

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2067

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10/15/03  
Date

2003 SENATE JUDICIARY

SB 2067

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2067

Senate Judiciary Committee

☐ Conference Committee

Hearing Date: January 13, 2003

Tape Number	Side A	Side B	Meter #
SB 2067	X		0.0 - 16.0
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. . Sen. Traynor requested meeting starts with testimony on the bill.

**Testimony in support of SB 2067**

Mark Bachmeier - Commissioner, Department of Labor -(See attachment) (meter 0.4)

Senator Carolyn Nelson asked does the 90 day time frame include both parts of bill or just the one it proceeds? Both but this could be clarified.

Senator John T. Traynor, Chairman asked if this is a standard procedure for the rest of the country? This is not standard but typical (meter 4.0)

Senator Dennis Bercier asked questions in same regard. Discussion in regarding how the administrative process time will affect the filing time of a complaint and should not be started until the administrative process is complete . Senator John T. Traynor, Chairman: Stated that Employment Discrimination is in favor of plaintiff and against respondent (meter 8.2) under administrative practices act of 2832.

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Senate Judiciary Committee

Bill/Resolution Number SB 2067

Hearing Date January 13, 2003

Senator Dick Dever discussed the 180/380 days and law prior to 2001 time frame of 3yrs (meter 10.02)

**Testimony in opposition of SB 2067:**

There was no testimony in opposition.

**Testimony nutral to SB 2067:**

There was no nutral testimony of SB 2067.

Senator Dennis Bercier requested further clarification and time with Mr. Bachmeier.

Senator Carolyn Nelson would like Clarification of "Complaint".

Senator John T. Traynor, Chairman closed discussion upon completion of the above.



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2067

Senate Judiciary Committee

☐ Conference Committee

Hearing Date: January 14, 2003

Tape Number	Side A	Side B	Meter #
SB 2067	X		39
Committee Clerk Signature			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. . Sen. Traynor requested meeting starts with testimony on the bill.

Discussion with Sen. Nelson on the statute of limitations. All senators claimed to have the information need to take action.

Senator Carolyn Nelson made a motion to amend Complaint of Discriminatory practice.

Senator Dennis Bercier second the motion.

**Roll Call Vote: 5 Yes. 1 No 0 Absent**

**Motion carried, amendment passed.**

**Motion Made to pass SB 2067 after one (1) amendments** by Senator Stanley W. Lyson, Vice Chairman and seconded by Senator Thomas L. Trenbeath.

**Roll Call Vote: 6 Yes. 0 No 0 Absent**

**Motion Prevailed and carried by Senator Thomas L. Trenbeath**

38217.0101  
Title.0200

Adopted by the Judiciary Committee  
January 14, 2003

*[Signature]*  
1-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2067

Page 1, line 19, after "complaint" insert "of a discriminatory practice"

Renumber accordingly

Page No. 1

38217.0101

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*[Signature]*  
Operator's Signature

10/15/03  
Date

Date: January 14, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2067**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amendment for "Complaint of Discriminatory Practice"

Motion Made By Senator Carolyn Nelson Seconded By Senator Dennis Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman		X	Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Five No One

Absent ALL PRESENT

Floor Assignment \_\_\_\_\_

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

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LaCosta Rickford 10/15/03  
Operator's Signature Date

Date: January 14, 2003  
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2067**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to pass amendment.

Motion Made By Senator Stanley W. Lyson Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six No ZERO

Absent ALL PRESENT

Floor Assignment Senator Thomas L. Trenbeath

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

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10/15/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 15, 2003 1:22 p.m.

Module No: SR-07-0595  
Carrier: Trenbeath  
Insert LC: 38217.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2067: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2067 was placed on the Sixth order on the calendar.**

Page 1, line 19, after "complaint" insert "of a discriminatory practice"

Renumber accordingly

2003 HOUSE JUDICIARY

SB 2067

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*La Costa Rickford*

*10/15/03*

Date

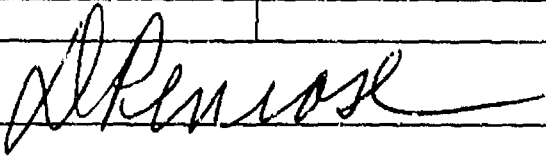
2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2067

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-3-03

Tape Number	Side A	Side B	Meter #
1		xx	16.9-end
2	xx	xx	0-12.4 & 13.5-22.5
Committee Clerk Signature 			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on SB 2067.

**Mark Bachmeier, Labor Commissioner:** Introduced the bill (see attached testimony).

**Chairman DeKrey:** Thank you.

**Rep. Kretschmar:** When administrative hearing process is completed, is this 90 days then to start an action in district court de novas or an appeal from the decision in your department.

**Mr. Bachmeier:** This would not relate to appeals to a formal administrative hearing under the administrative process. It would apply if a person filed an administrative complaint with the department, and then either chose to withdraw that complaint to take it to court or we issued a finding that we didn't believe there was cause to exist, and they wanted to pursue the complaint further on their own in court after we closed the complaint. Then they would have 90 days to do it. If a case were to go to a formal administrative hearing in that process, as a result of the administrative process, and the person wished to appeal that, then that's governed by the

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House Judiciary Committee  
Bill/Resolution Number SB 2067  
Hearing Date 3-3-03

Administrative Practices Act, that would be a different circumstance. This would just be for the person's right to pursue a case on their behalf in court.

**Rep. Klemm:** Are we looking at situations where either you have 180 days to file a complaint or 300 days depending on the kind of violation and we then filed a complaint with the department first. Are we shortening the time that somebody would otherwise have to file in court because the department was very expedient and they filed a complaint early with the department. If they had 300 days, and if on day 1 they filed the complaint with the department and the department acted within 200 days and sent out this notice. So it has taken a total of 200 days, that person would ordinarily have 300 days to file this claim in court, but now we're saying under this bill that they have 90 days from the date you send out this notice, which adds up to 290 days. This is 10 days less than they would have ordinarily had. Is that possible?

**Mr. Bachmeier:** Yes, that's true. It happens today with respect to the person's right to file in federal court. The federal law requires that an aggrieved person first undertake the administrative process before a complaint can be filed directly in court, and then establishes a 90 day time period to take to court at the end of the administrative process. So, you're right. It could lead to a circumstance that may be relatively rare, but it could certainly happen that somebody could file right at the beginning of the 300 day limitation, we could resolve the complaint and ultimately they would have fewer than the original 300 days to file in court. But in that case the administrative process would also have been completed by that time.

**Rep. Onstad:** As you go through the bill, it basically says "filing a complaint with the department you have 180 days", and then on line 19, it says you have 90 days. Can you explain that difference.



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Hearing Date 3-3-03

**Mr. Bachmeyer:** Presently, a person has two options. He/She may file their complaint directly in court and not file an administrative complaint with our office at all. That's always an option that's open to an individual. Exercising that option, whichever it is, has an initial time limitation attached to it. An individual either has 180 days or 300 days depending upon the nature of the complaint to file it either directly in a state court or file an administrative complaint with our office. That's true regardless of which option the person chooses. What we're trying to address here is what happens when somebody exercises that option to file an administrative complaint with our office, then what happens to their right to go to court. In filing an administrative complaint doesn't preclude somebody from going to court, but presently what they're left with at the end of the administrative process which is they file a complaint with us, we investigate it, and make a decision, the complaint is administratively closed and what we're dealing with here is what happens, what right does that person have available at that time to go to court. The person can file in court, the problem right now is that the time they have to do that is very often very short. Because all they have left for time at that point is whatever remains of the original time limitation. So they filed it in 150 days, the administrative process completes, the case is closed, now they have only 30 days of that original 180 days left. We're proposing that there should be a fixed 90 day after the administrative process is complete to file in court, and not have it be dependent upon how much of that original time limitation they took up.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Sen. Tim Mathern:** Support (see attached testimony and amendments). I suggest an amendment to create a commission to help with complaints...

*Salvatore Rickford*  
Operator's Signature

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**Chairman DeKrey:** Basically, Sen. Mathern, the Human Rights Commission bill was defeated in the Senate, and this is an amendment to change our bill into a Human Rights Commission bill?

**Sen. Mathern:** We had a very large bill in the Senate regarding Human Rights, and questions were raised about its cost and about its powers that were dramatic and much more than the Senate wanted to accept. The amendment you have before you, is a version that is much more reduced and that relates to the complaint procedure. That's what the amendment is: creating a 7 member commission...

**Chairman DeKrey:** Basically you're asking us put an amendment on a bill that's never had a hearing, this is actually a bill in itself.

**Sen. Mathern:** If you looked at the original bill, you will find that it was dramatically different. We have a hearing before us regarding complaints and procedures and the amendments, if I could go through that, would create a 7 member commission of Human Rights within the Dept. of Labor. It would not change the Dept. of Labor's work of Division of Human Rights. That would stay intact. They would continue to carry out those responsibilities, but this commission would provide some additional help. With this commission, there would be 7 members appointed by the Governor representing the business community and government, 5 members from the community at large. This commission diverse in membership would have representatives from across the state. It relates to the type of commission that has worked in other states, and working in other communities in this state in itself. The Division of Human Rights, created in 2001, was a step in the right direction. This bill, with these amendments, will take the next crucial step. It would provide the citizens that are most affected by discrimination, a voice in the enforcement of the human rights laws that we have. I appreciate the question and concern that you raise. I

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believe the amendments that are here address this process, to make this bill a better bill for the state of ND. I hope you look at those amendments, and I ask that you give it Do Pass recommendation.

**Chairman DeKrey:** I question whether this shouldn't have gone through delayed bills, so that it had a full hearing. I don't see where it is even germane to this bill, to tell you the truth.

**Rep. Klemin:** On the fiscal part of that, you didn't talk about that, I noticed that subsection 6 on the powers and duties of the commission, cooperate within the limits of any appropriations made for its operation, etc. Do you have any information on what the cost would be, is there a fiscal note on this amendment.

**Sen. Mathern:** One of the things in terms of putting the amendment together were to address the fiscal effects. Originally, when the commission was considered, the fiscal note would have been way too high. A fiscal note on this bill reflects the fact that this would be volunteer board members and so the cost of it would be the cost of their travel, etc. That's what is in this bill. The commissioners would not be paid, would not be given a per diem, so it would be dependent on how many meetings they had, and how many miles that they traveled. I think that fiscal note would be way under \$5,000.

**Rep. Klemin:** Are these volunteers going to be the ones that prepare the annual report, there's not going to be any staff time taken up within the Department of Labor, anything for the services that are needed to do paperwork for the commission, etc.

**Sen. Mathern:** I think in part that would relate to the abilities of the persons that the Governor would appoint. I think there would be a range of people and range of abilities. Some appointees might have that ability totally on their own, not needing staff, and I think maybe some appointees

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would need some staff help. That would be dependent on who the Governor would appoint. I think it would be logical to assume that there would be some staff involvement, but not at all to the expense independent human rights commissions that operate totally on their own, as a department of the government on their own. There are volunteers that do the work within the present Human Rights Act. There is no expansion of any rights, or any responsibilities on anybody's part in terms of human rights itself. Those remain unchanged with this bill.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Rep. Pam Gulleeson:** Support. I believe that as we look at the process by which the Labor Dept. is bringing in their bill, that it is really germane that we come back and revisit the whole discussion surrounding the commission concept. That is what we are really doing, looking at revising or changing their approach to how this is handled in discriminatory practices. There is a very large group of citizens across ND that believes that a real positive approach to handling part of that discriminatory procedure would be the establishment of a Human Rights Commission. I'm here for one piece and Cheryl Bergian will talk about the concept overall. My comments this morning are directed around one piece of that. Where there is a shortage in the workforce in ND, and especially in certain area, and a lot of efforts have been made and are looking at being made in how we can approach that. One of the things that we know that has to happen is that we are going to have to look for more diverse workforce to fill that. As part of the solution, GNDA has a subset committee under the New Economy Initiative that put forth a survey across the state in the business community and employers as part of their talent initiative. The results of that survey were very interesting. They really looked at what we need in terms of a workforce, not only in numbers but in diversity. The fact that we are a state that is not growing in population, we're

*Lacosta Rickford*  
Operator's Signature

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going to look outside ourselves to fill many of our needs, and the overall recommendation was that we look to policies that would support a more diverse workforce and they made the final recommendations to recommend a Human Rights Commission. I think that's pretty powerful. This is coming from our employers, business community, that looks out their door every day at everybody who is working for them and recognizes that we are facing a new challenge and going to need to find people to fill those positions. It was also the recommendation you should know from the Growing North Dakota panel that came here a few weeks ago, to speak about what they thought we needed to do to attract and retain new people. Those are two powerful groups that are not in this room today, but have come forth with recommendations on this. I think we need to consider this part of the whole thing.

**Chairman DeKrey:** Thank you.

**Rep. Lonny Winrich:** I also want to appear this morning in support of SB 2067 and in support of the amendment that Sen. Mathern has offered. I think it is important to recognize that this is not intended to be critical of the efforts of the Dept. of Labor in this area, but rather to reinforce those efforts and strengthen them. I think I strongly support what Rep. Gullison said about this contributing to the development of our workforce in ND, and a needed piece of the puzzle. As Sen. Dorgan told us on the Thursday before crossover, when he spoke to the house, we face a population crisis in ND. This certainly is not going to solve it, but it will make a positive contribution by encouraging people to come to ND and join our workforce.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Cheryl Bergian, Director, ND Human Rights Coalition:** Support (see attached testimony).

Also presented the written testimony of Robert Uebel, who was not present.

**Rep. Klemin:** I may have misunderstood Sen. Mathern when he talked about the people on the commission, that they would not be paid for expenses.

**Ms. Bergian:** That's correct.

**Rep. Klemin:** Then I read in the amendment here that at the end of the first section, "members of the commission who are not state employees, are entitled to mileage and expenses as provided by law for state officers and employees."

**Ms. Bergian:** Not state employees.

**Rep. Klemin:** So they do receive compensation for their expenses.

**Ms. Bergian:** Reimbursement for actual expenses, correct.

**Rep. Bernstein:** The fiscal note you said was \$23,000.

**Ms. Bergian:** If you are interested, I do have a fiscal note that was prepared for the Senate bill, so I can show you the figures.

**Rep. Bernstein:** Throughout your testimony, you talked about notifying, publicizing and various other things, which are you talking about. You also talked about the commission with respect to the staff time. Even for one FTE for the commission, I'm going to guess would run around \$40-50,000/year. So I am just wondering how accurate that \$20,000 was.

**Ms. Bergian:** When the fiscal note was prepared for the Senate bill, Commissioner Bachmeier did have the addition of 1/2 FTE to do the work of the Division, staff related to the commission on human rights, and that 1/2 FTE was \$17,400/yr, \$34,800/biennium. It is the position of the Coalition that this is the responsibility of the Division already and current employees of the Division should be available to do the work of the Commission, because much of this is the

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House Judiciary Committee

Bill/Resolution Number SB 2067

Hearing Date 3-3-03

responsibility of the Division already. We would question the need for a new FTE. Otherwise the amounts are related to expenses.

**Vice Chair Maragos:** Thank you for appearing. Further testimony in support of SB 2067.

**Carol Two Eagles:** Support. I have brought one complaint so far recently, went to mediation, and before the mediation was heard, and it was not successful, the person who is in charge of Equal Employment Opportunities Act violations told me, that he has no minority friends, that he's never had any minority friends, he never dated any minorities, so he doesn't know anything about how discrimination occurs or is perceived by them. I have no doubts that this person was extremely academically qualified, but if you haven't had any experience, how can you recognize it. Sometimes it is not incredibly blatant. Sometimes it is more or less, especially in mediation cases. This bill is a problem. In cases like that where it is extremely blatant, we have people who are managing businesses, who will be coming in to testify on my behalf of the potential employee. I don't see how this man can do his job. He has no experience. I think the Commission would assist in that way. As an employer, I went to the state for a grant, and I have legislators on my board of directors and I was told things like, "Indians wouldn't know enough to incorporate". That's pretty blatant. Those kinds of things do happen. So I think it would be a very good thing if you gave some thought to the additions to the bill. I appreciate your hearing me.

**Vice Chair Maragos:** Thank you. Further testimony in support.

**Wes Long Feather:** Support. Presented attached testimony of David Gipp, President of UTTC.

**Vice Chair Maragos:** Thank you.

**Amy Nelson, ND Fair Housing Council:** Support (see attached testimony).

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Hearing Date 3-3-03

**Vice Chair Maragos:** Thank you. Any further testimony in support. Opposition/Neutral?

**Sen. Mathern:** I just wanted to clarify my comments regarding a fiscal note. It did relate to the expenses of commission members who were volunteers, not the other expenses that might attend to staff. I recalculated those, and those come into that amount that I suggested. I suggest the committee ask for a fiscal note on the amendments from the appropriate state official, if you need one. That can clarify some of the questions.

**Vice Chair Maragos:** Thank you. We will close the hearing on SB 2067.

**Rep. Bernstein:** I would ask for a fiscal note on the amendment.

(Reopened later in the afternoon session)

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2067.

**Rep. Delmore:** I move the Mathern Amendments.

**Rep. Onstad:** Seconded.

**Roll call vote: Failed.**

**Rep. Grande:** I move a Do Pass.

**Rep. Kingsbury:** Seconded.

**8 YES 2 NO 3 ABSENT      DO PASS      CARRIER:      Rep. Kretschmar**



38217.0202  
Title.

Prepared by the Legislative Council staff for  
Senator Mathern  
February 26, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2067

Page 1, line 1, after "Act" insert "to create and enact two new sections to chapter 14-02.4 of the North Dakota Century Code, relating to the creation of a commission on human rights within the department of labor; and"

Page 1, after line 3, insert:

"SECTION 1. Two new sections to chapter 14-02.4 of the North Dakota Century Code are created and enacted as follows:

Commission on human rights - Membership. The North Dakota commission on human rights is created within the department. The commission consists of seven members appointed by the governor, with the consent of the senate, for terms of four years. Of the first members appointed, two must be appointed for terms of two years and two must be appointed for terms of three years. In making the first two appointments to the commission, the governor shall appoint one member to represent the business community and one member to represent state or local government entities. The governor shall make all subsequent appointments in such a manner that there is at all times one member of the commission representing the business community, one member of the commission representing state or local government entities, and five members of the commission from the community at large. The membership of the commission must at all times be composed of at least four members who are members of groups of people who have been or who might be discriminated against because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance. Appointments must be made to provide geographical area representation insofar as may be practicable, and no more than four members may belong to the same political party. Vacancies must be filled by the governor by appointment, with the consent of the senate, and the term of a commissioner appointed must be for the unexpired part of the term for which the commissioner is appointed. Any commissioner may be removed from office by the governor for misconduct, incompetence, or neglect of duty. Members of the commission who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

Powers and duties of commission. The commission may:

1. Investigate and study the existence, character, causes, and extent of discriminatory practices as defined in this chapter and chapter 14-02.5 and formulate plans for the elimination of discriminatory practices by educational or other means.
2. Issue publications and reports of investigations and research as in the commission's judgment will tend to promote good will among the various racial, religious, age, and ethnic groups of the state and which will tend to minimize or eliminate discriminatory practices as specified by this chapter and chapter 14-02.5.
3. Prepare and transmit annually a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the commission.

4. Recommend policies to the governor and submit recommendations to persons in the private sector to effectuate those policies.
5. Make recommendations to the legislative assembly for legislative action concerning discrimination as it may determine necessary and desirable.
6. Cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations whose purposes are consistent with those of this chapter and chapter 14-02.5, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions.
7. Intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques. The intervention may be made in cooperation with other agencies or organizations whose purposes are consistent with this chapter and chapter 14-02.5."

Renumber accordingly

Date: 3/3/03  
Roll Call Vote #: 1 Voice Vote

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2067**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Mathern Amendment

Motion Made By Rep. Delmore Seconded By Rep. Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey		✓	Rep. Delmore	✓	
Vice Chairman Maragos	AB		Rep. Eckre	AB	
Rep. Bernstein		✓	Rep. Onstad	✓	
Rep. Boehning		✓			
Rep. Galvin	AB				
Rep. Grande		✓			
Rep. Kingsbury		✓			
Rep. Klemin		✓			
Rep. Kretschmar	✓				
Rep. Wrangham		✓			

Total (Yes) 3 No 7

Absent 3

Floor Assignment \_\_\_\_\_

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

Failed

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

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2067

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Grande Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Vice Chairman Maragos	AB		Rep. Eckre	AB	
Rep. Bernstein	✓		Rep. Onstad		✓
Rep. Boehning	✓				
Rep. Galvin	AB				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 8 No 2

Absent 3

Floor Assignment Rep. Kretschmar

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

**REPORT OF STANDING COMMITTEE (410)**  
March 3, 2003 3:29 p.m.

Module No: HR-37-3792  
Carrier: Kretschmar  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2067, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (8 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2067 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-37-3792

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*LaCosta Rickford*

Date

*10/15/03*

2003 TESTIMONY

SB 2067

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10/15/03  
Date

John Hoeven  
Governor

Mark D. Bachmeler  
Commissioner



State Capitol - 13th Floor  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58505-0340

www.state.nd.us/labor  
E-mail: labor@state.nd.us

Testimony on SB 2067  
Prepared for the  
Senate Judiciary Committee

January 13, 2003

*same to House*

Chairman Traynor and members of the Senate Judiciary Committee, good morning. For the record, I am Mark Bachmeler, Commissioner of Labor.

The intent of SB 2067 is to make a simple improvement to the way the statute of limitations for filing a human rights complaint operates.

The North Dakota Human Rights Act (N.D.C.C. Chapter 14-02.4) provides time limitations for aggrieved persons to file complaints. These limitations are the same for filing an administrative complaint with the Human Rights Division of the Department of Labor as for filing in state courts. When a complaint is first filed with the Human Rights Division, the time limitation for the aggrieved person to file in court is tolled until the administrative complaint is closed, at which time it begins to run again.

The problem with the current law occurs when a person files an administrative complaint with the Human Rights Division near the end of the time limitation period. In such cases, the person may have inadequate time to file his or her complaint in court after the administrative complaint is closed should he or she choose to do so. For example, if an individual filed an administrative complaint on the 175<sup>th</sup> day of a 180-day limitation period and then wishes to appeal the administrative decision in state court, he or she would have only five remaining days to file the court complaint.

The solution we are proposing in SB 2067 is simply to provide a standard ninety-day time period for a complaint to be filed in state court upon closure of an administrative complaint by the Human Rights Division. This proposed method and ninety-day time period apply presently to the filing of employment discrimination complaints in federal courts after closure of administrative complaints under federal equal employment rules.

Thank you for your time. I would be happy to answer any questions you have.

Telephone: (701) 328-2660 ND Toll Free: 1-800-582-8032 Fax: (701) 328-2031 TTY: 1-800-366-6888

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*LaCosta Rickford*  
Operator's Signature

*10/15/03*  
Date

# NORTH DAKOTA FAIR HOUSING COUNCIL, INC.

33 Airport Road, Suite C  
Bismarck, ND 58504  
ND Relay 1-800-366-6889 (Voice)

Telephone 701-221-2530  
Toll Free 1-888-265-0907  
TDD 1-800-927-9275

**Testimony before the  
House Judiciary Committee  
March 3, 2003  
by the  
North Dakota Fair Housing Council**

Mr. Chairman, and members of the committee, my name is Amy Schauer Nelson and I am the Executive Director of the North Dakota Fair Housing Council (NDFHC). The NDFHC is a non-profit organization which works to eliminate housing discrimination in North Dakota. The NDFHC supports passage of Senate Bill 2067 with the amendments proposed by the North Dakota Human Rights Coalition.

SB 2067 would establish an independent, volunteer based human rights commission to assist the Human Rights Division at the North Dakota Department of Labor. This commission would not compete with the duties of the Department of Labor.

Through our experience, the NDFHC knows that the North Dakota Department of Labor is extremely busy investigating complaints of housing discrimination and other types of discrimination. This legislation would give the Labor Department assistance by freeing up staff time. Staff would be able to focus their energy on the daily functions of investigating; mediating and ruling on complaints of housing discrimination and attending trainings to more advance their knowledge in this area. The Human Rights Commission could focus on long term goals and larger projects dealing with the public and the legislature.

The Human Rights Commission could:

- conduct public hearings on discrimination;
- coordinate activities to educate the public on discrimination laws;
- provide a yearly status on discrimination in North Dakota for the Governor, legislature and public;
- recommend policies; and
- review regulatory changes and amendments.

The Commission as outlined in the amendment would be bipartisan, represent businesses, represent those likely to be victims of discrimination, and have statewide representation. This appears to cover everyone and would be a fair representation of all interested parties.

The North Dakota Fair Housing Council supports passage of this bill with the amendment indicated.

Email: [ndfhc2@btl.net](mailto:ndfhc2@btl.net)  
Equal Housing Opportunity



Web: [www.ndfhc.org](http://www.ndfhc.org)  
Fax 701-221-9597

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10/15/03  
Date



House Judiciary Committee Testimony  
Senator Tim Mathern  
Senate Bill 2067

Chairman DeKrey and members of the Judiciary Committee. My name is Tim Mathern, Senator from District 11 in Fargo.

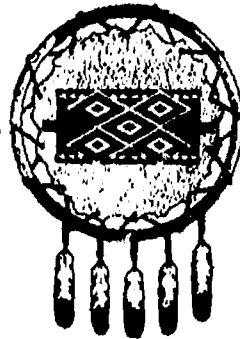
I support SB 2067 and suggest a further addition to assist in dealing with issues of complaints and discrimination. I suggest an amendment to create a commission to help with complaints and improve enforcement of human rights laws. This change would create a seven member North Dakota Commission on Human Rights within the Labor Department's Division of Human Rights. The Commission would not replace the Division of Human Rights, but would enhance and augment the work of the Division of Human Rights. The Division of Human Rights will continue to carry out the responsibilities given to it in past legislative sessions, with the assistance and information that the Commission will be able to provide.

The Commission members would be volunteers appointed by the Governor and would represent the business community, government, and five members from the community at large. The Commission, diverse in membership, would have representatives from across the state. This model has worked well in other states and in communities throughout North Dakota.

The Division of Human Rights, established in 2001, was a step in the right direction. This bill with amendments will take the next crucial step, providing North Dakota citizens most affected by discrimination another way to offer complaints and a voice in the enforcement of our human rights laws.

Mr. Chairman and members of the Committee, I ask for your support of SB 2067 with amendments. The suggested amendment is here attached. Others are here to testify to their content and need. Thank you.

UNITED TRIBES TECHNICAL COLLEGE  
3316 UNIVERSITY DRIVE  
BISMARCK, NORTH DAKOTA 58504 • PHONE 701-255-3285 • FAX 701-530-0605



**Judiciary Committee  
North Dakota House of Representatives  
58th Legislative Assembly**

**Testimony of David M. Glipp  
President, United Tribes Technical College**

**on SB 2067  
Clarifying Time to File Complaint After Labor Department Decision  
On Complaint of Discrimination**

**March 3, 2003**

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony today in favor of the amendments being proposed to SB 2067. I am David Glipp, President of United Tribes Technical College here in Bismarck.

United Tribes Technical College serves over 600 students each year at its campus just south of Bismarck next to the Bismarck airport. We have been serving Native American and other students since 1969, and are in our 34<sup>th</sup> year of operation.

Our students come from reservation around the country. At any one time, we may have students from over 40 Tribal Nations at our school, studying from a wide variety of technical and vocational disciplines. Our students live on campus, but often go into Bismarck for various activities. This year for the first time we have a significant number of students living off campus in apartment buildings in Bismarck.

Before discussing the amendments to SB 2067, I also want to add one thing about the present SB 2067. United Tribes' attorney has recommended that the time period be 180 days for filing a complaint with the State District Courts, rather than 90 days after the Labor Department has completed its investigation. This is more in keeping with Federal legislation and allows enough time to gather the evidence and funds that are needed to file such a case.

It is because of the local experiences of our students and faculty at United Tribes Technical College, and my personal experiences in North Dakota, that I am in favor of the proposed amendments to this bill. While we have not yet had an opportunity to study the amendments in detail, the thrust of the amendments is to put in place a Human Rights Commission that would be advisory to the Department of Labor in carrying out its duties. It would have the power to call hearings and to generally oversee the Department of Labor's efforts with regard to enforcing North Dakota's Human Rights laws.

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As you know, the State Senate voted down a measure earlier in this session that would have established a full Human Rights Commission in North Dakota, despite the 1999 report of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights that such a commission is necessary, despite the lack of any opposition at the hearing, despite the lack of credibility of the present arrangement with the North Dakota Labor Department, despite the low cost of putting a state human rights commission in place, and despite the concern of nearly every minority and disadvantaged group in North Dakota that a true human rights commission is necessary.

Discrimination is still present in North Dakota in many places: in employment, housing, credit and public services, among other places. Our students still experience it a variety of ways in our malls, in housing, in employment, in general every day living experiences. A strong, functioning human rights commission could assist in discouraging that behavior. It is my hope that an advisory commission could also do much to discourage this behavior, without very much cost to North Dakota, just by raising its visibility.

But first such a body must be created by legislation. And that is what the amendments to SB 2306 must do, is create an advisory commission that will be able to begin to create credibility for the activities of the Labor Department on the discrimination issue, by studying it, holding additional hearings, developing educational materials, and so forth.

If this legislature again fails to act in this situation, we will have lost yet another opportunity and another two years will pass. North Dakota will continue to lose its creative and brightest people who realize that North Dakota has little commitment to protecting its diversity and protecting its minorities, including Native Americans and other racial groups, women and those with disabilities, from unjust discrimination. If the legislature does not make itself a strong statement against discrimination by passing these amendments, ignores the need for a vigorous effort to combat its effects, and acts as if a non-minority person is qualified to determine whether discrimination exists in a particular circumstance, there will be little effectiveness to the Department of Labor's efforts.

I have no quarrel with the North Dakota Labor Department; I am certain that our present Commissioner is doing as good a job as he can. But we must make a renewed commitment to dealing with discrimination in the workplace, in our communities, in our malls, in our credit establishments, and in the public services we provide, otherwise, our efforts lack real credibility. It is in this area that an advisory commission to the Labor Department can do some good, although it is not nearly enough. The advisory commission, made up of people from all backgrounds, including Native Americans in its membership, perhaps can help the Department of Labor structure a way to make sure that it will become more responsive to complaints of discrimination and more proactive in its approach to reduce discrimination in our state.

Given the history of this issue, in which time after time the legislature uses the excuse of lack of funds to determine that no commission is needed, I am not certain that we can expect an advisory commission to do much better, but it is a start at least.

How far do we have to go in our state in this area? I invite each and every committee member, and each and every member of the House of Representatives, to consider carefully the report of the Labor Department concerning the attitudes of the public regarding discrimination that was provided to the legislature earlier this session. Even those people surveyed who did not regard discrimination as a problem (overwhelmingly white) recognized that discrimination might be a problem for Native Americans in this state. Their comments reflect the fact it is still far too easy to discriminate in North Dakota and that we have a long way to go to reduce the kinds of discriminatory acts that take place in our state.

Let me give you an example of just what is wrong and what might be done to fix it. I do not have the exact statistics, but I think this point illustrates the issue. Our state capitol building has a roughly one thousand people working in it. The population of North Dakota is about 6% Native American. Are there 60 Native Americans working in the State capitol? No, there are less than 5 in this building of which I am aware, and nearly all of them are working in areas that deal only or primarily with Native Americans. There may be a few other Tribal members working in the lowest paying jobs, as well.

In contrast, Governor Bill Richardson of New Mexico, elected Governor in the 2002 election, by himself has appointed more than 21 Native Americans to various posts in his administration, many of whom are dealing with issues that are not directly tied to the fact that they are Native Americans. I know there are many, many qualified Tribal members who would love to work in the Tax Department, or the Insurance Department, or in the Banking Commission, or the Attorney General's office, or with the Department of Public Instruction or the Department of Health and Human Services or in the Governor's administration or with the State legislature but who are never offered the chance to do so or are discouraged from even trying to get such positions because there is no effort made to make them feel like this is their state, their state capitol, and that they have a valid and valuable contribution to make to our state government. We have a long ways to go.

It is not just that there are few candidates who apply for these positions. That is always the excuse I have heard. Doing outreach to seek qualified persons from among the Native American community for positions in our state government just doesn't seem to happen in our state, to an extent that is embarrassing.

Members of the Committee, discrimination hurts and damages citizens across our state. It prevents many people from achieving their full potential. We must do more and an advisory commission for the Department of Labor is the next logical step in the process of preventing discrimination. I urge you to pass the amendments, and give a do pass to SB 2067.

**FISCAL NOTE**  
Requested by Legislative Council  
01/23/2003

Bill/Resolution No.: SB 2306

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$66,746	\$0	\$67,862	\$0
Appropriations	\$0	\$0	\$66,746	\$0	\$67,862	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2306 proposes to create a seven-member human rights commission with authority to hold hearings on human rights complaints, issue publications and reports, adopt rules, investigate and study discrimination in the state, and formulate plans for the elimination of discrimination through education and other means. Under the proposal, commissioners would be entitled to compensation for their time and reimbursement for expenses. The primary fiscal impact of the bill relates to these costs plus administrative support for the operation of the commission. The fiscal estimates provided in this note are based on the following assumptions:

--The commissioners would hold hearings or meetings once every other month (six times per year),

--Including travel time, each meeting would encompass compensation and expenses for two days for each commissioner,

--Administrative support functions for the commission would require 1/2 FTE; and (Department of Labor had had 3 FTE added since 1999)

--All estimated costs relating to the commission would be in addition to the current budget proposal for the Department of Labor (SB 2007).

The fiscal estimates provided here do not include any estimated costs for contract services for studies or educational activities.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

No revenues are projected for SB 2306.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line

Item, and fund affected and the number of FTE positions affected.

Estimated expenses itemized here relating to SB 2306 are for the first fiscal year of the 2003-05 biennium. Subsequent years are estimated as the total first year expenses minus \$1,500 for one-time, first-year equipment expenses plus two percent each year for estimated cost increases.

\*  
remove Compensation to commissioners @ \$62.50 per day = \$5,250

Meal reimbursements to commissioners @ \$20.00 per day = \$1,680

Mileage reimbursements to commissioners @ \$0.32 per mile = \$2,688

\*  
remove Lodging reimbursements to commissioners @ \$45.00 per day plus taxes = \$1,782

remove Salaries and Benefits for 172 FTE (new) @ \$1,450 per month = \$17,400

Estimated administrative costs, including IT and office equipment, telephone and data connections, printing, postage, copy costs, office supplies, and other miscellaneous operating expenses = \$5,000

Total estimated expenses for first year:  $33,800 - 5,250 - 17,400 = 11,150$

Total estimated expenses for second year:  $32,946 - 5,250 - 17,750 = 9,946$   
 $21,096$

\* Total estimated expenses for 2003-05 biennium: \$66,746 \* 21,096

\* Total estimated expenses for 2005-07 biennium: \$67,882 \* 21,520

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

None of the expenses estimate here for SB 2306 are presently accounted for in the executive budget. All estimated expenditures would require new general fund appropriation.

Name:

Cheryl Bengien  
Mark D. Bachmaier

Phone Number:

328-2800

Agency:

Director, ND Human  
Department of Labor

Date Prepared:

9/28/2003

701-239-9323

2-10-03

Rights  
Coalition

**STATEMENT BY EQUALITY NORTH DAKOTA IN SUPPORT OF AMENDMENTS TO  
SENATE BILL 2067**

My name is Robert Uebel, and I live in Fargo. I am writing as co-chair of Equality North Dakota, the statewide advocacy organization for gay, lesbian, bisexual and transgender (GLBT) North Dakotans, to speak in support of amendments to Senate Bill 2067 which would provide for a human rights commission in North Dakota.

Equality North Dakota is a member of the North Dakota Human Rights Coalition and has been an active supporter of the efforts to create an independent human rights commission in our state. Our organization believes that the creation of an independent human rights commission will send the clear message that the state of North Dakota is serious about fighting discrimination and creating a more welcoming climate for those who are seen as "different." We are convinced of the necessity for such a commission, even though it would presently not be able to address the very real discrimination experienced by GLBT North Dakotans, such as loss of employment and even eviction from their homes once their sexual orientation becomes known.

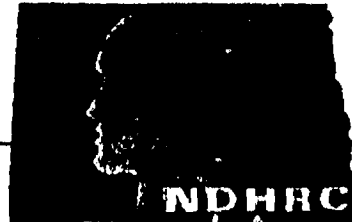
We must face the unpleasant reality that North Dakota is not known as a state where people who are believed to be "out of the mainstream" are fully welcomed and valued as equal members of the North Dakota family. I know of many talented GLBT North Dakotans who have chosen to leave the state because they do not enjoy equal rights and consequently feel they can create a better future for themselves elsewhere. Can we continue to afford to educate GLBT North Dakotans in our schools and in our universities only to have them move to neighboring states where their rights are better protected?

Dr. Richard Florida, in his book *The Rise of the Creative Class*, has spoken of technology, talent and tolerance as the three "T's" of economic development. He states, "... the creative capital theory says that regional growth comes from the 3 T's of economic development, and to spur innovation and economic growth a region must offer all three of them." He has shown a strong correlation between the presence of a thriving GLBT community and a successful high-tech industry. In other words, a region that welcomes and values the GLBT community is very likely to possess the qualities that will attract the kind of individuals who will spur creativity and generate high-tech growth.

"Business as usual" is not going to create the climate that will allow North Dakota to grow and prosper in the new century. Others have shown that the Division of Human Rights within the Department of Labor has not adequately addressed issues of discrimination in our state in the two years of its existence. I ask you to support the amendments to SB 2067 and help make North Dakota a state that values all of its citizens equally.

## North Dakota Human Rights Coalition

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



Testimony  
Senate Bill 2067  
House Judiciary Committee  
March 3, 2003

Chairman DeKrey and members of the Committee, thank you for the opportunity to present testimony in favor of the proposed amendments to Senate Bill 2067. A summary of the amendments to Senate Bill 2067 is provided to you as part of this testimony, which provides the structure and responsibilities for the Commission. Senate Bill 2067 amends the North Dakota Human Rights Act; the proposed amendments relate to the North Dakota Human Rights Act, also.

The North Dakota Human Rights Coalition is proposing that the North Dakota legislature enact a bill, Senate Bill 2067 as amended, to create a North Dakota Commission on Human Rights. The proposed Commission, made up of volunteers and representing both those likely to experience discrimination, businesses and government, would operate in addition to the current Division of Human Rights in the North Dakota Department of Labor. The Commission would not replace or supplant the Division; the intention of this legislation is to enhance and augment the work of the Division, and provide the resources to the Division to accomplish activities that the Division has not had the ability to accomplish. Other states have Commissions in addition to Divisions, including South Dakota, Iowa, Kansas, Colorado and Michigan.

The Division of Human Rights was given the ability to investigate and enforce all forms of discrimination prohibited by state law in the 2001 legislative session. This would continue and is not affected by the proposed amendments. The proposed Commission would have different responsibilities than the Division, responsibilities that have been within the Division but that the Division has not been able to adequately meet.

While the Division of Human Rights has begun to address the needs of North Dakotans in the human rights area, it has not been able to accomplish several enunciated goals in the past two years. The correspondence between the Labor Commissioner and the North Dakota Human Rights Coalition provided to you as part of this testimony make it clear that the Division has been trying to be responsive to the identified needs of North Dakota residents since its receipt of additional responsibilities in 1999 and 2001, but has had to prioritize other activities and has not achieved several important goals. An example is the Division's promise two years ago to ensure listings in all the telephone books across the state, so that people with questions about discrimination would be able to locate a telephone number to call. The Division is not currently listed in telephone books in the state other than Bismarck, including Devils Lake, Grand Forks, Grafton, Minot, Jamestown, Wahpeton, Dickinson, and Williston. The creation of the Commission could provide seven volunteers, plus dedicated staff time, to address the barriers to access that exist for those who are trying to find the Division of Human Rights.

*LaCosta Rickford*  
Operator's Signature

10/15/03  
Date



The Division does in-person complaint acceptance in one city in North Dakota, Fargo (other than in Bismarck, where its office is located). The Division instituted in-person complaint acceptance for one-half day per month in August, 2002, at the request of the Fargo Human Relations Commission in early 2002. The Fargo Human Relations Commission asked for in-person complaint acceptance in Fargo because of the 18 people referred to the Division in 2001, only 3 people got complaints filed through the written complaint acceptance process. The Division has done no publicity of the availability of in-person complaint acceptance in Fargo, despite its promise to do a press release in September, 2002, and despite a second request for that press release by the Fargo Human Relations Commission in November, 2002. It is my understanding that the Labor Commissioner decided, without communicating that decision to the Fargo Human Relations Commission, that a Forum article was the equivalent of a press release; that article is included in this testimony. The article contains no information regarding how to contact the Division of Human Rights. And, the telephone number for the Division of Human Rights (in Bismarck or Fargo) is not listed in the Fargo telephone book. The request for a press release included the information that the information regarding the availability of the Division of Human Rights in Fargo and how to contact the Division would be disseminated to the 250 stakeholders on the Fargo Human Relations Commission mailing list. A Commission on Human Rights would be able to assist the Division in publicizing the Division's availability as a resource for complaints or questions in all areas of North Dakota; the Commission would include members from across the state.

Another example is the study on the extent and nature of discrimination in North Dakota that was required by the 2001 legislature, upon the request of the North Dakota Human Rights Coalition. The Division contracted with a private company which conducted that study in December, 2001. Despite repeated requests to the Division from the North Dakota Human Rights Coalition and the Fargo Human Relations Commission that the results of the study be released and publicized, the Division did not make those results public until February, 2003, after the Coalition brought the Division's delay to the attention of the Senate and House Judiciary Committees last month. A Commission would be able to publicize the results of such a study in a more timely manner, including positive and negative results, and assist the Division in developing responses to the negative results in order to improve the quality of life for all North Dakota residents, and for those who might consider residence in North Dakota.

An example of information in the study that the Commission could assist the Division in addressing is the difference in perception of the extent and nature of discrimination between all the respondents in the survey and the respondents who were Native American or Non-White. 25% of the respondents, 1 in 4, believed that they had experienced discrimination. A significantly higher number of people of color believed that they had experienced discrimination: 55% of the Native American respondents and 52% of the Non-White respondents (Executive Summary, page 3).

The Appendix of the survey lists two pages of places respondents went to seek help for the discrimination they believed they had experienced. In only a handful of times did they seek out the Department of Labor, the state agency given the responsibility to address complaints of discrimination (Appendix page 45).

The respondents in the survey were asked to rate how much of a problem discrimination is in North Dakota using a scale of 1 (No Discrimination) to 5 (Very Significant Problem). The overall mean rating was 2.80, which was interpreted to be that discrimination is not a "very significant problem". (Executive Summary page 2). This is despite the information that one-fourth of the respondents believed that they had experienced discrimination and more than 50% of the people of color believed they had experienced discrimination. And, there are more than 30 pages of comments in the Appendix

(pages 1 through 31) which list the comments made regarding discrimination in North Dakota. We ask that you read through those pages, and listen to the responses made. There is page after page of reports from the 1316 respondents of discrimination that they experienced or knew about. While the survey may be interpreted to state that discrimination is not a "very significant problem", the voices that you will hear will tell you that it is enough of a problem that additional resources of state government, at a minimal cost, are needed to provide the environment in this state that will attract and keep people in our state.

The North Dakota Human Rights Coalition asked the Division of Human Rights to create an advisory committee, made up of people who represent those likely to experience discrimination, more than a year and a half ago. Despite repeated requests for an answer to the Coalition's request, despite meeting with the Labor Commissioner regarding this request and providing additional information on the reasons for, proposed responsibilities of and proposed structure of the advisory committee, the Labor Commissioner has never responded to the Coalition's request for an advisory committee, despite repeated assurances that he would do so. The advisory committee would have assisted the Division in providing information on discrimination and in publicizing the Division's availability to citizens of North Dakota. The proposed Commission is needed to fill role. It is critical that citizen participation be part of the human rights education and enforcement role of state government. The participation and involvement of citizens, those who are affected by the discrimination laws of the state, including members of the protected classes, business, and government, is needed to be able to fully, adequately, and effectively fulfill the needs of those who experience or might discrimination within our state. The law passed in 2001 giving full investigation and enforcement authority to the Division of Human Rights was one step in reaching this goal. The creation of a North Dakota Commission on Human Rights is the next step that is needed.

It is clear from letters exchanged with the Labor Commissioner that the Labor Commissioner agreed that the requests of the Coalition were being considered, and some actions were in the process of being implemented. But, according to the Labor Commissioner, the resources of the Division were being allocated to other priority needs, and the implementation of the actions were delayed. The written testimony of Tom Fibieger provides additional information about his concerns regarding the operation of the Division of Human Rights within the Department of Labor. It should be noted that the Labor Department has the responsibility of investigating and enforcing the labor laws of North Dakota, in addition to the responsibilities of the human rights laws. The Commission is needed to assist the Division of Human Rights in responding to and implementing the responsibilities given it, by this legislature.

The proposed Commission would be a visible example of North Dakota's commitment to embracing and celebrating diversity, both to those who are residents of North Dakota and those who might be considering residence in North Dakota, and a visible response to the complexities that diversity can bring for those who live here. The written testimony of Heather Ummel-Wagner is provided to you, which provides you the perspective of two new residents of North Dakota and the assessment they did of the question of whether North Dakota would be welcoming of diversity in its population, and her concerns regarding the answer to that question. The Commission would be a low-cost resource for those who are assessing the ability of the state of North Dakota to respond to and encourage the celebration of diversity within the state. It would be a resource for communities that might be considering ways to attract and retain residents of diverse backgrounds and experiences.

As part of this testimony, we're providing to you a list of 40 organizations in the state of North Dakota which support the creation of a North Dakota Commission on Human Rights. The organizations are diverse in nature and scope and represent many of the citizens of North Dakota in varied capacities. Also as part of this testimony, we provide to you the testimony of Allan Peterson, the Chair of the North Dakota Human Rights Coalition and the President of the North Dakota Association of the Blind, the testimony of Mark Hill, representing the North Dakota Association of the Deaf, and a letter from Freedom Resource Center for Independent Living, Inc., all of which provides information to you on the perspectives of an people with disabilities and organizations associated with people with disabilities.

We ask that the you recognize the grassroots support for the creation of a North Dakota Commission on Human Rights and amend Senate Bill 2067.

## North Dakota Human Rights Coalition

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



### Summary of Proposed Amendments to Senate Bill 2067

The proposed North Dakota Commission on Human Rights would:

- Be seven volunteer members
- Be bipartisan with statewide representation
- Represent persons likely to experience discrimination, business and government
- Be selected by the governor and approved by the senate
- Investigate and study the existence, character, causes and extent of discriminatory practices and formulate plans for the elimination of these practices
- Issue publications and reports of investigations and research that will tend to promote goodwill among the diverse groups of the state and which will tend to minimize or eliminate discriminatory practices
- Intervene in intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques
- Recommend policies to the governor and to the legislature, and submit recommendations to entities in the private sector to effectuate those policies

The intention of the proposed amendments to Senate Bill 2067 is to add a North Dakota Commission on Human Rights to the existing Division of Human Rights in the Department of Labor in order to augment and enhance the ability of the Division of Human Rights to provide information and assistance to the residents of North Dakota.

The fiscal note for these amendments should be very low. The only compensation for the volunteer commissioners would be reimbursement for travel and lodging. The current staff of the Division of Human Rights should be able to provide staff support for the Commission, as the responsibilities of the Commission augment the current responsibilities of the Division of Human Rights in the Department of Labor.

The Division of Human Rights within the Department of Labor would continue to investigate complaints and issue determinations on those complaints pursuant to the North Dakota Human Rights Act (Chapter 14-02.4) and the North Dakota Housing Discrimination Act (Chapter 14-02.5).

June 28, 2001

Mark D. Bachmeier, Commissioner  
North Dakota Department of Labor  
State Capitol Building, 13th Floor  
600 East Boulevard, Dept. 406  
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

Thank you for the phone conversations that we've shared regarding issues related to North Dakota Senate Bill 2217 and its implementation. Your information and your willingness to discuss these issues with me has been very much appreciated. Thank you!

My letter is written as spokesperson for our coalition that has been known as North Dakotans for a Human Rights Commission (NDHRC). Our mission was to establish through the legislative process a Commission for Human Rights in North Dakota. The work of our coalition began in late 1999 - early 2000, the organizational impetus originating within the Arc's of North Dakota, most specifically the Arc of Cass County. Our work has involved a number of organizations and individuals who share a mutual concern about human rights enforcement in North Dakota. Sixty-eight member organizations have joined and endorsed the work of the Coalition which led to the introduction of Senate Bill 2217 and the mirror bill to it introduced in the North Dakota House.

My role with the coalition has been to serve as its chair and spokesperson. Others have spoken on behalf of the coalition as situations have dictated. My personal goal is that the issue of human rights not be drawn into a partisan debate. If this were to happen, I believe, it would be a great disservice to the cause of human rights.

We are continuing our work as a coalition and have chosen to rename our Coalition under the banner of North Dakota Human Rights Coalition (NDHRC). The focus of our coalition will be on the implementation of the landmark legislation set forth under provisions of Senate Bill 2217. Our coalition, hopefully in a coordinated effort and with the cooperation of the Department of Labor, will monitor both how the Human Rights Division implements its responsibilities under the Act and, subsequently, its actual record of performance.

The first priority, we believe, is the establishment of an advisory committee to the Human Rights Division. It has been our understanding that, in the past, you've expressed a receptiveness to this concept. An advisory committee composed of a broad bipartisan group of North Dakotans, familiar with human rights issues, is essential. The Advisory Committee would have direct access to the Labor Commissioner and the Human Rights Division Director. The Department would cooperate fully with the Advisory Committee to ensure that the Committee is kept fully informed of all the phases of the implementation of its duties under provisions of the legislation that was passed and is now to be enacted.

The advisory committee would meet on a regular basis and solicit input from all North Dakotans. There are obvious logistical matters regarding the establishment and function of an advisory committee, but the immediate priority is to determine whether you and the Human Rights Director agree that an advisory committee is necessary and will be implemented as soon as possible. Please advise at your earliest convenience in response to this issue.

Our Coalition is also interested in the area of training for the Department's employees. Now that the Department of Labor has the full authority to investigate violations of human rights under the State's Human Rights Act, as well as to enforce legitimate complaints, proper training of the investigating personnel is an obvious priority. Please advise us as to what training would be provided to the Department's Human Rights Investigators, both initially and further on an ongoing basis.

A third and major concern of our Coalition is what criteria the Labor Department will use to determine whether probable cause exists with regard to the complaints it receives. As you know a finding of probable cause is the condition of having the complaint move onto the next level of administrative enforcement, i.e., a formal hearing before an administrative law judge. As I am sure you are aware, there has been much criticism in the past of the probable cause determination process of the Department of Labor. Statistics show that only a minute percentage of complaints were found to have a probable cause determination. Obviously, not every complaint of discrimination will have merit; but, just as obvious, it seems to us, that many will. Therefore, a clear definition of probable cause and how probable cause determinations are made, are absolutely crucial in our opinion. It would seem that the entire probable cause process should be set forth by administrative regulation and be made available for public comment prior to the implementation; these regulations being in accordance with the North Dakota Administrative Agencies Practices Act. Obviously, with the legislation scheduled to take effect as of August 1st, 2001, any regulation regarding the determination of probable cause needs to be drafted and published as soon as it is feasible. Please advise us of your intentions in this regard.

A fourth concern: a key component of implementation is for the Department of Labor to conduct a study to determine the extent to which discrimination outlawed under the Human Rights Act exists in North Dakota. We understand that the Division of Human Rights is in the process of implementing that study through private contract. It is of vital importance, of course, that this study be conducted in good faith by trained professionals who have the training and experience necessary to conduct this study using scientifically valid methodology. As you know, no such study has been attempted in North Dakota heretofore. It is crucial, therefore, that the integrity of the study be unassailable, so that regardless of its results, no one based on a particular agenda, can dismiss it as being biased or invalid. In this regard, please advise us as what is being done to implement this study and to ensure its validity.

Commissioner Bachmeier

page 3

Please know that our Coalition very much desires to have input into the study before any proposal is made or consultation chosen. Also, please send us any or all documentation you have regarding what the North Dakota Department of Labor has done thus far in implementing its responsibilities under the new legislation.

Finally, if at all possible, we would like to have you address representatives of our Coalition at a meeting, to be arranged at your convenience, but, as soon as possible. Our Coalition was gratified that, at last, North Dakota has a form of structure to redress violations of human rights of it's citizens. The awesome responsibility for this enforcement has been placed within the North Dakota Department of Labor. Our Coalition looks to work with you when we can and offer constructive criticism where we must, in order to ensure that the promise of human rights protection to all of our North Dakota citizens does not go unfulfilled. In that spirit, we look forward to working with you in serving the people of North Dakota in the cause of human rights. I look forward to your response. Thank you.

Sincerely,

Allan Peterson, Chairperson  
North Dakota Human Rights Coalition  
7009 Horseshoe Bend  
Fargo, ND 58104-5719  
Phone: 282-4644

cc: Dina Butcher, Director, Division of Human Rights,



John Hoeven  
Governor

Mark D. Bachmeier  
Commissioner



State Capitol - 13th Floor  
600 E Boulevard Ave Dept 406  
Bismarck, ND 58505-0340

www.state.nd.us/labor  
E-mail: labor@state.nd.us

September 10, 2001

Mr. Allan Peterson, Chairperson  
North Dakota Human Rights Coalition  
7009 Horseshoe Bend  
Fargo, ND 58104-5719

Post-It Fax Note	7671	Date	
To	Cheryl Bergman	From	Allan Peterson
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	701-232-8366	Fax #	

Dear Allan:

Please accept my most sincere apology for taking so long to respond to your June 28 letter. I certainly did not intend to ignore your concerns. I am embarrassed to say that your letter was simply among a very large number of pressing matters to which I have had to dedicate my attention during the past several months. Please do not take my poor response time as an indication of lack of interest or concern. I will do my best to respond, in order, to the issues you addressed in your letter.

First, I have enjoyed our telephone conversations. I appreciate your perspective and invite you to contact me any time.

I am certainly willing to discuss the concept of an advisory committee but I need to understand more about what the intent, composition and functions of such a group would be. I believe that the entire Department of Labor, and I personally, need to be accessible to anyone with questions or concerns about our programs and activities. Communication between the department and the public is essential to the success of our human rights enforcement and other programs. Moreover, I believe strongly in accountability. We have responsibilities to citizens of North Dakota and I think those citizens have every right to hold us accountable for meeting our obligations. I simply don't know enough at this point about what an advisory committee would look like to tell you whether or not I believe it to be a necessary part of meeting these objectives.

Training for our investigative staff is taking a number of forms. Several of our staff have years of investigative experience and have attended a variety of training provided by the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD). One of our staff holds an investigator certification from the Council on Licensure, Enforcement and Regulation. Beginning this fall, various staff will be attending specific human rights investigator training provided by the National Association of Human Rights Workers. My goal is to eventually have all investigative staff certified by that organization. In addition, we have gathered a great deal of information from other states' human rights enforcement agencies and have purchased a variety of quality research and reference materials.

Telephone: (701) 328-2660 ND Toll Free: 1-800-582-8032 Fax: (701) 328-2031 TTY: 1-800-366-6888

Operator's Signature LaCosta Rickford

Date 10/15/03



I am aware of the criticisms of the department's record of finding probable cause in equal employment cases. It is true that the agency has issued few probable cause findings historically. However, the number of probable cause findings is not a valid measure of the number of allegations that we find to be supported by the evidence we obtain during our investigations. The vast majority of complaints that are supported by evidence are settled prior to a formal determination. We expect this since it is clearly in the interest of respondents in such cases to avoid the inevitable litigation that follows a probable cause determination. We have negotiated many settlements and in some cases settlements have been reached directly between the parties and the complaints have been subsequently withdrawn.

I believe that settling a case is always preferable to issuing a probable cause finding as long as both parties agree voluntarily to the terms of the settlement. Our goal is always to resolve a complaint and to seek a suitable remedy for anyone who has been harmed by a discriminatory practice. I think it is a good thing whenever this can be accomplished without formal hearings or litigation. In addition, we have a statutory obligation to "emphasize conciliation to resolve complaints." The clear intent of the Legislative Assembly was that we resolve complaints informally to the extent possible.

Another factor is that, prior to the passage of SB 2217, we had no authority to hold administrative hearings or otherwise enforce remedies in equal employment cases. Consequently, probable cause findings almost invariably resulted in complainants seeking remedies on their own behalf in courts. We have certainly tried to avoid this when possible.

I would also point out that the EEOC has reviewed every determination issued by the department since 1987 in every case meeting federal jurisdiction. Under the terms of our agreement with the federal agency, it may refer back to us any case in which it does not agree with our conclusion. Our rate of rejection by the EEOC is less than two percent, among the lowest in the Rocky Mountain Region. We reopen for further investigation the few cases that are rejected by the EEOC and bring each one to an acceptable resolution if at all possible. We have been notified that we will soon be issued "certified" status by the EEOC, specifically for our record of accurate determinations.

The North Dakota Supreme Court discussed probable cause as a legal standard in its opinion in *Asbridge v. ND State Highway Commissioner*, 291 NW2d 739 (ND 1980). The Court concluded that "reasonable grounds", "reasonable cause", and "probable cause" are synonymous and noted essentially that probable cause exists where the facts and circumstances are sufficient to "warrant a man of reasonable caution in the belief that, an offense has been or is being committed." The Court further noted that "whether or not probable cause exists depends on the facts and circumstances of each case." Our process entails conducting a thorough investigation to gather all available information relating to an allegation and applying this "reasonable person standard" to the weight of that evidence. When the evidence leads us to "reasonably" believe that a discriminatory practice has occurred, we issue a probable cause finding if we are unable to negotiate a resolution. I don't know if there is a more exacting way to articulate the probable

cause standard. Your general point regarding the need for documentation of our processes and standards is very well taken, however, and we will certainly be working toward that goal.

Both the housing discrimination law passed during the 1999 Legislative Session and SB 2217 mandated that we study "the nature and extent of discrimination" in North Dakota. I welcome that obligation because we have far too little information about the prevalence of discrimination in our state. We need information to effectively administer our programs and target our educational efforts. I view this as an ongoing process approached methodologically in a variety of ways. As you are aware, we are proposing to begin with a relatively broad, general survey inquiring about people's experiences. No single methodology will be sufficient to cover all of the questions encompassed by the topic. My belief is that starting with an overview and moving to more specific and more qualitative research is a sound approach. I welcome your input into the entire study process and your comments regarding the integrity of the research are right on the mark. We will work, to the extent that resources allow, with a credible research firm.

I would welcome any opportunity to meet with you and other representatives of your coalition at your convenience. Please call me any time you would like to schedule a meeting and I will gladly drive to Fargo to meet with you.

Finally, I want you to know that I take our human rights responsibilities very seriously. I am committed to making our investigation and resolution of human rights complaints thorough, timely, and fair for all parties. Toward this goal, I am presently implementing a number of organizational initiatives intended to make our processes better and more efficient. These initiatives involve maximizing the number of agency staff dedicated to investigative work, organizing investigative staff into an investigative team that will work collaboratively on all types of complaints, consolidating a number of currently independent processes into a single, unified case management process, and developing technology that will improve the efficiency of case management and information processing. I would be happy to discuss these initiatives and other activities of the agency with you any time.

Again, I am very sorry that I was not more timely in my response. I appreciate your thoughts and comments and I look forward to continuing an ongoing dialogue with you and other members of the North Dakota Human Rights Coalition.

Sincerely,

*Mark D. Bachmeier*

Mark D. Bachmeier,  
Commissioner of Labor

November 25, 2001

Mark D. Bachmeier, Commissioner  
North Dakota Department of Labor  
State Capitol Building, 13th Floor  
600 East Boulevard, Dept. 406  
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

Thank you again for your September tenth letter in response to the letter which we sent to you on June 28th. Your letter of response has been shared with other members of our North Dakota Human Rights Coalition for their thoughts and input.

As indicated in our initial June 28th letter, we believe there are four basic issues which are absolutely critical to fully implement North Dakota's Human Rights Act. We wish to again address these issues in this current letter and continue to expand our dialogue with you.

You stated in your response that you were "certainly willing to discuss the concept of an Advisory Committee," but that you needed to understand more about what the intent, composition and functions of such a group would be". As you are well aware, there are distinct subgroups of people within our population who, because of their identity, are more likely to be subjected to acts of discrimination. Many, who are so categorized, are represented by various advocacy groups who speak to the issues that affect people in these defined populations. It would seem to be wise for the Division of Human Rights to seek the counsel of leaders in these defined populations to advise them on such issues as, how to effectively communicate with people in these various constituencies. Our primary intent in seeking establishment of an Advisory Committee would be to help the Division address the problems it faces in making it more accountable to the people of North Dakota. Defining the specific responsibilities of an Advisory Committee could be addressed in conjunction with reaching a consensus on the need for such a group.

It is our belief that the Advisory Committee would significantly increase the Department's productivity and effectiveness. A commonly shared opinion is that educating the public in regard to what constitutes discriminatory practices and what increases the dignity of people would be beneficial to all concerned. We believe an Advisory Committee would be a key component in coordinating efforts to educate the public regarding human rights issues. As you can appreciate, public relations is crucial to the success of many public enterprises; an Advisory Committee would serve a significant role in the success of the Department's public relations effort. We want to strongly emphasize that our primary intent in advocating for inclusion of an Advisory Committee is to help the Division of Human Rights accomplish its mission of fully enacting our states Human Rights Law.

When the substituted version of Senate Bill 2217 was being debated during the past legislative session, some of our advocates for a Human Rights Commission, were assured that an Advisory Committee for the Division would be considered and could be implemented once the bill became law. We would hope that the assurances that were given on this most critical of issues would be honored. We continue to believe it to be absolutely essential that there be an Advisory Committee to the Division composed primarily of people who are spokespersons for groups of people who commonly experience acts of discrimination.

Our Coalition does appreciate the information you and Ms. Dina Butcher have provided regarding the training and experience of the Division's staff. We believe it to be extremely important that the staff not only be highly trained in regard to human rights enforcement but that they also be sensitive and committed to the very important work they do in order to assure that people's rights are not violated. Since the Division has so much responsibility for the legal issues of human rights enforcement, we assumed that there would be an attorney on the staff who specialized in this area of the law. Do you employ an attorney within the Division's staff whose responsibility is to review claims of discrimination?

We are encouraged to hear that many of the procedures and forms used for documenting claims of discrimination are being streamlined by the Division. We also feel that cross training your staff in different areas of the law will lead to more efficient use of the Division's investigative staff.

In August, many of us received a request for input on a proposed study, which was to be financed by the Department of Labor, for the purpose of determining the extent of discrimination present in North Dakota. What is the current status of this study? The reasoning given for conducting the study was to help determine a base line of discrimination experienced by the population in North Dakota. As you are well aware, there are valid studies and ones that are flawed and aren't worth the money and resources that were invested in conducting them. It would seem to us that a telephone survey would by its very nature leave out low income people, people who have difficulty communicating and minorities who are residing on reservations and in homeless shelters. Also important is what questions are asked and how they are asked. It also seems to be very important to determine what goals you are trying to attain and what hypothesis are being established prior to conducting the study. Sampling the classes of people most likely to experience discrimination would seem to more clearly define the extent of discrimination. Although, some people may object to the use of testers, they have proven to be a very reliable means of determining prevailing attitudes and practices. We would like to draw your attention again to the North Dakota Advisory Committee's 1999 Report to the U.S. Civil Rights Commission which found that discrimination is "commonplace" in North Dakota.

In regard to the issue of "probable cause," the response given here has been written by Fargo attorney, Mark Schneider, who is a fellow member of our Coalition. In this response, Mark has reviewed the comments made regarding "probable cause" in your September 10th letter to us. Mark's credentials include his service for several years on the bipartisan North Dakota Advisory Committee, that prepared the 1999 North Dakota Report to the U.S. Civil Rights Commission; Mark is also well versed on administrative law. The following remarks (enclosed in bold brackets) is his response to your description of how the Division of Human Rights determines the existence of "probable cause".

{We would like to follow up on your assertion that, "the vast majority of complaints, that are supported by evidence, are settled prior to a formal determination." You offer this by way of explanation why " . . . the agency has issued few probable cause findings historically."

First, how does the Department determine whether the "complaints . . . are supported by evidence . . ." without making some type of "probable cause" determination? How do you inform the charging parties that their complaints are "supported by evidence?" in order that the complaining party may maximize the settlement that is to be obtained?

Also we don't understand your assertion that a "probable cause" determination results in "inevitable litigation." It would seem to us to be just the opposite, i.e., if your Department makes a probable cause determination, both parties are given notice of the merits of the claim, thus enhancing not only the prospects of settlement but a settlement amount that is reasonable given the obvious merits of the complaint.

Obviously, all parties should be "treated fairly", but after all, the North Dakota Human Rights Act is a clear and unequivocal statement of legislative purpose that illegal discrimination, in all its forms, should be eradicated "root and branch." According to your letter, there are numerous "complaints that are supported by evidence" that are not the subject of a "probable cause" determination. With all due respect, it would seem to us that if complaints are "supported by evidence", then, obviously, the purpose of the Human Rights Act is enhanced by using that evidence to make a "probable cause" determination and give the best possible leverage to the charging party to have his/her claim settled with the "benefit of the probable cause" determination. Any other process, it seems to us, does not embrace either the spirit or the letter of the Human Rights Act, i.e., that your agency will investigate all complaints within its jurisdiction and will seek to assist charging parties to resolve the cases - - through settlement if possible and litigation if necessary - - if those claims are "supported by the evidence."

Also, while the EEOC is far from a model of perfection, we do urge you to look at the EEOC procedures regarding "reasonable-cause" (probable cause) decisions. EEOC is charged to either make a "no cause" or "reasonable cause" decision. If a "no cause" decision is reached, EEOC must dismiss the charge, while a "reasonable cause" decision means the EEOC must undertake its statutory obligation of attempting to conciliate the dispute. 42 USC 2000E-5 (B); 45B AmJur 2d, Job Discrimination, Section 1350-1361. Certainly, if the claim has no merit, and to be fair to the person being charged with the discrimination, your agency should issue a no probable cause determination promptly after fully investigating the complaint. By the same token, if there is "probable cause", it is not only fair to the charging party - - but it is the essential function of your agency - - to promptly make the "probable cause" determination and attempt to conciliate if possible and litigate if it is necessary.

You appropriately emphasize the legislative direction that says, "the Department shall emphasize conciliation to resolve complaints." N.D.C.C. Section 14-02.4-22. You ignore, however, the equally clear mandate of the legislature that requires that, "the Department shall determine from the facts whether probable cause exists to believe a discriminatory practice has occurred." N.D.C.C. Section 14-02.4-23(2). Emphasis added. Reading these two statutory mandates together, it seems obvious to us that the legislature mandates a decision from your department whether "probable cause" exists in every complaint. If it doesn't exist, ". . . the department shall promptly dismiss the complaint. . . ." Id. Again, the clear statutory direction - - we believe one that all reasonable people can agree with - - is that "conciliation" should be used to resolve complaints". However this salutary goal has nothing to do with the independence - - and the mandatory - - statutory duty of your department to make a determination in every complaint whether "probable cause" exists to believe a discriminatory practice has occurred. N.D.C.C. Section 14-02.4-23.

Also, it seems essential - - and fair to all concerned - - that your Department have a regulatory appeal process with regard to a finding of no probable cause. Again, the EEOC has this regulatory procedure, allowing a request for review to be filed with subsequent notification to all parties to the charge. 45B AmJur 2d, Job Discrimination, Section 1356.

We also believe it is essential that your Department develop a regulatory definition of "probable cause." You have cited the case of Asbridge v. ND State Highway Commissioner, 291 N.W. 2d 739 (N.D. 1980) for the proposition that "reasonable grounds", "reasonable cause" and "probable cause" are synonymous. And see Chadwick v. Moore, 551 N.W. 2d 783 (N.D. 1996) (reasonable grounds to arrest are equivalent to probable cause to arrest). Of course, the Asbridge case dealt with what constitutes "reasonable grounds" to stop a motor vehicle operator who is suspected of (cont.)

drunken driving. The Asbridge case discusses "probable cause" for arrest in a criminal law context, and seems to us, is not readily adaptable to "probable cause" determinations under complaints of civil rights violations.

It seems to us that adopting a criminal law standard of "probable cause" simply doesn't fit the context of what constitutes "reasonable (cause)" in the context of investigating an allegation of civil rights discrimination. Rather, the plain speaking language of the EEOC in regard to what constitutes "reasonable cause" seems to have much clearer application, i.e., a "reasonable cause" in most circumstances means the EEOC finds the charge to have sufficient merit to warrant litigation if it is not conciliated. 45B AmJur 2d, Job Discrimination, Section 1350. This common sense definition embraces your Department's mandatory duty to make "probable cause" determinations on every complaint and, if it exists, seek to conciliate the complaint, if possible.

Finally, even in a criminal law context, our Supreme Court (while confirming that standard is indeed "knowledge that would give a prudent person reasonable grounds to believe a violation of law has occurred") has found that it is not necessary that the arresting officer have knowledge of facts sufficient to establish guilt. Mayo v. Moore, 527 N.W. 2d 257 (N.D. 1995). In other words, the "probable cause" determination can never be predicated upon the necessity of having the complaint proved either "beyond a reasonable doubt" (the criminal standard of proof) or by a "preponderance of the evidence" (the civil standard of proof). Rather, "probable cause" should be found in every case where there is sufficient merit to litigate if the case is not conciliated. If so, the matter must be either conciliated, or failing that, must be litigated to determine the truth of the matter through a due process hearing.

Again it seems essential that your Department promulgate regulations that provide a working definition of "probable cause" that embraces the spirit and the letter of the North Dakota Human Rights Act.

Therefore, we ask that you revisit the entire issue of "probable cause" not only because it is an indispensable and integral portion of the statutory duties of your department, but perhaps even more importantly, because open, fair, and just determinations of all complaints of discrimination are essential to winning the public confidence that your agency will be a positive factor in eradicating illegal discrimination in our state.

We look forward to your response that addresses our concerns regarding your "probable cause" mandate.} This concludes Mark Schneider's comments in regard to the issue of "probable cause" as were addressed in your letter to us.



Commissioner Bachmeier

(11/25/01)

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For your information, our coalition is seeking support from a granting agency for the purpose of employing staff whose work would be dedicated to help the coalition organize and to more efficiently address our work on human rights issues in North Dakota.

Thank you for your offer to meet with us in Fargo at any time. We of the coalition would very much like to schedule a meeting with you sometime before the beginning of the new year. Please advise us as to openings in your schedule that would allow for a trip to Fargo during that time period. We do look forward to your response!

Sincerely,

Allan Peterson, Chairperson  
North Dakota Human Rights Coalition  
Home Address: 7009 Horseshoe Bend,  
Fargo, ND 58104  
Phone: 701-282-4644

c: Rose Stoller, State Director, Mental Health Association



February 8, 2002

Mark D. Bachmeier, Commissioner  
North Dakota Department of Labor  
State Capitol Building, 13th Floor  
600 East Boulevard, Dept. 406  
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

We, the members of the North Dakota Human Rights Coalition, wish to thank you for the time and effort that was required of you to meet with us on December 17th. The consensus of our group was that our meeting with you was informative and very worthwhile.

By way of review, most of the topics we discussed at that December meeting were also raised in our previous exchange of letters. In principle, our discussion at the Dec. 17th meeting was based upon the issues that were outlined in our letter of November 25th. We continue to refer to these points because, we feel, they are absolutely crucial to the framework upon which an effective means of human rights enforcement for North Dakota citizens can be built. Although our discussion during our December meeting was rather detailed, we feel it to be important that there would be a written response to points in the letter of November 25th. Thank you in advance for the thought and research required of you to compose this response.

As you will recall, one of the principle issues that garnered so much discussion during our meeting on December 17th, was the establishment of an Advisory Committee for the Division of Human Rights. During our discussion, you questioned those present as to why an Advisory Committee was necessary. Our discussion led to an offer to document the reasoning for establishing such a Committee. To this end, enclosed with this letter is a proposal that outlines reasons why such a Committee should be instituted.

It has been well established in many instances that State Boards and Commissions have served a vital role within state government. Similarly, it is our belief that the input from an Advisory Committee would also prove to be vital to the administration of human rights enforcement within agencies of state government. We believe, that this contribution would more than justify the reimbursement of its members for the expenses that they would incur.

Another major focal point of our previous letters and discussions has been the procedures for establishment of "probable (reasonable) cause" for the complaints that are submitted to the Division. As you are well aware, this issue was addressed rather extensively in the contribution Mark Schneider made in our letter of November 25th. We ask that you would review and respond to the issue of probable (reasonable) cause as it was addressed in that letter.

Mark Bachmeier (2/8/02)

page 2

Personally, I thank you for including me as a panel member representing North Dakota Association of the Blind and the North Dakota Human Rights Coalition at the Diversity Day Celebration, that was conducted in conjunction with observance of Martin Luther King Day, at the University of Mary in Bismarck on Monday, January 21st. I feel that it was an excellent opportunity for all participants to share information among themselves and to learn from these shared experiences. I very much look forward to receiving a compilation of the notes taken at the diversity day Celebration.

If it is available, would you also send me a copy of the instrument (questionnaire) that D and H Research used in their telephone interviews to help determine the extent of discrimination which is experienced by citizens of North Dakota? Whenever the results of this study are available, we would be most interested in receiving the details that it contains.

Has there been a decision as to how the position which Dina Butcher previously held in the Division will be filled? Information you could supply in that regard would also be most appreciated.

Please know that your response to this letter and its enclosure are most appreciated.

Sincerely,

Allan Peterson, Chairperson  
North Dakota Human Rights Coalition  
Home Address:  
7009 Horseshoe Bend,  
Fargo, ND 58104-5719  
Phone: 282-4644

## An Advisory Committee Proposal for the Division of Human Rights

The proposal we outline herein addresses the intent, function and composition of an Advisory Committee for the Division of Human Rights as administrated within the North Dakota Department of Labor.

### Intent:

The intent of the Advisory Committee is not to manage or administrate the Division of Human Rights; The primary intent, in advocating for the establishment of an Advisory Committee, is for it to be of assistance and to be a resource for the Department as the Division of Human Rights seeks to accomplish it's mission. Our advocacy for establishing an Advisory Committee, is for it to help the Division be an effective means within state government by which all acts of discrimination can be minimized and eventually, eliminated altogether.

### Function:

We believe that the functions that an Advisory Committee would preform would be beneficial to the success that the Department would realize in its efforts to enforce our states Human Rights Act. A list of suggested functions for an Advisory Committee include the following:

(1) It would be a resource for critical review. The Committee would periodically review a summary of the work and the progress that the Division has made on cases that have been submitted over a time interval between meetings. Based on the review of the overall summary of cases, the Committee could make pertinent suggestions to the administrators of the Division. the Committee would not review individual cases unless a specific request for their advice and input on such cases were made.

(2) It could be a Sounding Board for reviewing procedures and initiatives. The Advisory Committee could review policy and initiatives that the Division has undertaken to guide its work. For the sake of illustration This could include, what documentation the Division collects and how it is collected. The administrators of the Department would then have had the opportunity to gain these suggestions and utilize the knowledge they would have gained from this input in any way they would deem to be appropriate.

(3) The Committee would be a resource for information. Individuals who were selected to serve on the proposed Advisory Committee would be chosen to reflect a broad base of expertise and experience with advocacy groups who have addressed human rights violations. Through the process of sharing their knowledge with administrators of the Division, they would provide the insight that would help make the Department a more effective agency.

(4) Provide a link to the community. The Advisory Committee would be a link to the people in the various regions and communities in North Dakota. Although Department personnel can conduct open forums in different locations of the state, their day-to-day contact within individual communities is limited. Advisory Committee members would add the perspective of those persons who do have daily contacts with people in the various communities of the state.

(5) The work of an Advisory Committee would add to the credibility of the Department's efforts. The existence of an Advisory Committee would give the Department greater credibility with people it serves because it would demonstrate the Department's willingness to cooperate collaboratively with community leaders for the enforcement of our human rights laws.

(6) An Advisory Committee could assist with efforts to create more public awareness about the Division of Human Rights and educate the public on what constitutes discriminatory practices. The ultimate success of advocacy for human rights enforcement is for all people to come to a greater understanding and appreciation for the personal dignity that is sought through observance of our human rights laws. It is our belief that the Advisory Committee would be of great assistance in creating more public awareness and appreciation for our State's Human Rights Laws.

On the Composition of an Advisory Committee:

It is proposed that the membership of the Advisory Committee to the Division should be composed of (1) representatives that are chosen from the leadership of organizations of people who have been identified as belonging to the protected classes which are listed in the North Dakota Human Rights Act, (2) representatives from leadership in the business community, (3) professionals who have experience in this area and have dealt with issues of human rights and equal opportunity and (4) individuals with a legal background and experience in the area of human rights enforcement and administrative law. The Advisory Committee should be composed of, at least, ten to twelve members. It is suggested that each of the protected classes identified in the Human Rights Act be represented on the Committee in numbers proportional to their percentage within the total population of the state.

Appointments to the Advisory Committee:

The appointments to the Advisory Board could be made, for example, in a somewhat similar manner as those made to the State Independent Living Council (SILC). Nominees would be submitted with recommendations for appointment; the Governor's Office would then have the discretion to finalize any of the recommendations for appointments. Members would serve without any compensation other than being reimbursed for the expenses they incur.

Concluding Statement of Support:

Our nation's government and culture have been built upon the ideals of democracy and equality for all. The progress that we've achieved as a nation has without doubt, been a product of the ideals to which our form of government has aspired. Our society is progressively becoming more diverse; we, as a state, need to embrace the diversity which has become more pronounced elsewhere in our nation. It is our belief that discrimination is not only unlawful but ultimately undermines the values and the resources of our culture and society. We also believe that the Advisory Committee that we've proposed can assist the Department of labor to minimize the extent to which discrimination is experienced by the citizens of North Dakota.

John Hoeven  
Governor

Mark D. Bachmeier  
Commissioner



State Capitol - 13th Floor  
600 E Boulevard Ave Dept 406  
Bismarck, ND 58505-0340

www.state.nd.us/labor  
E-mail: labor@state.nd.us

April 2, 2002

Mr. Allan Peterson, Chairperson  
North Dakota Human Rights Coalition  
7009 Horseshoe Bend  
Fargo, ND 58104-5719

Dear Allan:

Thank you for your February 8, 2002 letter. We are reviewing your proposal for an Advisory Committee to the Human Rights Division and will respond to that issue upon completion of our review. I want to thank you as well for your participation in our diversity conference. I very much appreciate your valuable contribution and I am very glad to hear that you feel the day was successful. We received many useful comments and suggestions from participants. I will be happy to forward those to you as quickly as I am able to make time to finish compiling them. Finally, thank you and your members for meeting with me in December. I want you to know that I very much welcome the interaction with you and your members.

In your letter, you ask me to provide written responses to the points you addressed in your November 25, 2001 letter and that we discussed during our December 17, 2001 meeting. I am happy to do so.

The first issue you addressed in your November letter related to the formation of an advisory committee. As I note above, we are reviewing your recent proposal on that topic.

Secondly, you noted several issues relating to the training, experience, and expertise of our staff. I truly believe that we have an exceptional group of investigators assembled at the department, including one person who is a licensed social worker, another who worked for more than twenty years in a housing assistance program, and a third who spent several years working in a refugee assistance program. I assure you that each member of the group is caring and committed. Four of our six investigators have now completed half of the requirements for certification by the National Association of Human Rights Workers and a fifth already has investigator certification through the Council on Licensure, Enforcement, and Regulation.

As I noted during our December meeting, we have reorganized the investigative staff from working in individual areas into an investigative team that works together on all types of complaints. That change is progressing well. The team now meets weekly to discuss cases and to make group decisions about the dispositions of complaints. No

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*LaCosta Rickford*  
Operator's Signature

10/15/03  
Date

human rights complaint is closed without a thorough discussion by the group. These sessions also serve to provide a vehicle for cross training investigative staff.

We do not have an attorney on staff per se but receive legal services as necessary from the Attorney General's Office. I recently met with representatives of that office specifically to discuss our increased need for legal services in the area of human rights and have subsequently been informed that two attorneys in the Civil Litigation Division have been assigned to provide legal services to our Human Rights Division. We will utilize these services for opinions on questions of law, case reviews, and legal representation in formal proceedings.

The next issue you addressed in your November letter was our discrimination study. You also requested an update on the study in your February letter. We have not placed a specific timetable on the project but I expect to be able to review the findings report within the next couple of weeks. We will plan to release the results as soon as we have had an opportunity to look them over.

I understand the concern you have raised about the use of telephones as a methodology for gathering data on discrimination. I want to stress again that the decision was mine and one that I based on a number of considerations. There are five main areas in which discrimination is prohibited and eleven protected categories under the North Dakota Human Rights Act and the North Dakota Housing Discrimination Act. I felt it was necessary to employ a methodology that would allow us to collect initial data on all protected areas. The statutory obligation for the department to "conduct studies of the nature and extent of discrimination in the state" was not accompanied by any funding for the purpose. Attempting to collect data on all protected areas with more qualitative methods was cost prohibitive. I continue to believe that the study will provide useful information about the areas and bases upon which people most prevalently feel that they have been treated differently. I believe that information will be useful in guiding our education and enforcement efforts, as well as subsequent research.

Next, you addressed the issue of reasonable cause. Please know that I am convinced that we need to promulgate a clear definition of reasonable cause in implementing regulations and be assured that we will do so. I don't believe that the standard I discussed in my previous letter is contrary the EEOC standard discussed by Mr. Schneider of finding reasonable cause when a charge has "sufficient merit to warrant litigation if it is not conciliated," although I agree that the latter is perhaps more clear as a working definition. "Sufficient merit to warrant litigation" implies that a judgment must be made about the extent to which the allegation contained in a complaint is supported by evidence obtained during an investigation. My intent in discussing a "reasonable person test" was to attempt to define reasonable cause as a standard for making that judgement, as distinguished from "preponderance of evidence" or "beyond a reasonable doubt."

As evidence that our standard in practice is similar to that utilized by the EEOC, I would again point out that the federal agency has reviewed the dispositions in hundreds of cases completed by the department and has disagreed with only very small number.

The only point on which I have to respectfully disagree with Mr. Schneider's analysis is his assertion that we should issue a finding of either probable cause or no probable cause in every complaint. We have very frequent contact with HUD and the EEOC and I have met and/or talked with representatives of many other state human rights agencies. I personally know of no state or federal human rights agency that issues a finding in every complaint. A formal finding can be made only when an investigation has been completed and there are a variety of actions or circumstances that result in the resolutions of complaints before that time. Some complaints are withdrawn, for example. In many others, the parties themselves initiate attempts to settle them prior to the end of the investigative process. Every human rights agency case management process that I have reviewed includes at least one stage at which the agency offers the parties an opportunity to resolve the complaint, generally pre-investigation, through some form of mediation, settlement negotiation, or conciliation. These methods of resolution often prove to be very effective and timely ways to resolve complaints and to remedy the harmful effects of discrimination for individuals. If parties to complaints are voluntarily willing to discuss their disputes and resolutions that would be acceptable to them, I think we should help facilitate that process.

Please understand that I have no reluctance whatsoever to issue a probable cause finding and to pursue a remedy in any case where we complete an investigation and reasonably believe from the evidence that discrimination has occurred but I also believe that informal resolutions are appropriate and effective means for resolving complaints.

Finally, in your February 8 letter, you inquired about our progress in filling the position in our office previously held by Dina Butcher. We are presently considering several final candidates and I expect that we will make our decision before the end of April.

Thank you once again for your great patience with me. Please be assured that we are working extremely hard to organize the resources of our agency and develop processes in ways that will ensure effective resolutions of human rights, as well as labor complaints. I am very committed to these goals. I appreciate your time and look forward to continued dialogue with you and your members.

Sincerely,

*Mark D. Bachmeier*

Mark D. Bachmeier

North Dakota Human Rights Coalition  
P.O. Box 1961  
Fargo, ND 58107-1961  
701-239-9323  
701-478-4452 (fax)  
ndhrc@hotmail.com

July 24, 2002

Sent by fax to (701) 328-2031

Mark D. Bachmeier  
Commission of Labor  
State Capitol - 13<sup>th</sup> Floor  
600 E. Boulevard Ave., Dept 406  
Bismarck, ND 58505-0340

RE: North Dakota Human Rights Coalition requests

Dear Commissioner Bachmeier:

The following is the text of an e-mail sent to you on July 10, 2002. I have not had a response. Please confirm that you have received this fax at your earliest convenience.

The North Dakota Human Rights Coalition would like to bring the following requests to your attention:

(1) The NDHRC first requested in June, 2001 that an Advisory Committee to the Division of Human Rights in the Department of Labor be established. A comprehensive proposal regarding the intent, function and composition of that Advisory Committee was submitted to the Department of Labor in February, 2002. There were also letters reiterating this request from the North Dakota Human Rights Coalition in November, 2001, and February, 2002, and a meeting of the North Dakota Human Rights Coalition with you regarding this request and other matters in December, 2001. It is my understanding that this request has been forwarded for review by the Governor's office.

Is there someone within the Governor's office with whom we should be communicating? It is the belief of the North Dakota Human Rights Coalition that an Advisory Committee is vital to the administration of human rights enforcement by the State of North Dakota and we ask that we be of assistance in addressing any questions or concerns which are delaying the implementation of this Advisory Committee. At the least, there should be some timeframe within which a decision or further development of this request will be made. Our request in June, 2001 identified the establishment of the Advisory Committee as the first priority and we believe that creation of that Advisory Committee should be addressed without further delay.

(2) The NDHRC also asked in June, 2001 that criteria for the determination of probable (reasonable) cause be established for public review and comment and use by the Division



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of Human Rights within the Department of Labor. This request was further discussed in the letters and meeting outlined above. It is our understanding that the Department of Labor intends to promulgate these regulations and has been in the process of gathering information regarding the drafting of those regulations. As part of the promulgation of this criteria, we asked that the Department of Labor establish a policy of making a determination of probable cause or no-probable cause on all human rights complaints filed with the Department of Labor, as required by state statute and outlined in the correspondence listed above. While we understand the Department of Labor's policy of encouraging settlement, the statutory requirement cannot be disregarded; in fact, complying with the statute will enhance the settlement prospects of complaints, as the complainant and opposing part(ies) would have better information regarding the substantive merits of the complaint at a stage of the process that would enhance settlement prospects.

We also ask that a civil (as opposed to criminal) probable cause standard be adopted, as outlined in our letter to you dated November 25, 2001. We reiterate the reasons cited in that letter for our position regarding the efficacy and requirement for a determination of probable cause or no-probable cause to be made regarding all complaints filed. We note that the Equal Employment Opportunity Commission is charged with this same requirement and ask that a timeframe for the promulgation of these regulations be identified.

(3) We also ask for the release of the results of the study on discrimination conducted by the Department of Labor in December, 2001.

Regarding all three of these requests, we understand that the staffing levels of the Department of Labor have contributed to the pace of progress on the requests. However, we believe that these requests must be addressed and fulfilled for the Division of Human Rights within the Department of Labor to appropriately address violations of the North Dakota Human Rights Act.

Please feel free to contact me if the North Dakota Human Rights Coalition can be of any assistance regarding these requests; we are especially interested in contacting the Governor's office in order to establish the Advisory Committee, if that is necessary.

Cheryl Berglan  
Director

John Hoeven  
Governor

Mark D. Boehmle  
Commissioner



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Bismarck, ND 58505-0340

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August 2, 2002

Sent by fax to (701) 478-4452

Cheryl Berglan, Director  
North Dakota Human Rights Coalition  
P.O. Box 1961  
Fargo, ND 58107-1961

RE: NDHRC Requests

Dear Cheryl:

In response to your July 24, 2002 fax:

1. We have recently discussed the advisory committee proposal again and are giving it thorough consideration. I fully expect to provide an answer to you soon. While others have reviewed the proposal, it is ultimately my responsibility to get an answer to you. I recognize how pressing you feel this is and I am sorry for not being more prompt in my responses. I have felt it necessary and appropriate to prioritize work related the continued development of our case management processes. Implementing our new responsibilities under the 2001 legislation and our efforts to integrate all of our case management work has virtually required my continuous attention during most of the past year. You should always feel free to contact the Governor's office with your concerns about my job performance. The Governor's Constituent Services person is Monty Ann Rauser, the Governor's Policy Advisor for our area is Duane Houdek, and the Chief of Staff is William Goetz. Any of these people can be reached at 328-2200.
2. Regarding reasonable cause:
  - a. I refer you to my April 2, 2002 letter for a discussion of the reasons I believe it is impracticable to issue a formal determination in every complaint. I believe that our current approach to the resolution of complaints is appropriate, effective, consistent with the intent of our laws, and consistent with the approaches of other human rights agencies. I do not believe that a change in policy is necessary.
  - b. I am completely confident that we apply the proper "probable cause" standard in our determinations in human rights cases. I attempted in my April 2, 2002 letter to clarify the intent of my November 25, 2001 comments on this topic. I submit again that the Department of Labor has maintained a work-sharing agreement in excellent standing with the EEOC for fifteen years. During that time, the EEOC

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Operator's Signature

*LaCosta Rickford*

Date

10/15/03

has reviewed the department's dispositions in hundreds of cases. Moreover, we recently underwent our second successful fair housing performance evaluation by HUD officials and will soon be entering into our third annual work-sharing agreement with that agency. Our eligibility to share work with these agencies has been and continues to be dependent upon our application of standards for the resolution of complaints that are consistent with theirs. As I have previously noted, we will include a clarifying, operational definition of probable/reasonable cause in administrative rules but I have no doubt whatsoever that we are applying the proper standard in our work today.

3. The survey results are a priority for me. As I am beginning to be able to increasingly delegate day-to-day responsibilities to our new Human Rights Director, I anticipate being able to turn greater attention to the survey project shortly.

Thank you for your correspondence, as well as your time and patience. Please continue to feel free to contact me any time.

Sincerely,

*Mark D. Bachmeier*

Mark D. Bachmeier

North Dakota Human Rights Coalition  
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October 3, 2002

Sent by fax to (701) 328-2031

Mark D. Bachmeier  
Commission of Labor  
State Capitol - 13<sup>th</sup> Floor  
600 E. Boulevard Ave., Dept 406  
Bismarck, ND 58505-0340

RE: North Dakota Human Rights Coalition requests

Dear Commissioner Bachmeier:

The North Dakota Human Rights Coalition would like to bring the following requests to your attention:

(1) The NDHRC first requested in June, 2001 that an Advisory Committee to the Division of Human Rights in the Department of Labor be established. A comprehensive proposal regarding the intent, function and composition of that Advisory Committee was submitted to the Department of Labor in February, 2002. There were also letters reiterating this request from the North Dakota Human Rights Coalition in November, 2001, February, 2002, and July, 2002 and a meeting of the North Dakota Human Rights Coalition with you regarding this request and other matters in December, 2001.

It is the belief of the North Dakota Human Rights Coalition that an Advisory Committee is vital to the administration of human rights enforcement by the State of North Dakota. As we stated in our letter in July, 2002, at the least, there should be some timeframe within which a decision or further development of this request will be made. Our request in June, 2001 identified the establishment of the Advisory Committee as the first priority and we believe that creation of that Advisory Committee should be addressed without further delay.

(2) The NDHRC also asked in June, 2001, as subsequently as listed above that criteria for the determination of probable (reasonable) cause be established for public review and comment and use by the Division of Human Rights within the Department of Labor. This request was further discussed in the letters and meeting outlined above. It is our understanding that the Department of Labor intends to promulgate these regulations and has been in the process of gathering information regarding the drafting of those regulations. As part of the promulgation of this criteria, we asked that the Department of Labor establish a policy of making a determination of probable cause or no-probable

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cause on all human rights complaints filed with the Department of Labor, as required by state statute and outlined in the correspondence listed above. While we understand the Department of Labor's policy of encouraging settlement, the statutory requirement cannot be disregarded; in fact, complying with the statute will enhance the settlement prospects of complaints, as the complainant and opposing part(ies) would have better information regarding the substantive merits of the complaint at a stage of the process that would enhance settlement prospects.

We also ask that a civil (as opposed to criminal) probable cause standard be adopted, as outlined in our letter to you dated November 25, 2001. We reiterate the reasons cited in that letter for our position regarding the efficacy and statutory requirement for a determination of probable cause or no-probable cause to be made regarding all complaints filed. We note that the Equal Employment Opportunity Commission is charged with this same requirement and ask that a timeframe for the promulgation of these regulations be identified.

(3) We also ask for the release of the results of the study on discrimination conducted by the Department of Labor in December, 2001, as requested since December, 2001 as listed above.

Regarding all three of these requests, we understand that the staffing levels of the Department of Labor have contributed to the pace of progress on the requests. However, we believe that these requests must be addressed and fulfilled for the Division of Human Rights within the Department of Labor to appropriately address violations of the North Dakota Human Rights Act.

Please feel free to contact me if the North Dakota Human Rights Coalition can be of any assistance regarding these requests.

Cheryl Bergian  
Director

My name is Tom Flebiger. I have been a licensed attorney since 1984. I practice extensively in the area of labor and employment law and have litigated numerous discrimination lawsuits. I am a Fargo resident and a member of the Fargo Human Relations Commission. I provide this testimony in support of the current proposed legislation to establish a Human Rights Commission in the state of North Dakota.

I do not think the Labor Department Division of Human Rights has been responsive to the needs of the citizens of the state of North Dakota. For instance, if you check the Fargo telephone directory, and as I understand it the other North Dakota city directories except Bismarck/Mandan, you will not find a listing for the ND Labor Dept. Division of Human Rights. Why not? Something as rudimentary as this is inexcusable. It tells me they do not want to be found. I have visited with Labor Commissioner Bachmeier about this on more than one occasion over the last year and a half and he acknowledges this oversight and states that they are moving to correct it. Yet it has not been corrected. More importantly, it is something so fundamental it should not need to be corrected.

In my practice I represent both employees and employers. Both have been frustrated by the current complaint process and its lack of responsiveness. Recently, a woman came to me after going through the Labor Department process that started about two years ago and told me the Labor Department had now issued its decision - a finding of no probable cause of discrimination. She wanted to know if I could help her because she had ninety days to file a lawsuit. Unfortunately, several of the coworkers had left town, one witness had died, and apparently none of the people she asked the Labor Department to interview in connection with her complaint were interviewed. This woman went to our state's Labor Department in good faith to avoid the legal system. She was not assisted by the process. To the contrary, she was harmed. I also have had employer clients call and be frustrated that a complaint that laid dormant for 18 months is now being picked up by the Labor Department and they want to send someone out to interview employees 18 months after the alleged actions took place. I also remember discussions with Commissioner Bachmeier through my role as a Fargo Human Relations Commissioner about trying to get the Labor Department to have a presence in Fargo one day a month. This process took months to accomplish. We had been trying to get the Labor Department to send someone to Fargo without success.

Commissioner Bachmeier, as part of that discussion, conveyed to me his concern that if the Department sent someone to Fargo one day a month, than other communities might want or expect them to send someone there. What a sad commentary on the willingness to provide basic and important services to all citizens of this state outside of Bismarck. Again, much of this is about what you see as your goal. This is not about closing out old files, or suggesting that our large delay in addressing citizen complaints is not as bad as some states. The current Division of Human Rights is not serving the needs of our citizens. A North Dakota Human Rights Commission is needed. We are one of only a handful of states without one. We are also a state where our young people are leaving. How we treat our citizens and protect their rights matters to young people. It matters to us all.

Please take favorable action on the proposed legislation to establish a Human Rights Commission in North Dakota. It will make a difference.

My name is Heather Ummel-Wagner, and I am a lecturer in the Modern Languages department of NDSU. My husband, Alexander Wagner, who is a recently appointed assistant professor of Physics at NDSU, and I moved to Fargo in August 2002. We moved here from Edinburgh, Scotland, where we had been working for several years. Before that, he and I were conducting post-graduate research at M.I.T. and Harvard University, respectively, in Cambridge, MA. And before that, we were graduate students together at Oxford University in Oxford, England. This information is simply to give you a context in which to place the following information.

We are very pleased to be living in Fargo, as it is a pleasant community with very little crime and is a very affordable place to live. For example, I relish the fact that people can leave their keys in the car ignition here without worrying about burglary; also, we're excited at the prospect of finally being able to own a home. Moreover, we enjoy living in a small town and having quick accessibility to walking along the Red River, riding our bikes along groomed trails, and discovering other outdoor activities.

When we decided to move to Fargo last Spring, our main concern in moving here was not the weather: on the contrary, we enjoy cold weather with plenty of sunshine. Rather, we were worried that we would not meet like-minded people who appreciate and respect cultural diversity. Although this aspect encompasses music, theater, and the arts in general, a larger part of this relates to the treatment of fellow human beings. In a nutshell, we were afraid we would be surrounded by an all-white community that wanted to remain as such (by the way, we are both caucasian).

For the most part, we have been pleased with our decision to move here, but reading the statistics of the Division of Human Rights is chilling. I hope this does not represent a larger picture of possible discrimination taking place in ND. The fact that the DHR found only 8 out of 528 cases of discrimination to be well-founded is worrying, indeed, and suggests that institutionalized discrimination is taking place. I acknowledge that I am not aware of each individual case, but this low number appears overwhelmingly statistically significant towards possible problems within the existing system. Given the statistics, the DHR appears to lack credibility.

Having such an organization as the North Dakota Commission on Human Rights would be a sure sign that ND is concerned about the welfare of every individual of this state. As a new citizen of ND, and one who hopes to remain here for at least a decade, the newly devised Commission looks like an important step towards establishing an outward-looking North Dakota.

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La Costa Rickford  
Operator's Signature

10/15/03  
Date

Testimony for the North Dakota House Judiciary Committee  
Pertaining to North Dakota Senate Bill 2067  
Prepared for the hearing scheduled on March 3, 2003

Chairman DeKrey and Members of the House Judiciary Committee:

My name is Allan Peterson from Fargo; My mailing address is 7009 Horseshoe Bend, Fargo, ND 58104. I reside in State Legislative District 22.

Thank you so much for the opportunity to speak in support of legislation, (North Dakota Senate Bill 2067 that, if amended to implement the creation of a State Commission on Human Rights, would do much to help assure that our State's laws on human rights are properly honored and observed.

I serve as Chairperson for the North Dakota Human Rights Coalition and also am the current President of North Dakota Association of the Blind. I also serve on a number of other Boards and Committees of organizations who advocate and serve the needs of people with disabilities.

As a person who is blind and as an advocate for people with disabilities, I share the experience of many other advocates, who have found that people with disabilities are often judged not on the merits of their ability but are judged principally on their disability. I believe, this judgement is the primary reason that the rate of unemployment among people with disabilities is consistently near or over seventy percent. If the same rate was realized among non-disabled people it would have been a state and national crisis and remedies would have been implemented long ago.

People with disabilities commonly experience discrimination, not only in their ability to secure employment, but also encounter discrimination in almost every other aspect of public life including, housing, reasonable accommodations, and the ability to gain access to public services. Almost every incident of prejudice and discrimination are not reported - the reason being that people don't want to be labeled as "trouble-makers" and fear the process they must deal with in filing a case within the bureaucratic system.

The process of filing a report with the Division of Human Rights needs to be made "people friendly". A Commission for Human Rights can aid in the process of making these procedures more accessible and friendly to people who feel they have experienced personal harm from a discriminatory act.

A Human Rights Commission would be structured to include the participation of people from those who are defined by law as belonging to protected classes of people - Commissioners would be selected because they have expertise in this area. We believe that this expertise would be an invaluable aid for the work of the Division of Human Rights. We pride ourselves in a citizen legislature; likewise, a Human Rights Commission would include the participation of citizens as a resource to help to assure that all people of North Dakota enjoy full human rights.



Most notably, a recommendation supporting establishment of a Human Rights Commission are found within the November, 1999 Report of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights. The Advisory Committee's "Report on Civil Rights Enforcement in North Dakota" recommended that the State establish a Human Rights Commission and fashion it to be as independent as possible from unwarranted political interference. A Human Rights Commission, whose role is structured similar to that of the Colorado Commission, achieves a large measure of political independence.

It is important to note too, that the Advisory Committee that prepared the 1999 Report on the State's Civil Rights Enforcement, had a broad representation of members from throughout the political spectrum within North Dakota. Another important fact to note about the Report is that the Advisory Committee did come to a unanimous conclusion as it reached consensus on the findings within this public document.

Our coalition believes that the North Dakota Legislature is entrusted with protecting its citizens from all forms of discrimination. Accordingly, this public trust mandates that human rights be enforced to the fullest extent possible for the improved protection of all of its citizens. North Dakota citizens need a place where they can readily voice their concerns, seek needed information, obtain assistance, and when necessary file discrimination complaints - a Commission would be an invaluable aid in helping achieve this goal.

Human rights is a fundamental precept of our democratic form of government. Observance of human rights is also a reason that is stated in implementing our foreign policy objectives. It is for all these reasons, we must ourselves, honor human rights enforcement and support the creation of a Human Rights Commission in North Dakota.

Mark Hill, Lobbyist #509  
North Dakota Association of the Deaf, Inc.  
1617 2nd Street North  
Fargo, ND 58102

House Judiciary Committee Hearing on Senate 2067 - Human Rights Complaints

Written testimony

Mr. Chairman

My name is Mark Hill. I represent the North Dakota Association of the Deaf and support the North Dakota Human Rights Coalition's request to have an amendment to the Senate Bill #2067 - an advisory committee to advise to the Human Rights Division. I am not able to testify before the House Judiciary Committee and give my written testimony.

The North Dakota Association of the Deaf believes that it would be very beneficial to the division by providing better tools to improve the division and saving the costs of doing the wrong decisions that we have seen enough problems during the two years what the division has done to the minorities. Remind you that we are also the taxpayers and expect to have an equal protection/treatment from the Government.

Having the advisory committee would be a greater asset to the division that would cost very little to the division because the members of the committee would be all volunteers. It would help to improve a better relationship between the Government and people of North Dakota, especially minorities. Remember, the minorities do eat, breathe, and live in the State of North Dakota and do pay taxes.

Please do pass with an amendment offered by the North Dakota Human Rights Coalition. Thank you.

c.c.

Michele Rolewitz, President of North Dakota Association of the Deaf, Inc  
Jim Moench, Executive Director, North Dakota Disability Advocacy Consortium  
Cheryl Bergian, Executive Director, North Dakota Human Rights Coalition



January 31, 2003

Cheryl Bergian, Director  
ND Human Rights Coalition  
PO Box 1961  
Fargo, ND 58107-1961

Dear Cheryl:

At its January 27 meeting, the Freedom Resource Center Board of Directors enthusiastically voted to support your organization's effort to gain a Commission on Human Rights for the State of North Dakota. As you probably recall, Freedom was one of the first organizations to begin work on this important issue. I believe that this effort has been ongoing for over three years now.

We work with many people with disabilities who feel they have experienced discrimination. It is difficult for us to have to tell them that the remedies available are slow and sometimes unavailable. I believe that the presence of an independent body such as a Commission would inspire some level of confidence in people that their issues will be heard. It will also give those people likely to experience discrimination a voice from which to tell our elected officials what they feel needs to happen to make this a more open, welcoming state.

Our Board also recommended that it would be fitting for a representative from Freedom be on such a commission. Human rights are a principal that we work for every day.

I support you in your efforts. If there is anything else Freedom can do to help, please let me know.

Sincerely,

Nate Aalgaard  
Executive Director

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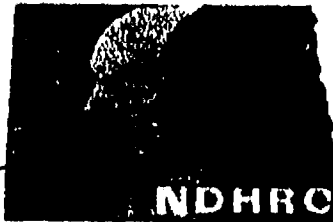
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Operator's signature

10/15/03  
Date

## **North Dakota Human Rights Coalition**

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



### **ORGANIZATIONS THAT SUPPORT THE CREATION OF NORTH DAKOTA COMMISSION ON HUMAN RIGHTS**

- AARP of North Dakota
- AAUW – North Dakota
- AFL-CIO of North Dakota
- Arc of Cass County
- Bremer Bank
- Catholic Family Services
- Central Dakota PFLAG
- Cultural Diversity Resources
- Dakota Center for Independent Living
- Equality North Dakota
- Family Voices of North Dakota
- Fargo City Commission
- Fargo Forum Editorial Board
- Fargo Human Relations Commission
- Fargo-Moorhead PFLAG
- Freedom Resource Center for Independent Living
- Gandhi Peace Network
- Grand Forks Unitarian Universalists Fellowship
- League of Women Voters of ND
  - LWV of Red River Valley
  - LWV of Bismarck/Mandan
- Mental Health Association in ND
- MSUM Social Work Department
- Nativity Social Justice Ministry
- ND Association of the Deaf
- ND Caucus on Abused Women's Services
- ND Children's Caucus
- ND Disabilities Advocacy Consortium
- ND Education Association
- ND Fair Housing Council
- ND Peace Coalition
- ND Progressive Coalition
- People Escaping Poverty Project
- Pride Collective and Community Center
- Red River Friends
- Sisters of the Presentation, Sacred Heart Convent
- Statewide Independent Living Council
- The People's Diversity Forum
- United Tribes Technical College
- Women's Network of Red River Valley

As of February 27, 2003

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*L. Costa Rickford*  
Operator's Signature

*10/15/03*  
Date

# COMMENTARY

The Forum  
Fargo

Sunday, February 23, 2003 A11

## YOUR OPINION

### Rights bill didn't get full airing

By Mark G. Schneider

On Tuesday, Feb. 11, the Republican super majority in the Senate, without even allowing the public hearing scheduled for the next day, defeated - on a straight party line vote (18-29) - the bill that would have created the North Dakota Human Rights Commission. This bill had - publicly at least - universal bipartisan support. Virtually every charitable and service organization in North Dakota belongs to the North Dakota Human Rights Coalition and a coalition unanimously endorsed a human rights commission. Republican Mayor Bruce Furness of Fargo endorsed it, as did Fargo's Human Relations Commission.

The younger members of Saving North Dakota Round Table met with legislators just two weeks ago and voiced their support for the commission. The North Dakota Advisory Committee to the U.S. Commission on Civil Rights, composed entirely of North Dakota citizens, unanimously and without partisanship, endorsed and recommended in its report to the people of North Dakota the certain need for a human rights commission. In a public hearing before the Senate Judiciary Committee on the bill, not one person or organization testified against it.

All of this begs the question as to exactly why the Republican Senate rose in one voice to defeat a human rights commission that otherwise enjoyed universal bipartisan support. Has the hubris and arrogance of the Republican majority become so pervasive that they believe they have a mandate to ignore the will of the people? If so, the people of North Dakota should judge them accordingly and hold them accountable.

In a party that loves to hate "unfunded mandates," the galactic hypocrisy of defeating a human rights commission is startling. North Dakota has for the most part an excellent Human Rights Act on the books and that was passed 20 years ago. Yet the Republican majority has consistently blocked any meaningful attempt to breathe life into one of the most important mandates of them all - that illegal discrimination in all of its pernicious forms will not, as matter of state policy, be tolerated and that our citizens will have an effective and meaningful remedy when their rights are violated.

Two years ago, the Republican majority, in a last minute backdoor maneuver, "hoghoused" the bill that would have created an independent human rights commission to one that put the enforcement authority for human rights into, of all places, the North Dakota Department of Labor. In that two years, the Labor Department has not taken one case of discrimination to a hearing before an independent administrative law judge; it has not published the results of the legislatively mandated study as to the extent of discrimination in North Dakota.

In short, the department lacks all of the essential elements to be successful, particularly leadership and resources. In fact, the only thing the department excels at is not doing its job; a result obviously intended by the Republican majority in the first place.

When the promise of equal rights and equal justice under the law becomes simply a hollow slogan, the result is a breeding ground for cynicism and contempt. The promise and vindication of human rights is at the very foundation of our nation and is the shining example of the best our country can be. This issue is not supposed to be - and historically has not been - a partisan issue. The question for all North Dakotans is why did the Republican majority make it one?

For the sake of all of our citizens and in recognition of the truism that denial of human rights to any debases us all, common sense and common decency command a change. It is time for the Republican party to honestly and openly embrace and support the cause of human rights and - for those Republican senators who unanimously voted the straight party line to defeat the human rights commission - to either lead, follow or get out of the way.

Schneider is an attorney with the Fargo firm of Schneider, Schneider & Phillips.

# OPINION

2-16-03  
The Forum  
Fargo

Your Editorial Page Editor  
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The Forum

## The Forum

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### OUR OPINION

## Legislature chalks up 3 failures

Last week the North Dakota Legislature gave cynics the evidence they needed to conclude backwards is the state's preferred direction.

In short order, lawmakers rejected formation of an independent state human rights commission, an agency to deal with population decline, and a measure to demand accountability from businesses that receive taxpayer-subsidized grants and loans.

It was a disappointing performance,

#### Today's issue:

Three good bills were defeated in N.D. Legislature.

#### Our position:

Apparently real change is not on the majority party's agenda.

not only because three good ideas were shot down, but also because the actions suggest attitudes about what is important to the state's fleeing young people have not changed.

The human rights commission, for example: It's a concept that goes to the heart of concerns

young people have about the lack of diversity and difference in North Dakota. Unlike many of the adults in

legislature, most young people

the state has to be more welcoming if it is to grow. They understand fairness; they understand prejudice.

The Human Rights Division of the Labor Department, which was established in 2001 as an alternative to a full-blown independent commission, has not been up to the job. The division's personnel might be sincere, but have neither the resources nor mandate to deal with a broad range of discrimination complaints.

Rep. Mary Ekstrom, D-Fargo, saw her bill to establish a population division killed in the House. A phony fiscal note was attached to the legislation, which gave lawmakers the cover they wanted to kill it. They made a mistake.

North Dakota's population is, at best, stagnant. Young people are leaving by the thousands. The state needs a modest but focused effort within the Commerce Department to study population trends and develop strategies to attract people to the state. That's what Ekstrom's bill was all about, but apparently even a small dose of enlightened thinking was too much for House members who voted against the bill.

The third legislative defeat was probably the most callous of them all. Lawmakers backed away from demanding more accountability from businesses that receive taxpayer subsidies either to start up or expand. Measures in the House and Senate were attempts to determine if North Dakota taxpayers are getting a bang for their buck: How many jobs were created? What is the average pay? Did the recipient of the subsidy fulfill requirements of the grant or loan?

We find it peculiar that the Legislature's majority members - usually good stewards of tax dollars - seem to have an accountability blind spot when it comes giving public subsidies to private companies.

To be fair, the Legislature did a lot more business last week than the three measures cited here. But the work load does not minimize the impact of the failures. Lawmakers missed opportunities to prove critics and cynics wrong. In killing three measures that called for modest but significant change, legislators sent entirely the wrong signals.

Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board

G.F. Herald 2-16-03 6D

# INSIGHT

Sunda

## VIEWPOINT

### Lawmakers fumble on human rights

By Cheryl Berglan

FARGO — Senate Bill 2306, which would have created a volunteer and independent North Dakota Commission on Human Rights, was defeated by the North Dakota Senate on Tuesday on a party-line vote, despite being scheduled for a hearing before the Senate Appropriations Committee the next day. Other citizens and I who came to provide information to the Senate Appropriations Committee never got the chance to do so.

Our right to offer amendments to the bill at the hearing that had been scheduled the week before was taken away by the Senate's altogether too hasty action.

With the defeat of the bill, the concerns of the North Dakota Human Rights Coalition regarding the ability of the Division of Human Rights within the North Dakota Department of Labor will not be addressed.

For 18 months, the Division of Human Rights had promised to take action on many requests, none of which were accomplished before the legislative session started. For example, our requests for the release of the 2001 Public Perception Study of Discrimination in North Dakota were acted on only after the North Dakota Human Rights Coalition brought its existence and lack of availability to the public to the attention of the Legislature in January 2002. The commission would have been able to release the survey when it became available in April 2002 and would have been able to assist the division, administration and Legislature in formulating responses to the information contained in that survey.

The North Dakota Commission on Human Rights would have been able to assist the division in many other ways. The division is not listed in the telephone books around the state. This in effect denies those looking for information on human rights or discrimination the ability to find it in the local phone book.

The division intended to be listed in the telephone books more than a year ago, but still has not done it. An independent commission on human rights would have had its members around the state assist the division in getting listed in the local telephone books.

A North Dakota Commission on Human Rights would be a shining example of the state's commitment to embracing and celebrating diversity, both to its residents and those who might be considering moving to North Dakota, and a visible response to the complexities that diversity can bring for those who live here.

The commission, made up of volunteers, would have been a low-cost resource for those who are assessing the ability of the state of North Dakota to respond to and encourage diversity in the state. It also could be a resource for communities that would like to attract and retain residents of diverse backgrounds and experiences.

Almost 40 organizations in the state of North Dakota support an independent commission on human rights. These organizations are diverse in nature and scope and represent many of our citizens in varied capacities. By refusing to accept such a commission, the senators who voted to end the possibility of a North Dakota Human Rights Coalition lost an opportunity to provide North Dakota with a resource that would have enhanced the State's quality of life.

*Berglan is director of the North Dakota Human Rights Coalition.*

Forum  
The Forum

# OPINION

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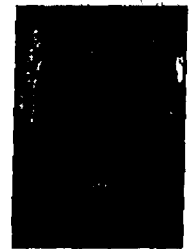
Saturday, February 15, 2003 A15

## YOUR OPINION

# Rejection of rights panel sends a wrong message

By Cheryl Bergian  
Senate Bill 2306, which would have created a volunteer and independent North Dakota Commission on Human Rights, was defeated by the North Dakota Senate on Tuesday, Feb. 11,

despite being scheduled for a hearing before the Senate Appropriations Committee the next day. Other citizens and I who came to provide



Bergian

information to the Senate Appropriations Committee never got the chance to do so. Our right to offer amendments to the bill at the hearing which had been scheduled the week before was taken away by the Senate's altogether too hasty action.

With the defeat of bill, the concerns of the North Dakota Human Rights Coalition regarding the ability of the Division of Human Rights within the North Dakota Department of Labor cannot be addressed. For 18 months, the Division of Human Rights had promised to take action on many requests, none of which were accomplished before the legislative session started.

For example, the release of the 2001 Public Perception Study of Discrimination in North Dakota, was acted on only after the North Dakota Human Rights Coalition brought its existence and lack of availability to the public to the attention of the Legislature in January 2003. The commission was able to release the survey when it became available, in April, 2002, and would have been able to assist the division, administration and legislature in formulating responses to the information contained in that survey.

The North Dakota Commission on Human Rights would have been able to assist the division in many other ways. The division is not listed in the telephone books around the state. This in effect denies those looking for information on human rights or discrimination the ability to find it in the local phone book. The division intended to be listed in the telephone books more than a year ago, but has still not done it. An independent Commission on Human Rights would have had its members around the state assist the division in getting listed in the local telephone books.

An independent North Dakota Commission on Human Rights

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Almost 40 organizations in the state of North Dakota support an independent Commission on Human Rights. These organizations are diverse in nature and scope, and represent many of our citizens in varied capacities. By refusing to accept such commission, the senators who voted to end the possibility of a Human Rights Commission lost an opportunity to provide North Dakota with a resource that would have enhanced the state's quality of life.

Bergian, Cheryl, is director of the North Dakota Human Rights Coalition. She can be reached at cherylbergian@ndhrc.org.



The Forum A10 2-12-03  
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**METRO/STATE**

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The Forum

*"We followed the process and now it's being shot down"*

- Sen. Carolyn Nelson, D-Fargo

# Rights panel bill killed

By Janell Cole  
foruncap@btinet.net

BISMARCK - The latest attempt to create a North Dakota human rights commission died in the Senate Tuesday after an hour-long debate.

It left Democrats complaining the Republican majority unfairly maneuvered to kill the bill before people could speak on it at a hearing slated for today.

Republican leaders said there was nothing unusual or unfair about the procedures or the vote.

The bill died on a party line vote, 16-29. It's the fifth session in a row supporters have backed bills for a commission. The best they've come has been 2001, when the state labor commissioner was given the duty of investigating human rights violation complaints without the oversight of a commission.

Sen. Tim Mathern, D-Fargo, sponsored this year's Senate Bill 2306. It would have established a state-run human rights commission to oversee and improve enforcement of human rights laws.

Mathern expected the Senate to forward the bill to the Appropriations Committee for a hearing, based in part on a printed scheduled showing discussion on the matter at 11:30 today. Supporters would then address changes to make the bill more affordable, he said.

"We followed the process and now it's being shot down," said Sen. Carolyn Nelson, D-Fargo.

"We should embrace this human rights commission," said Sen. Larry Robinson, D-Valley City. "If we need to make amendments, we've got ample time to do so. If this is such a bad idea, why are Fargo and so many other cities and states

embracing what we're talking about."

He added, "If this state is going to move forward, I would hope we could all move forward together."

There was nothing irregular about how the vote was handled, Senate Republican leaders said.

Assistant Majority Leader Sen. Randy Christmann, R-Hazen, said senators already approved a motion that they would vote to approve or kill the measure. Only if the bill passed would it be forwarded to Appropriations, he said.

Nelson and Sen. Linda Christenson, D-Grand Forks, argued killing the bill repudiated the young people of the Saving North Dakota Roundtable who met with legislators two weeks ago and spoke of the need for the commission.

Readers can reach Forum reporter  
Janell Cole at (701) 224-9630

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2003

# METRO/STATE

To report to  
City Editor Matthew Von Pinnor  
mvonpinnor@



Photos by Bruce Crumby / The Forum

**Prairie Rose, Fargo, at the microphone, and Saving North Dakota Roundtable participants, from right, Jonathan Gelfman, Chris Skeldum, Jeff Hoffman, Lyle Lere, Rick Karboviak and Amanda Butcher Mack make their case to lawmakers this past week at the Capitol in Bismarck.**

## Saving N.D. effort continues

### Forum staff reports

"Saving North Dakota" Roundtable panelists are still at it, discussing ways to make the state more attractive for young people.

Legislators appear to be listening.

Sen. Larry Robinson, D-Valley City, last week urged lawmakers to "seize the momentum" begun by the Saving North Dakota series.

"I don't believe we can lose that energy, the excitement, that determination."

Robinson's comments came during discussion of a "Growing North Dakota" bill that he's sponsoring. The bill concerns monitoring economic development efforts.

After the Roundtable broadcast, which occurred one month ago today, participants started meeting and making plans to continue the discussion on how to deal with the out-migration of young people from North Dakota.

It's estimated from 2000 through 2004, 13,000 people ages 20-24 will move out of North Dakota.

"It's been 30 days with just a ton of stuff," Roundtable member Jonathan Gelfman



**North Dakota State Sen. Tony Grindberg, R-Fargo, confers with Prairie Rose, Fargo, on the Senate floor at the State Capitol.**

said Friday, as he referred to the panelists' activities since the Jan. 9 broadcast.

Gelfman of Grand Forks said he is "amazed" by the networking that has occurred since the Roundtable.

On Jan. 30, several panelists spent a whirlwind day in Bismarck, meeting with legislative leaders and Gov. John Hoeven.

They have also appeared on

a Prairie Public Radio broadcast.

They've formed committees, ranging from economic development to media relations.

They've started their own Internet discussion group and remain in frequent contact with each other.

"We want to keep the momentum going," said Amanda Butcher Mack of

Fargo, following the meetings in Bismarck.

Butcher Mack and 30 other people, ages 21 to 34 - people with close ties to North Dakota - appeared on the two-hour, primetime television broadcast sponsored by Forum Communications and Associated Press Managing Editors.

The Forum assembled the group as part of its "Saving North Dakota" series that was published in December.

Forum Editor Lou Ziegler said panelists are acting independently of Forum Communications. "They're making their own plans, creating their own agendas."

"We remain extremely interested in what they have to say," Ziegler said.

In one meeting last week, five members discussed requests from radio and television stations.

One idea being considered is to have the Saving North Dakota Roundtable become a catalyst for others 18-34 to "just speak up" about issues affecting population losses, said Audra Kutz-Behl, 30, of Fargo.

SAVING: Page A17

## SAVING: Group considering Web site

From Page A14

Another idea is to develop a Web site so the group can create a "meeting place for people across the state," she said.

The panelists are studying the Bridge Syndicate in Duluth, Minn. It is a group of young professionals who are working to improve economic, social and culture opportunities in Duluth.

Roundtable members are targeting five major areas of discussion: human rights, arts and culture, technology, marketing, and community and economic development.

While in Bismarck, six of the Roundtable members met in the office of House Minority Leader Merle Boucher, D-Rolette, in an effort to keep alive the issues they raised during the televised broadcast.

Sen. Tony Grindberg, R-Fargo, and Rep. Elliot Glassheim, D-Grand Forks, were instrumental in setting up the meetings.

Boucher applauded the group for addressing as one of its main points - the out-migration issue. He said out-migration can be attributed to the lack of well-paying jobs in the state during the past 20 years.

"The single most important issue is opportunity," Boucher said, adding state leaders must work in a nonpartisan way to create incentives that would attract businesses willing to pay North Dakotans a fair wage.

He called on citizens to develop new ideas to tap the state's natural resources, keeping the wealth within its borders.

"North Dakota is a hub of wealth," Boucher said, citing wind among the state's newest and cleanest forms of energy. "It's (the state) just not recycling its wealth."

Prairie Rose, one of the Roundtable panelists who met with Boucher, called on state leaders to better enforce the state's anti-discrimination

laws. The 22-year-old North Dakota State University pre-law student said it would keep North Dakota's minority groups from leaving for states that better enforce those laws.

Lyle Lere, 33, of Jamestown, said North Dakota must do a better job of retaining its "intellectual wealth" by fostering a creative and risk-taking environment. "We can't rely on what made us successful in the past," said Lere, who works in information technology and sales.

Chris Skeldum, a 34-year-old assembler at the Case New Holland tractor plant in Fargo, said the state's citizens should demand more accountability when granting businesses economic development incentives.

Jeff Hoffman, a 29-year-old from Dickinson, and the 30-year-old Butcher Mack said businesses, universities and government should work together to create more internship opportunities for those graduating from college.

Getting college-aged students into businesses is the key to ensuring the businesses have well-skilled workers into the future and would open more eyes among students considering whether to leave the state.

"There's not enough acceptance of young people in the state," Hoffman said.

### Officials impressed

After meeting with Boucher, Roundtable participants addressed about 30 legislators, sharing their ideas about what would keep their age group from leaving the state.

"Everyone was so pumped up after the day," Butcher Mack said. "It will affect our lives as we move forward."

Rep. Scot Kelsh, D-Fargo, said the Legislature welcomed the panelists. He thinks legislators can act on the panelists' suggestions regarding economic development and creating a human rights commission.

"I think they need to keep the pressure up," Kelsh said. "It's

about time their voices are being heard."

Kelsh, speaking during a Feb. 1 legislative forum in Fargo, said meeting with the SND panelists was "a very enlightening exchange."

Sen. Richard Brown, R-Fargo, said he was impressed with the panelists.

"They're tomorrow's leaders," he said. "I would like to work further with them."

Brown said that after their presentation in Bismarck, he spoke with panelists about making it easier for younger people to run for the state Legislature. He encourages them to step into the political arena.

"We need the perspective of the younger adults," Brown said.

### Panelists appreciative

Cooperstown Mayor Rick Karboviak, 25, and other panelists are encouraged by the reception they've received from legislators.

"I saw them put pen to the paper and write the ideas down," Karboviak said about the meetings in Bismarck.

"It was very exciting going out to Bismarck, meeting with legislators and with Gov. Hoeven. It was a lifetime experience for me."

Karboviak wants to form a youth leadership group in the Cooperstown-Finley area.

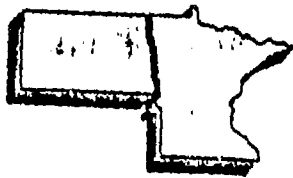
His vision is for a group of high school students to work on community projects. "In the long run they'll develop a sense of belonging in their town."

James Burgum, president of student government at North Dakota State University, said he's been involved in discussions about economic development issues since the Jan. 9 Roundtable broadcast.

He was among Roundtable participants who met with supporters of the New Economy Initiative.

"I personally see where we can become an advocate group for change," said Roundtable member Lere.

URNEY  
study  
exam B1



**SUNDAY**

January 12, 2003

# The Forum

of Fargo-Moorhead

[www.in-forum.com](http://www.in-forum.com)

## Rights group wants more action in N.D.

By Mary Jo Almquist  
[malmquist@forumcomm.com](mailto:malmquist@forumcomm.com)

The North Dakota Human Rights Coalition is dissatisfied with progress made by the state Department of Labor since it assumed the power to investigate all discrimination complaints nearly two years ago.

The labor commissioner has

failed to meet requirements of the 2001 legislation, which expanded the role of the Division of Human Rights within the Labor Department, and isn't addressing needs of North Dakotans, according to Cheryl Bergian, director of the Human Rights Coalition, a broad-based

**RIGHTS: Page A16**

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## RIGHTS: Human rights group contends

From Page A1

group made up of individuals and organizations interested in advancing human rights.

But North Dakota Labor Commissioner Mark Bachmeier said the department is working fine.

"We're working on a lot of things. There are some we can't move as quickly on," Bachmeier said. "We have to prioritize the work that requires our most immediate attention. We do not have more than we can handle."

### Department duties

Legislation in 2001 expanded the role and responsibility of the North Dakota Department of Labor to include the investigation of human rights complaints such as discrimination in public services and accommodations, and discrimination in credit transactions.

Although the department has been involved with human rights issues since 1983, the focus at that time was on employment discrimination. Housing discrimination came under its authority in 1999.

Duane Houdek, policy adviser to Gov. John Hoeven, said the department has taken on a lot of additional responsibility in the last two years.

"You're not going to have a full-blown ... system with everything developed in two years," Houdek said. "Things just don't happen that fast."

### Discrimination survey

However, the North Dakota Human Rights Coalition has not seen significant progress by the department on several key issues it expected to be addressed months ago.

Bergian said the department has not released results of a discrimination survey it commissioned as required in the legislation.

"The labor commissioner has not responded to repeated requests by the Fargo Human Relations Commission and the North Dakota Human Rights Coalition to release the results of this survey," Bergian said.

The survey was completed in December 2001.

"At this point it's more than a year old. If our taxpayer funds are being used to gather information, it should be disseminated," Bergian said. "You shouldn't do work and not tell anyone about it."

Bergian said she has no idea whether the results are positive or negative.

"There's been no hesitance to release it because of what it says," Bachmeier said. "It's not something we've just been holding on to."

Bachmeier said he'll be talking about the survey's findings during the current legislative session, but hadn't planned for what method he would use to release it outside Bismarck.

The results of the survey ultimately will be used for the purpose of program planning.

### Accessibility

The survey isn't the only issue the Human Rights Coalition claims the commissioner is not making progress on. Bachmeier also has said he is working on establishing both a statewide telephone complaint intake system and an in-person complaint system in Fargo.

When a person has a complaint now, they must obtain a

form from the department, fill it out, send it back and wait for a response.

Bergian said the process is a barrier for those seeking to be heard.

Bachmeier agrees that a telephone system would be an improvement, but said that also is a process that takes time and is dependent upon new software.

"It hasn't happened as quickly as we'd like it to, but we'll get there," he said. "It's definitely something we'd like to accomplish."

In-person complaints also are an option in Bismarck and now in Fargo, one half-day per month.

Bachmeier said the Fargo in-person complaint acceptance has been going on since August. At the Sept. 4 Fargo Human Relations meeting, Bachmeier agreed to send out a press release letting the public know about the new service.

"The labor commissioner has released no information to the public regarding the availability," Bergian said. "We need to tell the public what's the point of having the service."

Bachmeier said he assumed the Sept. 5 article which appeared in The Forum regarding the service was considered an official public release of information.

However, the department working on an information brochure about the complaint process, he said.

"We hoped to have this out there by now, but I do expect in pretty short order," Bachmeier said. "We recognize we have some work to do to increase awareness in Fargo."

## Human rights coalition wants statewide panel established

By Mary Jo Almquist  
malmquist@forumcomm.com

The North Dakota Human Rights Coalition once again will seek legislation to estab-

lish a panel to continue to conduct investigations.

Since commission members would be volunteers, expenses would amount to

During the last legislative session, Bergian asked for the support of Fargo Mayor Bruce Furness but not the entire City Commission.

# s N.D. Labor Department not doing its job

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## Probable cause

The North Dakota Human Rights Coalition also has asked the Labor Department to determine a more clear-cut definition of what determines "probable cause" in a case.

Currently after a complaint is filed and investigated, it can have one of several outcomes. Complaints can be settled, withdrawn or the department determines it does not have jurisdiction.

In many cases, the department makes a finding but determines there is "no probable cause."

There have been few cases in which the department has found probable cause.

That's partly because it isn't clear what justifies "probable cause," Bergian said.

"It isn't in writing," Bergian said. "We feel there should be a probable cause finding on every complaint."

Since 1999, the North Dakota Human Rights Division of the Department of Labor has

determined probable cause in six complaints out of more than 500 discrimination complaints filed.

Since 2001, when the category of discrimination in public services and accommodations, and discrimination in credit transactions was added, the department has logged 16 of those complaints, Houdek said.

Of the two logged in 2001, one was settled and one found no probable cause. Of those filed in 2002, eight cases still are open, while two were settled, three had no probable cause and one was withdrawn.

The ideal outcome is to settle a case to avoid the hassle of taking it to court, Houdek said.

But Tom Flebiger, an attorney with Ohnstad Twichell Law Office in West Fargo and member of the Fargo Human Relations Commission, said he has concerns with this approach.

"Some of these complaints

have to be valid," Flebiger said. "It seems like their (the department's) success is measured by how many files they close. But just because a person settles, doesn't mean it's a fair resolution."


The fact that the Labor Department is not making progress at the pace the Human Rights Coalition hoped for will be the ammunition the group will take into the 2003 Legislative session in its attempt to establish a statewide Human Rights Commission.

The group's attempt was unsuccessful in 2001.

"We wanted to give them (the Labor Department) a chance," Bergian said. "But at this point we're seeing a pattern. His (Bachmeier) primary role is to supervise investigations of the department. If that's all he's able to accomplish though, there's more the residents of North Dakota need."

Readers can reach Forum reporter Mary Jo Alquist at (701) 241-5531

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10/15/03  
Date

Fargo Forum p. A16 1-12-03

# Human rights coalition wants statewide panel established

By Mary Jo Almquist  
malmquist@forumcomm.com

The North Dakota Human Rights Coalition once again will seek legislation to establish a statewide Human Rights Commission.

The state Department of Labor currently hears and adjudicates all discrimination complaints related to housing, employment and human rights.

However, the Human Rights Coalition is hoping legislators will agree this year to create a separate commission to assist the Labor Department, which the coalition says is not meeting the needs of North Dakota citizens.

Unsuccessful attempts have been made in previous legislative sessions to establish a commission.

Legislation passed in 2001 is about as close as human rights advocates have come. At that time, the department's role was expanded to include the acceptance of discrimination complaints regarding public services and accommodations and discrimination in credit transactions.

"When the 2001 legislation was enacted, the coalition said 'OK, let's see how the Labor Department does,'" Bergian said. "Let's see how this works."

But now Bergian said the group has grown impatient. They are hoping they'll be able to prove a need for a commission during this legislative session.

The bill being drafted now is expected to call for a seven-member panel, which would be bipartisan or multi-partisan individuals who represent groups likely to experience discrimination.

Members would be appointed from across the state by the governor.

The commission would augment the work of the Department of Labor by conducting hearings, recommending policies, adopting or amending rules and regulations for the enforcement of state discrimination statutes and reviewing appeals of cases investigated and dismissed.

continue to conduct investigations.

Since commission members would be volunteers, expenses would amount to only about \$6,000 per year.

It's a small price to pay for what could assist in attracting and embracing a more diverse work force, Bergian said.

It also could assist in retaining people who might be considering leaving North Dakota for these reasons, she said.

The Fargo Human Relations Commission voted unanimously last week to stand behind the coalition in its quest.

"The Labor Department isn't doing the job," Fargo Human Relations Commissioner Tom Flebiger said at the Wednesday meeting. "We haven't seen a lot of positive action."

With the backing of the Fargo group, the North Dakota Human Rights Coalition will go before the Fargo City Commission Jan. 20 to ask for the same encouragement.

During the last legislative session, Bergian asked for the support of Fargo Mayor Bruce Furness but not the entire City Commission.

Furness wrote a letter favoring the concept, although he said he wouldn't consider that a "ringing endorsement."

He said he expects the City Commission would think the idea was a good one, as long as it makes sense statewide. However, he'll wait to make his decision until after hearing what the coalition has to say next week.

The North Dakota Human Rights Coalition also sent a letter to Gov. John Hoeven in December asking for his support.

"The position that we have now is that what we're seeing is working in a way that's responsive to North Dakota citizens," said Duane Houdek, Labor Department policy adviser to Hoeven. "We think it's going very well. Let's give the structure a chance to work."

Readers can reach Forum reporter Mary Jo Almquist at (701) 241-5631

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# BISMARCK TRIBUNE

Bismarcktribune.com

P. 6A

MONDAY, JANUARY 13, 2003

BISMARCK

## Department of Labor not doing its job, human rights group says

FARGO (AP) — The North Dakota Human Rights Coalition says the state Department of Labor isn't doing a good job of investigating discrimination complaints.

Cheryl Bergian, director of the coalition, said the department has failed to release the results of a discrimination survey commissioned by the Legislature in 2001. The agency also has a problem with accessibility, she said.

"The Labor Department isn't doing the job," said Fargo Human Relations Commissioner Tom Fiebigler. "We haven't seen a lot of positive action."

The 2001 Legislature expanded the Labor Department's jurisdiction to include any claim under the state's Human Rights Act, which bans discrimination on the basis of race, religion, sex, national origin, disability and economic status.

Before, the department could only investigate complaints of

housing or employment discrimination.

The change gave the department many additional responsibilities in two years, said Duane Houdek, aide to Gov. John Hoeven.

"You're not going to have a full-blown system with everything developed in two years, he said. "Things just don't happen that fast."

North Dakota Labor Commissioner Mark Bachmeier said his department is working fine.

He said the department isn't trying to delay the survey's release. Bachmeier said he had planned to talk about the survey results during the legislative session.

"There's been no hesitance to release it because of what it says," Bachmeier said. "It's not something we've just been holding on to."

Bergian contends the study, which was completed in December 2001, should have

already been released to the public.

"At this point, it's more than a year old," she said. "If our taxpayer funds are being used to gather information, it should be disseminated. You shouldn't do work and not tell anyone about it."

Bergian also said the department needs to make it easier for people to file complaints.

When a person has a complaint, they must get a form from the department, fill it out, send it back and wait for a response.

Bachmeier said he's working on a statewide telephone system so people can call in their complaints. He also wants to set up a walk-in complaint system in Fargo.

The coalition said since the Labor Department isn't making adequate progress by its standards, a separate statewide Human Rights Commission needs to be created.

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# Lawmakers question labor commissioner

By DEENA WINTER  
Bismarck Tribune

State lawmakers questioned the state labor commissioner Monday as to why so many discrimination complaints remain unresolved, and why so many of them have no "probable cause" finding, in which there's not enough evidence to substantiate the allegations.

The House and Senate judiciary committees questioned state Labor Commissioner Mark Bachmeier during a joint session in which he delivered a mandatory report on discrimination complaints received by his department under the state Human Rights Act and Housing Discrimination Act. The Division of Human Rights is a division of the Labor Department.

Last year, 191 discrimination complaints were filed with the state, and 128 of them remain open cases. Sen. Carolyn Nelson, D-Fargo, asked why Bachmeier said those are pending cases still under investigation, but he said his department has worked hard to close cases, particular-

ly in the past six months. He said by the end of March, the department hopes to have no case more than a year old.

"Human Rights cases very often are cases that take a great deal of time," Bachmeier said.

He said North Dakota's caseload issues pale in comparison to other states, where backlogs are common and cases can age up to seven years.

Rep. Andy Maragos, R-Minot, asked Bachmeier to do some research to compare the number of no probable cause cases in North Dakota to other states.

In an interview later, Bachmeier said he is confident that all discrimination complaints are being investigated thoroughly.

"Sometimes evidence is just hard to come by," Bachmeier said.

He said although he hasn't done a comprehensive exam of other states' statistics, those he has looked at have similar percentages of "no probable cause" dispositions. He said the vast majority of discrimination cases also are filed

with a federal agency, and those agencies have given his department "tremendously positive feedback."

But the director of the North Dakota Human Rights Coalition, Cheryl Bergian, told the panel of lawmakers that discrimination complaints are not being adequately handled, and that a state Human Rights Commission should be created to help address their concerns.

She cited several examples where she said the Division of Human Rights has been slow to respond to requests, suggestions and questions. Specifically, she said the division has never responded to a request that an advisory committee be established, never released the results of a statewide survey to gauge the nature and extent of discrimination in North Dakota (until Monday), and has an poor system for making complaints.

In an interview later, Bergian said the coalition asked in June 2001 that an advisory committee be created, and has received no response "despite repeated requests." She said the coalition

repeatedly asked that the results of a December 2001 survey be released to the public. She said Bachmeier has been promising to improve the complaint intake process with a new computer program for a year and a half. And she said he never delivered a promised press release to let Fargo people know that discrimination complaints were being taken in person in Fargo one day per month.

Bachmeier said the Human Rights Division has concentrated on establishing a good case management system for receiving and investigating complaints, and Bergian doesn't seem to recognize how much work is involved in that.

"I think maybe there are times when I don't move as quickly as she would like but certainly it's not an intent to be unresponsive to their concerns," he said. "It has simply been a case of not being able to do everything at one time."

Bachmeier said he thinks things are going "exceedingly well."

"It's clear that people think maybe we should

SEE LABOR, 2B

## Labor: Bachmeier stands behind outcome of case

FROM 1E

have prioritized some things differently and I don't happen to agree with that," he said. "We certainly recognize the need for us to do some additional work in some areas but we've prioritized things appropriately."

The coalition also is concerned about the number of cases in which no "probable cause" to believe the discrimination occurred. As an example, Bergian described a Minot case in which no "probable cause" was found when a landlord who had made several derogatory statements about blacks raised a black couple's rent and made them

get rid of a therapeutic dog. She said if a Human Rights Commission were in place, an appeal would be possible. As it is, the only recourse is going to court.

Bachmeier said he stands behind the outcome of that case, which was one of the first housing discrimination cases his office handled. He said HUD also investigated the case, and came to the same conclusion.

"We have much to do but we certainly have come a very, very long way," Bachmeier said.

(Reach Deena Winter at 223-8482 or [deenawinter@ndnline.com](mailto:deenawinter@ndnline.com).)

# OPINION

Your Editorial Page Editor  
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The Forum

A12 Sunday, January 19, 2003

## The Forum

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### OUR OPINION

## N.D. rights division disappoints

**W**hen the 2001 Legislature declined to establish a full-blown human rights commission, opting instead for a Human Rights Division of the Labor Department, we said, fine, let's give it a chance.

Two years later the division's performance is inadequate, at best. Some human rights advocates say the division is an underfunded, understaffed agency that merely "handles" civil rights complaints rather

**Today's issue:**  
After two years, the N.D. Human Rights Division has a record.

**Our position:**  
The agency's performance has been disappointing; a human rights commission still is needed.

than substantively addressing them. Too harsh? Unfair criticism? The record speaks for itself. For example, the division has been sitting on the results of a comprehensive discrimination survey for a year. When The Forum asked about the survey, Labor Commissioner Mark Bachmeyer said the results would be made available to the

Legislature this session.

But both the North Dakota Human Rights Coalition and the Fargo Human Rights Commission repeatedly asked for the survey, which was completed in December 2001. The department did not respond until criticism of the delay was about to appear in the newspaper.

The division also has been abysmally slow to put in place simple mechanisms to receive civil rights complaints, such as a statewide telephone intake system and (until last August) an in-person complaint contact in Fargo. Instead, North Dakotans must use a cumbersome process of forms and mailings that seems designed to discourage people from contacting the division.

The division, which arguably has one of the most important functions in state government, is the best-kept secret in the state. It made no effective effort to inform the public of the one-half day per month in-person contact in Fargo, instead relying on a single story in the newspaper to get the word out.

Finally, the division has a curious way of determining "probable cause" regarding human rights complaints. The division's definition of "probable cause" seems so malleable that such a finding is rare; few complaints are judged to be legitimate. For example, of the 500 discrimination complaints filed since 1999, the Labor Department has found probable cause in only six.

The division seems intent on clearing cases off the books, rather than identifying landlords, employers and others who violate human rights. As one critic said, the division measures success by how many files are closed, rather than fair resolutions of complaints.

All in all, it's a disappointing record.

A policy adviser to Gov. John Hoeven said two years has not been long enough to get the complaint system fully up and running. John Houdek said, "Things just don't happen that fast."

Of course "things don't happen that fast" if those "things" are not priorities. And that's exactly the point of critics who contend "things" will never happen as long as human rights complaints are relegated to a backwater division of a low-profile department.

As we suggested during the 1999 and 2001 legislative sessions, a separate, nonpartisan human rights commission - appointed by the governor - is needed in the state. The cost would be minimal, but the value of its work would be significant.

Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board

# OPINION

The Forum  
Fargo

Your Editorial Page Editor  
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Friday, January 17, 2003 A13

## SAVING NORTH DAKOTA

# Diversity is a component of 'Saving North Dakota'

By Paul H. Gleye

**J**ohn Calvert doesn't like North Dakota State University's diversity efforts ("Diversity not about education," Jan. 10 Forum). Neither does Terry DeVine (Jan. 12 Forum). As members of the NDSU Diversity Council, we would like to present another point of view. We think diversity is all about education and, for that matter, all about Saving North Dakota.

There are, in fact, two realms of diversity. The diversity of ideas is fundamental to a university and to a free society. A review of events at NDSU would reveal that the free play of ideas is alive and well on our campus. But celebrating a diversity of what people think is not the same thing as celebrating a diversity of who people are. The first is fairly easy to accomplish. The latter is deeply challenging.

In the pages of any newspaper these days you'll find intense debates between people with different ideas. But where it really gets personal is when some people write about others who are different, not just think differently - about people whose being is questioned because of their sexual orientation, race, ethnicity, gender, age, or physical or mental ability. We of the NDSU Diversity Council wish to focus on this second diversity. Our goal is to help everyone live in mutual respect. We see it as key to a successful future for North Dakota.

Many of our students come from places where everybody is pretty much like them. Yet our duty as a university is to prepare students to take leadership roles in places where not everyone is like them. To be sure, we hope many of our graduates will stay in North Dakota, but that should be their own decision, and sometimes to make that decision they must first experience a world quite unlike the place they came from, and populated with many kinds of people. Therefore we seek to educate students not only to be academically excellent, but to be culturally versatile and competent. One cannot learn to be culturally astute only by reading about it. One must learn by experiencing diverse cultures first-hand. We think it's important that this happen for our students at NDSU.

At the same time, NDSU must do more than educate our students to be at ease in other environments. "Saving North Dakota" means encouraging others to move here and contribute to the state. If we are to accomplish this, people from many backgrounds must experience North Dakota as a place where they are respected and valued. If NDSU can become a more culturally versatile and competent university, a place where diverse people - diverse both in being and in ideas - can work together respectfully and creatively, we will have contributed to helping

North Dakota attract talented people who may not otherwise think of coming here.

Our effort to assess the climate of diversity for faculty, staff and students at NDSU, the effort that Calvert and DeVine criticize in their columns, is not about how members of the campus community "feel." We want to know how they experience the campus, how they are treated at NDSU. If we want to be sure that NDSU is a place where people from many backgrounds and cultures are welcomed and respected, this information is vital to help us toward that goal.

We invite Calvert and DeVine, and others who may believe that diversity is an unworthy issue, to join us in making North Dakota a truly welcoming place. That begins by making those who are not just like us glad they are here.

Gleye is chairman of the Department of Architecture and Landscape Architecture at North Dakota State University. Other members of the NDSU Diversity Council who signed this commentary: Ahmed Kamal, assistant professor, computer science; Alan White, professor & dean, College of Science and Mathematics; Allen Kestacki, director, TRIO programs; Ann Burnett, director, Women's Studies Program; Barrington Bradley, political science student; Charles Odighe, professor, Department of Communications; Heather Lee, political science student; Jim Wittil, professor & chairman, School of Education; Josh McIneris, management information systems student; Kara Stack, assistant director, Campus Programs; Kara Theonnes, associate director, Residence Life; Kerri Spiering, director, International Programs; Paul Seewell, director, Multicultural Student Services; Rhonda Kitch, assistant director, Office of Admissions; Sandy Holbrook, director of Equal Opportunity. You can respond to this commentary at Paul.Gleye@ndsu.edu.

THURSDAY

THURSDAY

September 5, 2002

# The Forum

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## Discrimination complaints now taken in Fargo

### Face-to-face meetings offered

By Mary Jo Almquist  
malquist@forumcomm.com

North Dakota's Department of Labor, now responsible for probing discrimination complaints, has established a new presence in Fargo.

The department, which enforces state labor and human rights laws, last month began accepting discrimination and human rights complaints in Fargo.

A request by Fargo's Human Relations Commission prompted the department's decision to start receiving citizen complaints in a face-to-face setting on a monthly basis.

Complaints will be accepted between 1 and 5 p.m. the first Wednesday of each month at the Southeast Human Service Center, 2624 9th Ave. SW.

Fargo is the first city in North Dakota to officially offer the service, but state Labor Commissioner Mark Bachmeyer said he expects more communities could follow Fargo's lead.

"Before, we went all over the state on a case-by-case basis," Bachmeyer said. "This is the first time we'll have a scheduled presence."

By offering in-person complaint acceptance, Fargo residents now will have several options for voicing discrimination complaints.

The Fargo Human Relations Commission also meets the first Wednesday of each month, so citizens could voice concerns at that

time or later that day at the human service center.

"We requested the local presence here," Fargo Human Relations Chairman Barry Nelson said Wednesday. "I predict this will increase awareness in different communities around the state."

State Human Rights Director Kathy Kulesa, who personally will receive the complaints each month, said it's important to be open and available to the community when addressing issues of human rights.

"People want to see somebody in person for this kind of thing," Kulesa said.

"They want to be face-to-face."

The Department of Labor has been involved with human rights issues since 1983, at which time the focus was on employment discrimination.

Housing discrimination came under its authority in 1999, and in the 2001 legislative session, the department was given expanded power to investigate all discrimination complaints.

This includes discrimination in public services and accommodations, and discrimination in credit transactions.

"We are happy to accommodate," Bachmeyer said. "We'll see how this goes in Fargo, see what the demand is and go from there. Overall, I think it will be good."

Readers can reach Forum reporter Mary Jo Almquist at (701) 241-5531

Ergo Forum

YOUR OPINION

1-4-02 ALS

## Labor Department is not doing its job

I am writing in support of the Human Rights Coalition's critique of Mark Bachmeier's handling of discrimination complaints to the North Dakota Department of Labor.

First, the reason a survey was authorized and supposedly conducted was to determine the status of human rights in North Dakota. This survey is to be used to determine an appropriate response to a perceived problem. This survey was supposedly completed over a year ago. How long does it take to collate and disseminate data? Without the information, the resources needed to respond cannot be predicted.

Second, it is absurd that the Department of Labor has set up an in-person discrimination complaint process in Fargo - albeit a

half-day each month, which itself indicates a lack of dedication - and not informed the public about this service. Bachmeier said he assumed the Sept. 5 article which appeared in The Forum regarding the service was an official public release of information. Individuals do not generally anticipate that they will be victims of discrimination, and would not hang a paragraph from a newspaper article on their refrigerators "just in case."

Third, that only 1 percent of discrimination complaints filed in the past three years were found to have "probable cause" strongly indicates a propensity to disregard legitimate complaints.

Individuals as a rule do not generally file discrimination

complaints out of meanness or frivolity. Discrimination hurts, and the only remedy for it is a process that provides justice. Without due process, the whole idea of the Department of Labor serving as a conduit for remedy is a mockery of justice, and further serves to alienate people who have already been victimized by discrimination. The resulting frustration, bitterness, and disempowerment are worse than not having a process at all.

This is a system that is clearly not working. The answer is an agency dedicated to such complaints, with the resources to judiciously handle complaints: a state Human Rights Commission.

Lynn Rust  
Fargo