

Minority Businesses in a Bind

By Bernice Powell Jackson

It's ironic.

At a time when there are efforts to eliminate or drastically cut welfare payments to the poorest of the poor, there are also attempts to end government programs which were established to help people of color who own businesses. These programs encourage government contractors to set aside a certain number of contracts for businesses owned by people of color, many of whom would find it difficult or impossible to compete for these contracts otherwise. It feels like we are under siege from all sides.

According to the National Minority Suppliers Development Council, the number of businesses owned by people of color in this country is rising. They estimate there are 1.5 million such businesses nationwide, with potential annual revenues as high as \$100 billion. That's good news, not only for these business owners, but also for their communities and for our country because most jobs are in small businesses and businesses owned by people of color are often located in their own communities and employ higher percentages of their own people. More businesses owned by people of color mean more jobs for our communities.

But a case now before the U.S. Supreme Court endangers many small businesses owned by people of color. In *Adarand Construction vs. Pena*, Adarand Contracting Company of Colorado is challenging a U.S. Department of Transportation program that encourages large contractors to subcontract with disadvantaged businesses through financial incentives. Under this program, members of so-called minority groups and women are

presumed to be socially and economically disadvantaged and other small, non-minority-owned businesses can be included, if they establish that they are socially and economically disadvantaged.

In this case, Adarand, a white-owned business, did not receive a contract for providing highway guard rails, which went instead to a Hispanic business because the prime contractor received a \$10,000 bonus for using a disadvantaged business. The suit charges that this violates Adarand's right to

equal protection under the Fifth Amendment to the Constitution.

The government argued that federal law is a means of effecting a national policy that was adopted by Congress and supported by presidents of both parties and that the federal government can engage more freely in affirmative action than states and localities, which in the past have not been allowed by the Supreme Court to use set-aside programs for racial/ethnic businesses. It also pointed out that this program was based on disadvantaged business categories, which also can include businesses owned by white men.

Thousands of those businesses owned by people of color which are now doing so well are watching this case with fear and trepidation. They remember when the businesses of people of color were red-lined by banks and lending institutions and it was impossible for them to raise the dollars for the large bonds often required of contractors.

This country needs strong businesses owned by people of color. This country needs government to take the lead in supporting these businesses and we need private industry to make a real effort to use them as well. Maybe one day racial/ethnic and women-owned businesses won't need that special help, but that day certainly hasn't yet arrived.

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