

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

1435

2001 HOUSE GOVERNMENT AND VETERANS AFFAIRS  
HB 1435

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1435 A

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/1/01

Tape Number	Side A	Side B	Meter #
I		X	69-2623
Committee Clerk Signature <i>Robin D. Small</i>			

Minutes:

REP. M. KLEIN called the meeting to order, all members were present.

In favor:

REP. BERG introduces the bill, BERG is one of the sponsors on the bill. Maintaining the infrastructure in North Dakota is absolutely critical. Critical for our commerce, farmers, ranchers and everyone else. Some of the dollars that have come from the federal government have been tied into minority contractors. Certain quotas. It isn't an issue that has cost us money at this point, but the concern that BERG has in the proposed rule making suggests that certain thresholds that are met in the general bid, then that bid would not be accepted and then it would go to the next highest bid, that would meet a certain threshold for that quota. Certainly not advocating anything but keeping the process fair.

REP. M. KLEIN asks if this bill is modeled after some bill initiated out on the west coast?

REP. BERG replies yes it is. It was passed this fall out in California.

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1435 A

Hearing Date 2/1/01

In favor:

CURT PETERSON, ASSOCIATED GENERAL CONTRACTORS OF NORTH DAKOTA

PETERSON states that they are in full support of house bill 1435. They are the people that thrive on competition. In North Dakota there will be no discrimination what so ever.

REP. M. KLEIN asks about the percentage of minorities being ten percent, is that correct?

PETERSON replies that is almost correct it will vary. REP. M. KLEIN asks in most cases do you have a problem finding qualified minority contractors to meet that goal? PETERSON replies yes that is the case sometimes.

REP. METCALF asks if a general contractor has to accept bids from all minority contracts? Not necessarily approve them but review them? PETERSON replies that they absolutely review every opportunity. Higher sub-quote, operate on a low bid.

In favor:

REP. ECKRE, one of the sponsors of the bill. States to the committee that this is a fair bill to all. Please see attached testimony regarding what was passed out on the west coast.

REP. KLEMIN asks about preferential treatment. ECKRE replies that it would not be preferential treatment.

In favor:

REP. DEKREY speaks to the committee in favor of the bill. DEKREY is a sponsor on the bill also. DEKREY tells the committee that a window company in Fargo has the majority of its employees are of minorities. Affirmative action has not worked.

Oppose:

CAROL TWO EAGLES, SELF

TWO EAGLES states to the committee that affirmative action is still needed. TWO EAGLES tells the committee what happened to her when she went in to buy a vehicle for an association that she belongs to, and the financial institute would not give her the loan because of her race, and the history of past other Native Americans.

THOMAS M. DISSELHORST, STAFF ATTORNEY FOR THE THREE AFFILIATED TRIBES.

DISSELHORST states to the committee that unemployment on the reservations is still very high, which is something that they are trying to correct. On certain projects they try to make sure that tribal members act as employees.

REP. M. KLEIN states that this bill would do that.

Neutral:

KRISTA ANDREWS, ND DEPARTMENT OF HUMAN SERVICES

Please see attached testimony.

Neutral:

PAT SEAWORTH, NDUS

SEAWORTH is only concerned about the Indian scholarship program. Wishes the committee to take that in consideration.

There was no action taken at this time on the bill, therefore the hearing was then closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1435 B

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/15/01

Tape Number	Side A	Side B	Meter #
1	X		873-2183
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

COMMITTEE WORK:

REP. M. KLEIN called the committee to order. HB 1435 was heard on Feb. 1, 2001.

ACTION:

All members were present, except REP. BRUSEGAARD.

REP. RICK BERG introduces the amendments to the committee. General discussion.

REP. GRANDE motioned to accept the amendments, seconded by REP. KLEMIN. A voice vote was taken, with the majority passing them. REP. CLARK motioned for a DO PASS AS

AMENDED, seconded by REP. METCALF. The roll call vote was taken with 10 YES, 4 NO

and 1 ABSENT AND NOT VOTING. The motion carries. The CARRIER of the bill is

REP. M. KLEIN.

HB 1435: DO PASS AS AMENDED 10-4

CARRIER: REP. M. KLEIN

PROPOSED AMENDMENTS TO HB 1435

Page 1, line 15, remove "or"

Page 1, line 18, replace the period with a semicolon and insert immediately thereafter  
"or"

Page 1, after line 18, insert:

"A Prohibit programs and policies at state institutions of higher education intended to encourage diversity and provide opportunities for members of disadvantaged or diverse groups in order to prepare students to be knowledgeable contributing members of an increasingly global, multicultural society."

Renumber accordingly

February 15, 2001

VR  
2/15/01

HOUSE AMENDMENTS TO HB 1435 HOUSE GVA 2/15/01  
Page 1, line 15, remove "or"

Page 1, line 18, replace the period with ";

- d. Preclude contracting standards that have a preferential effect for federally recognized Indian tribes and tribal entities;
- e. Prohibit an employment preference for enrolled members of federally recognized Indian tribes whose principal duties are on behalf of state activity, program, department, agency, instrumentality, or political subdivision that primarily benefits Indians or federally recognized Indian tribes;
- f. Prohibit an employment or contracting preference for enrolled members of federally recognized Indian tribes under any contract funded in whole or in part by the state where the principal activities of the contract are undertaken on an Indian reservation within the state;
- g. Prohibit any educational program, including any program offering scholarships or loans, which is intended to benefit primarily or exclusively students who are economically disadvantaged and who are enrolled members of federally recognized Indian tribes; or
- h. Prohibit programs at state institutions of higher education intended to encourage diversity and provide opportunities for members of disadvantaged or diverse groups to prepare students to be knowledgeable, contributing members of an increasing global, multicultural society."

Renumber accordingly

Date: Feb. 15<sup>th</sup>, 2001

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1435

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

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

Action Taken adopt the amendments

Motion Made By Grande Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN			REP KROEBER		
VICE CHAIR GRANDE					
REP BELLEW					
REP BRUSEGAARD					
REP CLARK					
REP DEVLIN					
REP HAAS					
REP KASPER					
REP KLEMIN					
REP MEIER					
REP WIKENHEISER					
REP CLEARY					
REP HUNSKOR					
REP METCALF					

*voice vote passed*

*Haas - No*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: Feb. 15<sup>th</sup>, 2001

Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1435

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Clark Seconded By Metcalf

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP KROEBER		✓
VICE CHAIR GRANDE	✓				
REP BELLEW	✓				
REP BRUSEGAARD					
REP CLARK	✓				
REP DEVLIN		✓			
REP HAAS		✓			
REP KASPER	✓				
REP KLEMIN	✓				
REP MEIER	✓				
REP WIKENHEISER	✓				
REP CLEARY		✓			
REP HUNSKOR	✓				
REP METCALF	✓				

Total (Yes) 10 No 4

Absent 1

Floor Assignment Rep. Klein

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

**REPORT OF STANDING COMMITTEE**

**HB 1435: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1435 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "or"

Page 1, line 18, replace the period with ";

- d. Preclude contracting standards that have a preferential effect for federally recognized Indian tribes and tribal entities;
- e. Prohibit an employment preference for enrolled members of federally recognized Indian tribes whose principal duties are on behalf of state activity, program, department, agency, instrumentality, or political subdivision that primarily benefits Indians or federally recognized Indian tribes;
- f. Prohibit an employment or contracting preference for enrolled members of federally recognized Indian tribes under any contract funded in whole or in part by the state where the principal activities of the contract are undertaken on an Indian reservation within the state;
- g. Prohibit any educational program, including any program offering scholarships or loans, which is intended to benefit primarily or exclusively students who are economically disadvantaged and who are enrolled members of federally recognized Indian tribes; or
- h. Prohibit programs at state institutions of higher education intended to encourage diversity and provide opportunities for members of disadvantaged or diverse groups to prepare students to be knowledgeable, contributing members of an increasing global, multicultural society."

Renumber accordingly

2001 HOUSE JUDICIARY

HB 1435

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1435b

House Judiciary Committee

Conference Committee

Hearing Date 02-20-01

Type Number	Side A	Side B	Meter #
TAPE I	x		3105 to 5337
Committee Clerk Signature <i>Grace Diers</i>			

Minutes:Chairman DeKrey: Called the committee to order. we have before us HB 1435. This bill has been referred to us by GVA.

Rep Eckre: The bill was amended in GVA. they won't be meeting again. if you look at the amendments, the adding on of amendments d,e,f,g,h. d through g are for exempting Indian programs, but H allows an out for higher education. In talking to some attorneys. they said H would gut the whole bill, because it allows an exempting. therefore it would open the whole thing up and would be thrown out in court. I am proposing. to take H off. then the bill would be intact.

Rep Kelmin: I would like to give some background. There were a couple of sets of amendments that came in, D through G was one set, and H was separate by itself.

Rep Eckre: It was on the back and got approved and a lot of the committee didn't even see it.

And now Legislative Council put them all as one. Some of the committee members did not even see H.

Rep Klemm: We did talk about H briefly, because someone had raised a concern about the wording. We did look at it.

Rep Grande: I move to strike the H portion of the amendment.

Rep Eckre: Second.

#### DISCUSSION

Rep Maragos: What is the concern that you would like to remove it?

Chairman DeKrey: This bill was brought to me, but it is Rep Eckre's bill so you will have to explain.

Rep Eckre: In code it says that the state may not discriminate, but it is vague.

Chairman DeKrey: What we are trying to accomplish today, we need to put it in the form of the sponsor and it can go either up or down.

#### DISCUSSION

Further discussion was held on the bill, with questions asked if there was opposition and other concerns.

#### COMMITTEE ACTION

Chairman DeKrey: Called for a voice vote on the amendments. The motion carries. What are the wishes of the committee? Rep Grande moved a DO PASS as amend, seconded by Rep Wrangham. The clerk will call the roll on a DO PASS as amend on HB 1435. The motion passes with 9 YES, 5 NO and 1 ABSENT. Carrier will be Chairman Klien of the GVA Committee.

VR  
2/20/01

**HOUSE AMENDMENTS TO HB 1435 HOUSE JUDICIARY 02-20-01**  
Page 1, line 15, remove "or"

Page 1, line 18, replace the period with ";"

- d. Preclude contracting standards that have a preferential effect for federally recognized Indian tribes and tribal entities;
- e. Prohibit an employment preference for enrolled members of federally recognized Indian tribes whose principal duties are on behalf of state activity, program, department, agency, instrumentality, or political subdivision that primarily benefits Indians or federally recognized Indian tribes;
- f. Prohibit an employment or contracting preference for enrolled members of federally recognized Indian tribes under any contract funded in whole or in part by the state where the principal activities of the contract are undertaken on an Indian reservation within the state;  
or
- g. Prohibit any educational program, including any program offering scholarships or loans, which is intended to benefit primarily or exclusively students who are economically disadvantaged and who are enrolled members of federally recognized Indian tribes."

Renumber accordingly

Date: 02-20-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB-1435

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Pass as amend

Motion Made By Rep Grande Seconded By Rep Wrangham

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar		✓			
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield		✓			
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney					
Rep Andrew G Maragos		✓			
Rep Kenton Onstad		✓			
Rep Dwight Wrangham	✓				

Total (Yes) 9 No 5

Absent 1

Floor Assignment Chr Klein

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

**REPORT OF STANDING COMMITTEE**

**HB 1435: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1435 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "or"

Page 1, line 18, replace the period with ";

- d. Preclude contracting standards that have a preferential effect for federally recognized Indian tribes and tribal entities;
- e. Prohibit an employment preference for enrolled members of federally recognized Indian tribes whose principal duties are on behalf of state activity, program, department, agency, instrumentality, or political subdivision that primarily benefits Indians or federally recognized Indian tribes;
- f. Prohibit an employment or contracting preference for enrolled members of federally recognized Indian tribes under any contract funded in whole or in part by the state where the principal activities of the contract are undertaken on an Indian reservation within the state; or
- g. Prohibit any educational program, including any program offering scholarships or loans, which is intended to benefit primarily or exclusively students who are economically disadvantaged and who are enrolled members of federally recognized Indian tribes."

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1435

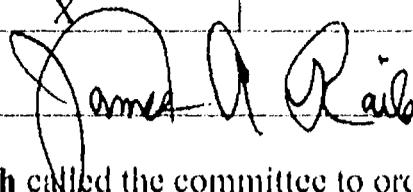
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1435

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 16, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-End
1		X	0.0-46.0
March 22, 2001 3	X		12.1-26.5
Committee Clerk Signature 			

Minutes: **Chairman Krebsbach** called the committee to order. The clerk called the roll.

**Chairman Krebsbach** opened the hearing on HB 1435 which relates to prohibition on discrimination and preferential treatment by the state. **Representative Bruce Eckre**, district 25, primary sponsor of the bill introduced the bill to the committee. A copy of his testimony is attached. **Senator T. Mathern** indicated that testimony seemed to relate to the fact to not discriminate and we should not be discriminating, he agrees. What about the other aspect wherein we literally want to promote a group which I would call affirmative action. Is that literally the intent here. For example we don't have many women in math programs and we find that that relates to some things we did in the past generation so we would like to influence that by moving more people into those programs or lets say an ethnic group from another part of the world needs to be recruited here for some effort. Would this prevent that? **Representative Eckre** indicated that the bill is against preferences. There are now more women in colleges than men. Women are 50/50 in medical and law schools. There might be shortages in Math but our

country has come a long way since the civil rights act of 1960 and he believes its time to stop preferences. We should all be on equal footing and that is just how he feels. **Representative Rick Berg**, District 45, appeared before the committee. He gave the committee a little background on the bill. He also talked briefly about what he sees in the bill. The concern that he had, he thinks this is a real simple bill, people have misinterpreted and read things into the bill that are not in there. Line 5 basically says that the state may not discriminate against or grant preferential treatment. Really the core question here is do we believe the state should discriminate or not discriminate. There's another issue and that is affirmative action. This bill in his mind is not affirmative action. He believes what we should do as a state is we should promote and encourage any individuals or groups that need additional training, additional support, etc. up to the point where the state is hiring someone or the state is awarding a contract. At that point we should not discriminate, but in terms of helping different groups out as intents of affirmative action he doesn't think that is wrong and he may disagree with some of the other sponsors on this bill but he thinks this is okay. At the point where we are expending state resources that decision should be one that does not discriminate against anyone. His purpose in being involved in the introduction of this bill related specifically to highway contracts. What has happened over the years is there has been tremendous pressure on North Dakota and the department of transportation that when federal dollars come in and we match those federal dollars and contracts are bid that a certain portion of those contracts should go to minority contractors. There has been increasing pressure to insure that a higher percent of our contracts go to minorities. Again, this is a Washington position that is coming out and what could ultimately happen in North Dakota is if we don't have a certain percent of minorities involved in highway contracts, that contract for that low bid would not be accepted, could be rejected. They

would then move to a higher cost bid that would have the minority percent covered and in essence what we are doing is we are expending more money than is necessary. As this thing has evolved a lot of different groups have kind of weighed in on the issue. He thinks this is good and he welcomes that. It is kind of because it is a core question that we need to answer as a legislative body. **Senator T. Mathern** inquired if Representative Berg believed that this bill permits affirmative action programs. **Representative Berg** indicated he believes it does. He thinks we have to look at affirmative action maybe differently. If we have a certain group or certain minority group, he thinks it is acceptable to do things that help that minority group get up to the level to be competitive for jobs and contracts. **Senator T. Mathern** indicated the concern he has is in line 5, or grant preferential treatment. It seems to him that language creates questions about affirmative action efforts. **Representative Berg** indicated this may be a question we need to look at. What areas is the state actively involved in what we would call an affirmative action and yet not at the point of hiring or awarding contracts and then he thinks we need to ask ourselves is that necessary and how does that tie in with this statement. This is a replication of California law. He believes some of the impetus for its passage had to do maybe with a more aggressive affirmative action in California than we have in North Dakota. **Senator Dever** inquired if we are going to grant preferential treatment to one person would you see that as discrimination against another person. **Representative Berg** indicated he would. **Senator Wardner** inquired as far as the federal government is concerned, if this bill were to pass are we in conflict with the federal government? **Representative Berg** indicated we are not in conflict with the federal government. He believes we are making a statement from the state level indicating that we do not want to allow discrimination in the state relative to the expenditure of state funds. **Chairman Krebsbach** inquired where there are federal dollars coming in for

programs, do not the federal guidelines supersede state in that case? **Representative Berg** indicated he believed that was correct. Other than federal dollars as it relates to Native Americans which we did add an amendment to this bill to deal with that. Questions were also offered by **Senators Kilzer** and **T. Mathern** with responses from **Representative Berg** (Tape 1, Side A, Meter #'s 14.4-21.6). **Curt Peterson** representing the Associated General Contractors of North Dakota appeared before the committee in support of HB 1435. He indicated their experience with the kind of things that have been talked about in this bill stem primarily from their contracts in the construction business from the federal government. Within all of those contracts there is a goal set that more than often turns out to be a quota rather than a goal. There have been instances within that program whereby a low bid on a subcontract has been turned away in favor of a contractor that is native American or some other minority. We think that is wrong. This bill clarifies some things in terms of policies of the state of North Dakota. **Representative Duane DeKrey**, district 14, a sponsor of the bill appeared before the committee. He indicated that he fully supports the bill and asks the committee's favorable consideration. The bill is a simple statement that we will not discriminate in this state. Questions were offered by **Senators T. Mathern, Wardner, and Dever** (Tape 1, Side A, Meter #'s 25.1-28.7). At this time questions were asked of Mr. Curt Peterson by **Senators Wardner** and **Kilzer** (Tape 1, Side A, Meter #'s 29.0-32.6). **Curly Haugland**, Chairman of the North Dakota Republican Party, spoke in support of HB 1435 because this issue is discussed in the platform of the National Republican Party. The platform made a statement which says We believe rights inherit to individuals not in groups. We will obtain our nation's goal of equal opportunity without quotas or other forms of preferential treatment. It is as simple as this. No one should be denied a job, promotion, contract, or chance at higher education because of their race or gender. Equal access

energetically offered should guarantee every person a fair shot based on their potential and merit. No further testimony was offered in support of HB 1435, no one appeared in a neutral position. Appearing in opposition was **Representative Lonnie Wnrich**, District 18. He originally became concerned because of the effects he felt this bill would have on programs on the University of North Dakota. His concerns are detailed in an article he wrote for the Grand Forks Herald. A copy is attached. **Larry Isaak**, Chancellor of the University System of North Dakota appeared in opposition to the bill. The fundamental obligation that he is concerned about with this bill is that it will not allow the university system to fulfill one of its fundamental obligations. That fundamental obligation is to prepare students to be successful in the global multicultural world in which they live and work. That point has been made clear many times in the higher education round table that took place in the past year. Especially by the representatives of the private sector who were on there. There needs to be diversity in education, a more diverse faculty and a diverse student body to offer opportunities for all. **Donna Thigpen**, President of Bismarck State College appeared before the committee in opposition to the bill. A copy of her written testimony is attached. **Jan Tachenko**, private citizen and recipient of benefits of the Phoenix Program appeared before the committee in opposition. A copy of her written testimony is attached. **Dr. Lee Vickers**, President Dickinson State University, appeared in opposition to HB 1435. A copy of his written testimony is attached. Questions were offered from **Senator T. Mathern** and **Chairman Krebsbach**. **Jennifer Ring** representing the American Civil Liberties Union presented written testimony in opposition to the bill. **Senator Kilzer** inquired if Ms. Ring agreed with or disagreed with the Bakke decision. **Ms. Ring** indicated she agreed in part and disagreed in part. **Betty Schumacher**, Financial Aid Director for Valley City State University and Mayville State University appeared in opposition to HB 1435. She read a resolution which

was prepared by the North Dakota University System Diversity Council in opposition to this bill. A copy of the resolution is attached. **Carol Two Eagles**, private citizen presented her testimony in opposition to HB 1435. **Sandra Donaldson**, faculty member UND, presented testimony in opposition to HB 1435. A copy of her written testimony is attached. **Dean Larameler**, Educator from Thompson, ND appeared before the committee testifying in opposition to the bill. **Eva Pipalova**, International Student at Dickinson State University appeared in opposition to HB 1435. **Kenny Gillis**, Student North Dakota State University, appeared in opposition to the bill. He indicated he is attending college on a diversity wavier. There was no further testimony offered in opposition. **Chairman Krebsbach** closed the hearing on HB 1435. **Chairman Krebsbach** opened the discussion on HB 1435 on March 22, 2001. **Senator Dever** presented E-mail messages from **Wayne Boekes** and **Lee Vickers**. **Senator T. Mathern** indicated the reality of many of the programs in higher Ed or even other state agencies really is a mix of resources, federal, state, sometimes private contributions and it isn't always so simple to differentiate those. He would hope that this bill could be defeated because he thinks it addresses, even though it addresses preferential treatment the consequence really is that it destroys certain areas of affirmative action that are important to our citizens that are in our state. Hopefully that's an unintended consequence of the bill, but it is one and that is what the testimony indicated. The e-mail's bring up that fact too. The one brings up the issue of trying to help women and then they have to modify it to enroll men when it's the women who are lower income persons who are trying to move up. Thank you Senator Dever for the e-mail's. They support the concerns he has about the bill. **Senator Wardner** commented that when it comes to the university system and the programs that they have, they do not keep the students from North Dakota from attending. These do not set a situation where someone can not get in because of the Phoenix Program or

something like this. These are like set asides, programs to help a group as Senator Mathern says to bring them up, to help them out. The other thing is that after we heard this bill he went home. We have a state institution in our community. We have a school board. We have a county government and we have a city government. There are no strings attached when it comes to bidding contracts. They take the lowest bidder. There are no quotas, affirmative action as far as they've got to have so many minority contractors. It doesn't exist. Everything that this bill is after is the federal government and what the federal government demands. If we pass this bill it doesn't get at what the sponsors of the bill want. Because the federal government preempts the state. He definitely is going to vote against the bill. At this time **Senator T. Mathern** moved a Do Not Pass on HB 1435, seconded by **Senator C. Nelson**. **Senator Kilzer** indicated that he has the same observation and the main problem in his opinion is the federal way they pick winners and losers frankly, and he regrets that the federal government is doing that. He was in medical training at the time of the Bakke decision. He taught the students at the medical school for many years and he is aware of the inmed program. He has seen many of these types of programs in other states and it just to him is an injustice to so many people and he guesses he would call it reverse discrimination and that is really what it is. Even the federal government he supposes started this many years ago and one of the first things was the way in which they chose their civil service people. If you were a veteran you were given 10 points on the civil service exam. He doesn't want to see anything like that being promulgated in this state so he supports the bill. **Senator T. Mathern** indicated that one of the concerns that he has here is that there are all kinds of programs moving ahead that give preferential treatment. You must mentioned one, veteran's benefits. There are all kinds of programs in economic development to meet certain public policy objectives. He believes there is some value sometimes to what he calls affirming

some group or some interest that some way hasn't been able to fully participate. He doesn't see passage of this bill being very equitable. That's one of the reasons he is voting against the bill.

**Chairman Krebsbach** indicated that she is very torn on this bill. She sees it from two different standpoints. She sees it in the area of reverse discrimination being unfair in these times and ages. The idea where this became the diversity issue for the campuses, it really kind of threw her that day. She doesn't see the great fear that was portrayed on the part of higher Ed and yet at the same time she is going to come down on the side that she doesn't want to see us doing anything to set out a tone that we are trying to destroy what is being done on the campuses in North Dakota in the area of diversification. She comes from two sides and she is torn because of that.

**Senator Wardner** commented that he would be in the same situation as the chairman. If he felt that this was a problem that our state was discriminating with their contracts in political subdivisions then he would probably have to take a much different position on this but, for example, at Dickinson State University they've got cultural diversity waivers. They've worked hard to build this program. Now, this would put a damper on that. They've set some goals and objectives. It does not discriminate against our white students. They are working to bring in students from outside the country and as a result hope to develop some kind of a trade connection and relationship with them. It's a part of a plan to help our area of the state. **Chairman**

**Krebsbach** indicated that he is absolutely right. Her first impression on the bill was the fact that the problem is not a problem within the state. It is the problem that the federal government has enacted on preferential bidding and so on. That is where the biggest problem has come in.

**Senator C. Nelson** indicated she wasn't here for the presentation but she has had many phone calls on the bill. Obviously her employer is NDSU and when she went and looked at the amendments she was at least glad to see that the Native American Programs were opted out of

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number HB 1435

Hearing Date March 16, 2001

there. Although we have a huge refugee population and she thinks they are trying to come up with special programs to help them assimilate into the community. You know you put a buffer up against those, we've got to grow North Dakota. It's not just in little towns or in Williston or Dickinson and Fargo. It's all over. She doesn't think the time has come to do away with affirmative action. Closing comments were offered from **Senators T. Mathern, Wardner, Krebsbach, and Dever**. The question was called for. Roll Call Vote indicated 4 Yeas, 2 Nays, and 0 Absent or Not Voting. **Senator Wardner** will carry the bill.



**REPORT OF STANDING COMMITTEE (410)**  
March 23, 2001 7:31 a.m.

Module No: SR-51-6481  
Carrier: Wardner  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1435, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1435 was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

HB 1435

**TESTIMONY BEFORE THE  
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
REGARDING  
HOUSE BILL NO. 1435  
FEBRUARY 1, 2001**

Chairman Klein and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. The Department neither supports nor opposes House Bill 1435. However, we do seek a clarification, and I have attached a clarifying amendment to this testimony.

This bill provides that the state may neither discriminate against nor grant "preferential treatment to any person on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." There are instances in the public contracting context in which the Department would seek to contract with, and perhaps effectively provide preferential treatment to service providers that are Native American tribal entities.

We might want to procure services from a tribal entity uniquely positioned to provide to clients who are tribal members. We might determine a higher appropriate payment to recognize factors such as infrastructure limitations or remote location.

House Bill No. 1435 may preclude the Department from contracting with tribal entities to provide services to tribal people, as tribal proposals would have to meet the same standards as other services providers. For these reasons, the Department is open to any arrangement that would permit its current contracting practices with tribal entities to continue. We have drafted an amendment to allow the state to establish contracting standards

that would have a preferential effect for Native American tribal entities. We would welcome any other arrangement to resolve the concern.

If there are any questions, I'll try to answer them.

**Presented by:**

**Krista Andrews  
Attorney, Legal Advisory Unit  
ND Department of Human Services**

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1435**

Page 1, line 15, remove "or"

Page 1, line 18, replace "." with "; or"

Page 1, after line 18, insert:

- d. Preclude contracting standards that have a preferential effect for native American tribal entities.

Renumber accordingly

| This - 209 | Analysis |

## Proposition 209: Text of Proposed Law

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This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT TO ARTICLE I

Section 31 is added to Article I of the California Constitution as follows:

*SEC. 31. (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.*

*(b) This section shall apply only to action taken after the section's effective date.*

*(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.*

*(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.*

*(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.*

*(f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.*

*(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.*

*(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.*

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| This - 209 | Analysis |

**Proposed Amendments to HB 1435**

**February 2, 2001**

From: Tom Disselhorst, Attorney at Law, representing the Three Affiliated Tribes and United Tribes Technical College. [disselhors@aol.com](mailto:disselhors@aol.com), Cell: 701-721-4046 Tel. 701-258-2769 (Bismarck) or 701-627-3621, ext. 8210 (New Town, at Three Affiliated Tribes) Fax: 258-2769 (Bismarck) or 701-627-3626 (New Town).

To: Rep. Rick Berg, one of the principal sponsors of HB 1435

cc: Krista Andrews, Pat Seaworth, United Tribes Technical College, Federally recognized Indian tribes in North Dakota

These proposed amendments are a combination of the amendment proposed by Krista Andrews of the North Dakota Department of Human Services and Tom Disselhorst, and also try to take into account the concerns of Pat Seaworth representing the North Dakota Board of Higher Education.

If these amendments are generally acceptable to the House Industry, Business and Labor Committee and to the sponsors of HB 1435, I would ask Legislative Council to make the language of the amendments consistent with general usage in the North Dakota Century Code.

**Amendments:**

Page 1, line 15, remove "or"

Page 1, line 18, replace "." with ";"

Page 1, after line 18, insert:

- d. Preclude contracting standards that have a preferential effect for federally recognized Indian tribes and tribal entities;
- e. Prohibit an employment preference for enrolled members of Federally recognized Indian tribes, whose principal duties are on behalf of a state activity, program, department, agency, instrumentality or political subdivision that primarily benefits Indians or federally recognized Indian tribes;
- f. Prohibit an employment or contracting preference for enrolled members of Federally recognized Indian tribes under any contract funded in whole or in part by the state of North Dakota where the principal activities of the contract are undertaken on or near an Indian reservation within the state of North Dakota.

- g. Prohibit any educational program, including any program offering scholarships or loans, that is intended to benefit primarily or exclusively students who are economically disadvantaged and who are enrolled members of federally recognized Indian tribes; ~~or~~

Renumber accordingly.



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Bruce Eckre  
District 25  
North Seventh Street  
Bismarck, ND 58075-3625

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

COMMITTEES:  
Judiciary  
Political Subdivisions

## HOUSE BILL 1435 TESTIMONY PREPARED BY REPRESENTATIVE BRUCE ECKRE MARCH 15, 2001

Madam Chair Krebsbach and Members of the Senate Government and Veterans Affairs Committee, this bill, House Bill 1435, addresses a need to judge our citizens by their merit, and not by their race, gender or ethnicity. The 14th Amendment bans racial discrimination; in my view, racial preferences and set-asides are racial discrimination.

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

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

There is no such thing as a "woman's" approach to mathematics, or an "African-American's" approach to physics. If we are really concerned about diversity, we need indicators more meaningful than the color of the applicant's skin or gender. Universities should indeed be looking for faculty members with differing perspectives and with experience and expertise in different cultures and ways of life. A good university will have liberals and conservatives, faculty members with expertise in the classics, and faculty members with expertise in jazz. It will have anthropologists who have field experience in the Peace Corps in far away parts of the world, and theoretical physicists who seldom stray very far from their computers.

But it shouldn't matter whether an expert in women's history is a woman or a man; what should matter is how knowledgeable the expert is.

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

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

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

This bill is aimed at hastening the day when people's race or ethnicity will be irrelevant to their civic lives. But a person's membership in an Indian tribe will necessarily (and properly) remain relevant in at least some ways, just as a person's being a North Dakotan or an American will remain relevant. The state may, therefore, legitimately want to consider a prospective employee's, student's, or contractor's Indian-tribe affiliation in seeking to better serve the needs of this separate political community.

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

In the National Republican platform it states:

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

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

Thank you. Representative Bruce Eckre, District 25

202401 *ny's tribune*  
**Jeb Bush speaks 'from the heart'**



Associated Press

Florida Gov. Jeb Bush hugged press aide Leslie Steele after speaking to the Southern Regional Conference of the National Baptist Congress of Christian Education on Friday in Tallahassee. Bush wept before the black education group as he introduced minority staff members and appointees he said have been ridiculed by other blacks for associating with him after his decision to abolish affirmative action in university admissions and state contracting. Bush said he feels hurt by the criticism, not for himself but for people such as Steele and Lottery Secretary David Griffin, who are black. "I saw her and I decided to speak from my heart about it," Bush said.

| This - 209 | Analysis |

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| This - 209 | Analysis |

"REVERSE DISCRIMINATION" BASED ON RACE OR GENDER IS PLAIN WRONG!  
And two wrongs don't make a right! Today, students are being rejected from public universities because of their RACE. Job applicants are turned [\*1398] away because their RACE does not meet some "goal" or "timetable." Contracts are awarded to high bidders because they are of the preferred RACE.

That's just plain wrong and unjust. Government should not discriminate. It must not give a job, a university admission, or a contract based on race or sex. Government must judge all people equally, without discrimination!

And, remember, Proposition 209 keeps in place all federal and state protections against discrimination!

**BRING US TOGETHER!**  
Government cannot work against discrimination if government itself discriminates. Proposition 209 will stop the terrible programs which are dividing our people and tearing us apart. People naturally feel resentment when the less qualified are preferred. We are all Americans. It's time to bring us together under a single standard of equal treatment under the law.

**STOP THE GIVEAWAYS!**  
Discrimination is costly in other ways. Government agencies throughout California spend millions of your tax dollars for costly bureaucracies to administer racial and gender discrimination that masquerade as "affirmative action." They waste much more of your money awarding high-bid contracts and sweetheart deals based not on the low bid, but on unfair set-asides and preferences. This money could be used for police and fire protection, better education and other programs - for everyone.

**THE BETTER CHOICE: HELP ONLY THOSE WHO NEED HELP!**  
We are individuals! Not every white person is advantaged. And not every "minority" is disadvantaged. Real "affirmative action" originally meant no discrimination and sought to provide opportunity. That's why Proposition 209 prohibits discrimination and preferences and allows any program that does not discriminate, or prefer, because of race or sex, to continue.

The only honest and effective way to address inequality of opportunity is by making sure that all California children are provided with the tools to compete in our society. And then let them succeed on a fair, color-blind, race-blind, gender-blind basis.

Let's not perpetuate the myth that "minorities" and women cannot compete without special preferences. Let's instead move forward by returning to the fundamentals of our democracy: individual achievement, equal opportunity and zero tolerance for discrimination against - or for - any individual. [\*1399]

Vote for FAIRNESS ... not favoritism!

Reject preferences by voting YES on Proposition 209.

PETE WILSON

Governor, State of California

Wednesday, March 7, 2001

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## VIEWPOINT

By Lonny Winrich

### Bigotry

#### fuels House

#### Bill 1434

BISMARCK -- There is one statement from a recent editorial with which I agree: "We need to move on toward the goals UND President Charles Kupchella articulated after the board acted" ("Board ended debate about Sioux name," Page 4A, Feb. 24).

Unfortunately, an exceedingly partisan move by the majority party in the North Dakota Legislature could effectively block those efforts.

On Feb. 21, the House of Representatives passed House Bill 1435 by a vote of 71-26, with every Republican in the chamber voting for the bill. This bill is an anti-affirmative action bill modeled on California's Proposition 209. Under the provisions of this bill, the state of North Dakota and all its agencies and political subdivisions would be prohibited from discriminating against or granting preferential treatment to any person on the basis of race, sex, color, ethnicity, or national origin in public employment, education, or contracting.

Proponents of the bill argued that contractors on highway construction projects have great difficulty meeting standards for minority employment because of the small minority population in the state, and this bill would help that situation. That argument is a sham! The bill explicitly exempts projects where the lack of affirmative action efforts would result in the loss of federal funds. Virtually all highway construction projects partially are funded by federal monies, and employment practices must conform to federal guidelines.

The real purpose of the bill is revealed by the amendments that were added in two House committees. Explicit exemptions were written in for affirmative action programs that affect the employment, education or contracting practices for American Indians or tribal entities.

Since those exemptions were deemed necessary to accommodate tribal members, one has to presume that similar programs to recruit women, blacks, Hispanics, Norwegians, Asian Americans and so on as faculty and students must be targets of the bill. Such prohibitions severely would restrict UND's efforts to recruit and retain a diverse faculty and student body.

At a time when UND indeed should move on toward goals of diversity and cultural understanding, this bill would place a major obstacle in the path. One has to wonder if the John D. Odegard School of Aerospace Science would be allowed to offer an educational program intended solely for Norwegian air traffic control students.

Another amendment to the bill would have even more sinister effects. At one time, the bill contained a paragraph that would have exempted "programs at state institutions of higher education intended to encourage diversity and provide opportunities for members of disadvantaged or diverse groups" from the general prohibitions of the bill.

That paragraph was deleted by a further amendment. The director of the Legislative Council has advised me that because the language was in the bill and then specifically removed, it would be interpreted as legislative intent to prohibit such programs.

It is ironic that the bill was passed by the House during Black History Month (February), and almost surely will be considered by the Senate during Women's History Month (March).

Those are just two of the many efforts to promote diversity and understanding on campus that probably will be prohibited if House Bill 1435 is enacted into law. Other casualties might include the Women's Center, the International Center, the Era Bell Thompson Multicultural Center, the Nordic Initiative and the Multicultural Awareness Committee and all its programming efforts.

The list is long, yet I doubt that I have included even a majority of the programs that would be affected. Even the accreditation of some of UND's academic and professional programs could be jeopardized.

House Bill 1435 is founded in bigotry. It does not deserve to become law in North Dakota. Unfortunately, it has the overwhelming support of Republicans, who have overwhelming control of both houses of the Legislature.

Those who truly love UND and want to see the university move on and rise above the controversy that now divides the campus need to convince the Senate to defeat this bill.

*Winrich, a Democrat, represents District 18 (Grand Forks) in the North Dakota House. He is a retired professor of computer science at UND.*

## MATTERS AT HAND



**Mike  
Jacobs**

HERALD  
COLUMNIST

# Young issue a challenge

Young people who spoke to North Dakota's New Economy Initiative on Thursday had a fairly straightforward message:

In order to stay here, we young people need opportunity, we want access to American popular culture and we want a more diverse population. In other words, make North Dakota more like the rest of the United States.

The young people realized that this is a tall order.

But they seemed eager to be part of filling it.

None of them disliked the place. Instead, they seemed to have genuine affection for it. And they liked it whole.

In fact, they were distressed that North Dakota promotes itself so narrowly. Why does the governor always have to stand in a wheat field in the picture on the road map? one asked. Wheat is good, but it isn't the image that's going to bring people to the state. In other words, don't count on open space as a selling point.

Nor were the young people impressed with what leaders like to emphasize when outlining the state's virtues. Quality of life is an issue for these young people, but it doesn't involve a low crime rate or good schools.

It means access to popular entertainment, especially music — and not yesterday's music, either.

North Dakota's liquor laws came in for a lot of criticism, because they divide young people. Friends — even couples — can't go out together because bars, which often double as entertainment

venues, aren't allowed to admit people younger than 21.

Besides, the bars close too early.

The state's lack of recreational opportunities drew comment, too. This flies in the face of the state's promotional efforts, which emphasize outdoor recreation.

But it wasn't hunting and fishing that these young people wanted. They wanted rock climbing walls and mountain biking trails — the kinds of places where someone can blow off steam after a hard day at work.

Work and the way it's done drew a lot of comment, too. Let us work the hours that are comfortable for us. Let us wear the clothing that we like. Give us learning opportunities, like internships. Expose us to how things are done elsewhere.

And above all, give us opportunity.

This includes money, the young people said. But it is not only money. Most of the young people indicated they'd consider staying here for less money if the other amenities were available.

And not just now and then, but whenever they're wanted. Access to entertainment and recreation is an important element of American popular culture — but it's lacking in North Dakota.

The young people placed great emphasis on diversity. We North Dakotans all look like one another, one said. We want to see and interact with people who have different backgrounds and different cultural values.

North Dakota attitudes came in for a great deal of criticism in this regard. A young black man, a student at Dickinson State University who grew up in South Carolina, spoke about the subtle racism he faces everywhere in the state. It may be unintended, perhaps even unconscious, he conceded, but it's real, nevertheless, and it hurts the state's chances of keeping young people here.

This theme was repeated throughout the afternoon. Be more open. Be more welcoming. Be more accepting. Embrace difference.

The young people who spoke to the New Economy Initiative were student leaders from the state's public colleges and some young entrepreneurs, most of them involved in start-up companies in Grand Forks.

The encounter brought a sense of excitement to the New Economy Initiative, which spent the morning bogged down in administrative details typical of task forces.

The young people also heightened the sense of challenge — and opportunity — the state confronts.

Jacobs is editor of the Herald. He is a member of the New Economy Initiative, which is a project of the Greater North Dakota Association.

Rep. Elmer Stansler

FYI

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1500 Edwards Avenue

P.O. Box 5587

Bismarck, ND 58506-5587

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**Presentation to North Dakota Senate  
Government and Veterans Affairs Committee  
By Dr. Donna Thigpen, President  
Bismarck State College  
March 16, 2001**

Chairman Krebsbach and Members of the Committee:

My name is Donna Thigpen and I am president of Bismarck State College. Passage of House Bill 1435 without the amendments excluding higher education will be extremely detrimental to this state's public colleges and universities and to our students.

Colleges and universities in the North Dakota University System struggle to provide the diversity that most educators and business leaders agree is an important part of the higher education environment. We need to increase diversity efforts on our campuses, **not** put up barriers to those efforts. Our students must be prepared for living and working in a society that is becoming more diverse each day. Passage of this bill without the amendments would be the death knell for our campus' diversity efforts.

At Bismarck State College, our award-winning Phoenix Program would be in jeopardy if this bill passes without the amendments.

The Phoenix Program prepares women who are economically, physically or academically challenged for higher-wage careers. This program has been recognized nationally for its success in placing single parent women in nontraditional fields with starting salaries between \$12 - \$17 an hour, plus benefits. Women who had to rely on public assistance to support their families are now successful community members and taxpayers.

One of our current students in the program, Jan Tachenko, will tell what the program means to her.

I urge you to defeat House Bill 1435, or at the least, replace the amendments that exclude higher education.

## **HB 1435**

### **Phoenix Program: Testimony of Jan Tachenko**

Chairman Krebsbach and Members of the Committee:

Two and a half years ago I said good by to my husband. Jeff and I were married right out of high school. I was a typical ranch wife with two children and no real job skills, except driving a truck and branding a calf. Medical expenses, incurred during Jeff's illness reached astronomical amounts leaving us in poverty. After my husband's death, I found myself in low-income housing, facing the responsibility of raising our two children alone. The hopelessness that surrounded us brought me to the realization that I had to take some kind of action. I called a family friend and lawyer. He sat me down and said "Jan, I know you have no money, I can't offer you a job, . . . but what I can give you . . . is a phone number". This was my connection to the Phoenix Program and a turning point in my life. As President Thigpen stated, the Phoenix Program prepares women in transition for higher-wage careers. Each woman accepted into the program has her own story of how she has become the breadwinner of her family. The circumstances are different but our needs are the same - and the results are what count. 93% of the women continue their education after completing the Phoenix Program. These graduates are earning wages that range from \$20,000 - 60,000.

The Phoenix Program at Bismarck State College helped me develop a life plan based on my strengths, abilities and family needs. More importantly, I learned that life is about attitude and that 90% of how we react to everyday challenges is based on that attitude and self-confidence. Today I am completing my second year at Bismarck State College. As a Phi Theta Kappa honor student, I plan to continue my education in Clinical Psychology. It is a privilege for me to share my Phoenix experience with you this morning; I urge you to support the recommendations made by our president, Dr. Donna Thigpen.

March 16, 2001

**Testimony given by Dr. Lee A. Vickers, President of Dickinson State University, in opposition of HB 1435:**

I am writing to convey my concern about HB 1435, the bill which will abolish affirmative action in higher education. As I understand it, HB 1435 was initially intended to address concerns related to federal guidelines which require contractors to hire a specific percentage of minority workers on federal road projects. During the testimony on this bill in the House committee, however, it was acknowledged that HB1435 contained language which would abolish affirmative action in higher education, similar to the action taken in California. If this bill passes, cultural diversity waivers, international student waivers and several very successful programs presently available in institutions across this state, will be eliminated. Elimination of these waivers and programs will have a substantial impact on the diversity of students and faculty at all of the North Dakota colleges and universities.

As you are aware, the Legislative Roundtable Report sets out an ambitious and exciting agenda for higher education in North Dakota. The first cornerstone of the Legislative Roundtable Report, the Economic Development Connection, focuses on the relationship between business and higher education and higher education's role in growing the economy. The second cornerstone, Education Excellence, emphasizes higher education's responsibility to prepare students to live, learn, and lead in our multicultural, highly technical society. HB 1435 is incompatible with the fundamental premise underlying both of these cornerstones. Moreover, our ability to reach many of the goals in the Legislative Roundtable Report depend upon our collective ability to educate, attract and retain workers, and to provide a work and community environment that attracts talented students and workers to North Dakota. Passage of HB 1435 will significantly delimit that effort.

Dr. Richard Florida, a distinguished professor at Carnegie Mellon University and a leading national authority on regional economic development and the changing face of commerce, was the keynote speaker at the Greater North Dakota Association's annual banquet earlier this year. His message was very straightforward. The "quality of place" is driving economic development in today's society. Economic development in the new economy depends upon attracting and retaining people/talent rather than attracting and retaining companies. He noted that diversity was the most important characteristic cited by knowledge workers in defining "quality of place."

Dr. Florida emphasized the critical connection between attracting and retaining talent and the work and community environments. Today's young, knowledge workers are seeking environments that are open and supportive of diversity. To quote Dr. Florida, "We must embrace diversity and inclusion. Embrace it, not just talk about it... We have to eliminate the exclusiveness that is part of our past." HB 1435 and the abolishment of affirmative action are in direct opposition to current thinking on economic development and to GNDA's new plan to enhance economic development in North Dakota.

Universities must educate students to participate successfully in an ever-increasingly diverse and highly global economy. Universities not only serve as laboratories for addressing society's diversity issues, they also must provide a diverse learning environment to ensure that graduates leave the university prepared to work and interact with people of other cultures. Research clearly demonstrates that critical thinking and problem solving skills are increased for all students if diverse populations are evident in the classroom and on the campus. Studies also show an increase in community and civic commitment from graduates who have attended universities with diverse student and faculty populations. The competition for students and faculty, like the competition for workers, is on the rise. Passage of HB 1435 will significantly thwart our efforts to attract and retain talented students and faculty, and, hence, talented workers to North Dakota.

I would submit that North Dakota's heritage with respect to past immigration at the turn of the last century provides a model for our actions today. If we are to educate our students to participate in a multicultural society and a global economy, and if we are to reverse the outmigration trends of the past several decades, we must respond to the new economy by creating study and work environments that reflect the new economy and the new society. HB 1435 will have the opposite effect. It will significantly curtail our efforts to attract and retain talented international and minority students.

In conclusion, HB 1435 is incongruent with higher education's charge to foster economic development and counter to our efforts to grow the universities by attracting and retaining talented students and faculty to North Dakota. This legislation is inconsistent with GNDA's new effort to revitalize North Dakota and ED&F's new initiative to recruit high tech entrepreneurs from California. Furthermore, passage of HB 1435 will have a direct and significant impact on the learning environment at all of North Dakota's universities. Consequently, I respectfully urge you to oppose HB 1435.

Thank you for your consideration of my thoughts and concerns regarding HB 1435. Your support of higher education and your leadership are greatly appreciated.

Testimony of Jennifer Ring, Exec. Dir. ACLU of the Dakotas on HB 1435

Madame Chairman, Members of the Committee,

Those of us who are White and especially those of you who are Male are beneficiaries of decades even centuries of governmentally sanctioned segregation and preference. Women were allowed the vote until 70 years ago, were not allowed to serve on juries or manage money on behalf of their children in many parts of the country until much later. Native Americans were not full citizens for much of our country's history. Blacks and Jews were not allowed to stay at most hotels until the second half of the 20<sup>th</sup> Century. Hispanic citizens have been subjected to substantial police scrutiny based solely on their national origin.

These discriminations had the affect of concentrating wealth, power, and opportunity in the hands of white males. These effects persist today. In a state where the majority of citizens are women we have 19 representatives 6 senators who are women. How many CEO's, Engineers, or University Presidents in ND do you know who are women. Progress has been made but it is nowhere near the 51% that would represent the state's population. In 1992 the last year for which figures are available there were only 613 businesses in the state that were owned by members of a racial minority.

Affirmative Action programs were designed to redress this past discrimination by giving opening the opportunities to people that they would have enjoyed if their families and especially their mothers had not been shut out of the opportunity to open the doors for them as many of your fathers and grandfathers did for you.

One problem in the affirmative action debate is the disagreement about what affirmative action is. Those who oppose it focus on quotas and preferences. We who support it often concentrate on outreach and recruiting. In fact, affirmative action includes a variety of remedies for discrimination, which once (but no longer) included quotas, and currently ranges from preferences, goals, and timetables, to self-studies, outreach and recruiting, anti-discrimination and anti-harassment programs, and diversity training.

While the Supreme Court has never defined affirmative action as a legal term, it has placed significant restrictions on a major portion of what we call affirmative action -- race and/or gender-conscious decision making programs. Such programs are only permitted when used as a remedy for discrimination. Before such an affirmative action remedy may be adopted there must be considerable evidence of continuing discrimination against the group receiving the affirmative action remedy. Even where there is evidence of discrimination, affirmative action plans are only permitted by the courts if they:

- \* avoid using quotas;
- \* are flexible;
- \* do not require the selection of unqualified candidates;

- \* are designed to last no longer than necessary to remedy the discrimination; and
- \* do not displace incumbent white male employees or businesses.

Despite these limits, opponents of affirmative action are effectively using four popular myths to turn many people against it.

Myth 1: Affirmative action requires (or permits) racial and/or gender quotas to be used in place of merit selection.

Myth 2: Affirmative action requires selection of unqualified persons for jobs, schools and commercial contracts.

Myth 3: The most common victims of discrimination today are white men.

Myth 4: Affirmative action is intended to counter-act the discrimination of the past, not the present; it thus requires today's white men to pay for discrimination which they did not cause and from which they did not benefit.

Each of these propositions is demonstrably false.

The debate about affirmative action dates at least to the 1940s, but it was not popularized as a remedy for discrimination until it was adopted by the federal government in the 1960s. At that time, a part of the debate concerned whether quotas should be used as a remedy to counteract discrimination. As a theoretical question, this may still be of interest. But as a practical concern, the debate was laid to rest in 1978 when the Supreme Court ruled in the Bakke case that government-sponsored racial quotas violate the equal protection clause of the Fourteenth Amendment. Like it or not, affirmative action quotas are illegal, and have been for seventeen years.

Unlike the debate about quotas, no serious argument has been made by the supporters of affirmative action in favor of hiring, promoting, or admitting the unqualified. Some opponents of affirmative action have seized on cases where employment tests have been thrown out by the courts, because they were both discriminatory and ineffective at measuring job qualifications. Affirmative action may require us to examine how we measure qualifications, but it never requires hiring, promoting or contracting with the unqualified.

Polls increasingly report that whites, and particularly white men, believe that there is more discrimination today against white men than any other group. Yet 1990 census data establishes that women and racial minorities continue to suffer from substantial race and gender-based differentials in income and opportunities; in many areas for Hispanics things are getting worse. A Hispanic woman with a college degree earns less, on average, than a white man with only a high school diploma.

Native American males enjoy a life expectancy that is approximately 20 years shorter than that of White males largely due to poverty related issues.

Discrimination based on race and/or sex is just as illegal when the victim is a white male, but in a fairly recent survey of 3,000 employment discrimination cases reported over ten years by the federal courts, only 100 involved sex and/or race discrimination claims by white men, and only six of those claims were found valid. In audits conducted in San Diego, Chicago and Washington D.C., when matched teams of job seekers responded to want ads, whites were far more likely to receive job offers than were equally qualified blacks and Hispanics. The American labor market is 45% white males, but over 95% of the top management of our largest corporations are white men. Banks are twice as likely to reject loan applications by black customers compared with equally credit-qualified white applicants. I have no figures for Native Americans but do you seriously doubt they would be similar.

Although many people have argued that general societal discrimination ought to be sufficient to justify affirmative action, the Supreme Court has rejected these arguments. In a series of decisions between 1977 and 1995, the Court has held that affirmative action is only permissible when there is considerable evidence of continuing discrimination which justifies a race and/or gender conscious remedy.

What HB 1435 does is cut off the state from taking proactive steps to cure a present discriminatory situation. There are two ways in which the state can handle discrimination

1. It can take steps to encourage women and minorities into educational and business opportunities for which they are qualified, or
2. It can wait until the situation becomes so glaring that a lawsuit becomes almost inevitable.

This bill would preclude the first option.

There is ample evidence that discrimination still exists. The House acknowledged that with regard to Native Americans by their own amendments. I ask you to acknowledge that it may exist in the areas of women or Hispanics. I ask you to acknowledge that it may exist in future with regard to some new immigrant group as it certainly did in the past with such groups as the Irish immigrants. Having made that acknowledgement. Please recommend to your colleagues that this bill  
**DO NOT Pass**



## NORTH DAKOTA UNIVERSITY SYSTEM

### RESOLUTION IN OPPOSITION OF THE HOUSE BILL 1435

At a meeting held at Bismarck State College on March 9, 2001, the North Dakota University System Diversity Council voted unanimously to adopt the following resolution, which was moved by Dr. Sharon Etemad, Lake Region State College, and seconded by Wylie Hammond, Minot State University.

#### **Resolution:**

Whereas, we believe that passage of House Bill 1435 will have a negative impact throughout the North Dakota University System,

Whereas, we believe the richness of human diversity has a positive influence on the intellectual and emotional growth of all students attending NDUS institutions,

Whereas, we believe that passage of the bill will limit, set back, or terminate current cultural diversity initiatives on college and university campuses in North Dakota,

Whereas, we believe that passage of the bill will hinder recruiting students to the state and be detrimental to the state's economy by presenting an unfavorable image of the state, and

Whereas, we believe that the bill, if enacted into law, will reduce the enrollment of students on all NDUS campuses,

We, the members of the North Dakota University System Diversity Council, oppose passage of HB 1435 and urge state senators to vote against it.

Norman Coley, Chairman  
North Dakota University System Diversity Council

State Capitol - 600 E. Boulevard Ave. Dept. 215, Bismarck, North Dakota 58505-0230 - (701) 328-2960  
Fax (701) 328-2961 - E-mail [NDUS\\_office@ndus.nodak.edu](mailto:NDUS_office@ndus.nodak.edu) - Web [www.ndus.nodak.edu](http://www.ndus.nodak.edu)

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

**Testimony of  
Sandra Donaldson  
In  
Opposition to HB1435**

Chairwoman Krebsbach and members of the Senate Government and Veterans' Affairs Committee, my name is Sandra Donaldson. I'm a member of the faculty in English at the University of North Dakota and also director of the Women Studies Program at UND. I urge you to vote a do not pass for HB 1435, in part because it likely will undermine programs which, like the Women Studies Program, explore and share new knowledge that has developed in the last two decades and more.

Many of these programs cross traditional disciplinary boundaries and reflect the sophistication of fields that view knowledge from a wide range of perspectives. A good example of the value of encouraging widened perspectives on knowledge may be seen in changes made in the testing of drugs. It was at one time argued that males were better subjects for testing the effectiveness of drugs to treat heart disease, cancer, depression, and other illnesses because males are not subject to changes in body chemistry like those that occur every month in women. It was thought that those changes would interfere with or complicate the necessary analyses. Males were regarded as the default for human being.

Certainly, having a clear sample for analysis is an advantage; however, it is dangerous to assume that female human beings are just a version of the male that have some added features. When the focus on women's health intensified about two decades ago, it was discovered that drug trials had not been done on women and yet these drugs were being prescribed for women as much as for men. Just thinking in those terms -- how is this different for women than for men -- made a significant difference in drug trials and, more importantly, treatment success.

It is these kinds of additions to knowledge that diverse programs contribute to the work of universities and colleges. They are paid for by all people, exist in the name of the people of the state, and must serve all people. Please vote a do not pass for this bill.



TRIBAL BUSINESS COUNCIL  
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# MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

1103 Box 2 • New Town, North Dakota 58763-9402

Government and Veteran's Affairs Committee  
North Dakota Senate  
57th Legislative Assembly

Testimony of Three Affiliated Tribes  
Mandan, Hidatsa and Arikara Nation  
Tom G. Hall  
Chairman  
on HB 1435, as amended  
March 16, 2001

Doshal (Hello). Good morning, Mr. Chairman, members of the Committee. As I could not be here today, this testimony is in opposition to HB 1435, which seeks to abolish state sponsored affirmative action programs in North Dakota similar to what Proposition 209 did in California when it was passed by an initiated measure in that state in 1996. This is a bill which is entirely unnecessary in our state.

I do understand that there were amendments that have been made to the bill to exempt out as much as possible certain state programs that benefit Native Americans, but unfortunately, no amount of exemptions can cure the problems with this bill. As a Native American, I know all too well the negative effects of racism in this State, racism which still exists in many ways.

Affirmative action programs, since their inception at the Federal level following the Executive Order of President Lyndon Johnson more than 31 years ago, were and are intended to remedy the effects of past discrimination. The message of HB 1435 is to say that somehow, in a single generation, all past discrimination has been eliminated and now there is a level playing field for minorities and women, who are the beneficiaries of affirmative action programs, both at the Federal and the state level, and so there is no need any longer for affirmative action.

But discrimination has not ended. Policies which locked out Native Americans from state jobs, from contracts, from scholarships, from training programs for decades before affirmative action programs were put in place (which are actually very few in North Dakota at the state level) still have a tremendous negative effect.

Look around you. If Native Americans are approximately 5% of the population in North Dakota according to the 2000 census, then approximately 5% of the legislators should be Native American, right? That would be approximately 7 legislators, maybe even one, as a veteran, would be on this Committee. But there is only one legislator who is Native American in the North Dakota Legislature, from a district that is primarily Native American.

This kind of representation continues throughout the rest of our State. For example, there are almost no Native Americans in any position in State Government except for those programs that primarily or exclusively benefit Native Americans or handle Native American matters. I do not mean to suggest there are not Native Americans who are hired for highway construction projects, there are

Testimony of Chairman Tom G. Hall, Three Affiliated Tribes  
HB 1435  
March 16, 2001  
Page 2 of 2

some there, and there may be a few in lower level, more menial positions. But in general, the employees in this Capitol building are not Native Americans except for the Native American programs. For example, the Labor Department, which may be administering enforcement of the Human Rights laws of this state has no Native Americans. How about the Secretary of State's office, which files documents that affect Native Americans every day? No Native Americans there, either. Or the Insurance Department. Except for construction jobs, are there Native Americans in the state Department of Transportation? I could go on and on.

There is one place where Native Americans are over represented, and that is the State Department of Corrections, and I don't mean as state employees, I mean as inmates. That is unacceptable also.

I believe society has a responsibility to make up for its past injustices. That is what affirmative action programs are intended to do, to seek out and find qualified minorities and women for jobs, as contractors, as students in our educational system and provide to them an opportunity to compete and show that they are just as capable as any of you who are mostly from the privileged majority.

From my Tribe alone, I am aware of many people who are construction contractors, or qualified employees, or students who want to better themselves who can and should be able to benefit from the limited affirmative action programs that the State of North Dakota does have in place, such as the Indian Scholarship program, which applies not just to students who are disadvantaged, but which also benefits all Native American students in our state who qualify on the basis of merit.

There is a notion among some of you and in the public at large concerning affirmative action that a person benefiting from an affirmative action program is getting a free ride, a benefit not shared by the rest of society. That is simply not the case. Every person who qualifies for an affirmative action program has to be qualified to do the job, perform the contract, or go forward with their education. If they can't do the job, or perform the contract, or pass their classes, they end up the same as anyone else who can't perform, out of a job, or dropping out of school. Yes, there have been abuses of the program in the past, but I don't think that is the case in North Dakota, but there has been almost no abuse of any affirmative action programs in North Dakota.

But more important, affirmative action provides only a relatively small benefit to a few minorities and women. As the North Dakota Association of General Contractors spokesman testified at the previous hearing on this bill in the House, the set aside requirement is small, less than 5%. That leaves 95% of all of the contracts available for everyone else, all of the normally large contractors who will qualify for most contracts in this State. Isn't 95% of the contracts enough for all of those contractors? Are they afraid of the competition for that 95% of the contracts for which they will inevitably be the successful bidder?

In summary, affirmative action programs are still needed in North Dakota. We cannot cure decades of discrimination in a single generation. It hasn't happened yet, and the employment figures alone in North Dakota government bear that out. This Committee needs to send a DO NOT PASS recommendation on this bill to the full Senate. Thank you.

March 11, 2001

Senator Ray Holmberg  
521 High Plains Court  
Grand Forks, ND 58201-7717

Subject: HB 14<sup>35</sup>~~33~~ Repeal of Affirmative Action

Dear Senator Holmberg,

I am writing you today to express my sincere concern for what I believe is a very destructive bill that must be defeated in its present form.

I am a transfer student who was raised in Brooklyn, New York, and have been living in Grand Forks since June of 2000. Over the past fifteen years, I have lived in several large cities, including Princeton NJ, Phoenix AZ, Fresno CA, and Los Angeles, CA.

**More than just a means to more easily compete for and execute State contracts**

I would like to be very clear about my concern for the lack of diversity to be found on my campus, and the potential racism fueled by misconceptions, misunderstanding and the absence of contact with people of dissimilar cultures or backgrounds. Upon learning of HB1435 just two weeks ago, I took it upon myself to research the issues at stake. As a result of several iterations, it would appear this bill has "evolved" into something very different than its framers intended.

**If you don't look like us stay home**

If University programs do not receive the protection outlined by Amendment 2.h., our state campuses stand to lose the few "dissimilar" students we have and will most certainly send the message "You are not welcome" to any others who would entertain the thought of attending a ND state institution of higher learning.

**If diversity is diminished, a homogenous student body will be the least of our problems**

As an education professional, you may be aware that various major programs at the university level receive accreditation from national organizations. Many programs, such as Medicine, Law, Nursing, and Business require that schools maintain a certain level of program-specific and campus-wide diversity. If our programs lose their accreditation, this would have significant impact on these programs and, as students, we face the grim prospect of our major programs losing their accreditation. This is a very serious, yet unintended consequence of this bill. The potential loss of accreditation on the grounds of unmet minimum diversity levels could mean to many students an inability to transfer credits out of the state and the inability to pursue post-graduate studies, among other ramifications.

With all due respect, I must strongly urge a NO vote on HB 1435.

Sincerely,

Joshua Freund  
UND Brannon Hall  
Grand Forks, North Dakota 58202  
UND Sophomore

Co signed:

Todd Roman  
3232 2nd Street  
Fargo, North Dakota  
58102  
UND Sophomore

Ryan Johnsrud  
216 4th Avenue NW  
Watford City, North Dakota  
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UND Junior



# Dakota Fence

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March 19, 2001

Senator Karen Krebsbach  
Senate Government and Veterans Affairs Chair  
Senate Chamber  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: House Bill #1435

Madam Chair Krebsbach,

My brother Dave Currier and myself attended the Senate hearing on HB #1435 that you held Friday March 16, 2001. Dave and I were stunned at the testimony and justification of those testifying against HB #1435. Dave and I own Dakota Fence Company. We are a construction company with offices in, Fargo, Bismarck and Minot. We have been in business since 1974. We regularly perform Private, State and Federal construction projects in North Dakota, South Dakota, Montana and Minnesota. It is not uncommon for our company to be low bidder on a project and not be awarded the contract because Dave and I are white males. This happens on highway projects with Federal Funds when we are bidding on fence work, guardrail or traffic control as a sub-contractor.

An example of this is the new 42<sup>nd</sup> Street Bridge over I-94 in Fargo built last year by Industrial Builders, Inc. In order for them to be awarded the prime contract by the North Dakota Dept. of Transportation they were not allowed to use our price quote of \$174,593.64 for the railing/fence sub-contract but instead had use a minority sub-contractor for this work at a higher price of \$184,515.20. Our company along with the North Dakota Association of General Contractors is currently working towards getting this blatant discrimination eliminated from federal projects. Our purpose in seeing H.B. #1435 become law is to insure that this form of discrimination does not become possible in the expenditure of state funds on state projects. H.B. #1435 would be a permanent "Firewall" against this discrimination.

Frankly we never realized that preferences based on race or gender were already the norm in various programs within the North Dakota Higher Education System. It is disheartening that our leadership in Higher Education promotes and defends discrimination under the guise of diversity or preference. Obviously when you use race or gender in determining admissions, promotions or the award of contracts you are discriminating against the non-targeted race or gender.

The usual result of "preference" is a white male or a business owned by a white male is discriminated against. This issue brings up some interesting questions. How much discrimination is acceptable and against whom? Should we discriminate against a woman? A Black American? A Native American? A White Male? How long should we discriminate, a week, a month, a year, forever? Make no mistake, when you use the word "preference" it is simply a palatable way to say you want to discriminate against a particular race or gender.

Diversity and understanding, for all races or gender is a concept we all embrace. Affirmative action is a process to seek out a diverse pool of applicants for a position, for a promotion or bids for goods and services. However when the line is crossed from affirmatively seeking out all applicants or price quotations to choosing or awarding based on race and gender then it becomes discrimination in its purest ugly form.

Discrimination by any individual, any institution, any agency or any company is unacceptable. No final outcome is worth paying that price. H.B. #1435 simply states "The State may not discriminate against or grant preferential treatment to any person based on race, sex, color, ethnicity or national origin."

This is a simple, clear and absolute statement against all forms of discrimination. Those of us who truly believe discrimination in all its forms is wrong support this simple but powerful statement. On behalf of Dakota Fence and it's employees we ask that you support H.B. #1435.

Sincerely,



Dan Currier  
Dakota Fence Company  
Fargo, Bismarck, Minot  
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293-8861 (H)