



National
Black
Republican
Council

March 16, 1984

LeGree S. Daniels
Chairman

The Honorable Samuel Pierce, Jr.
Secretary of Housing and Urban
Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Dear Secretary Pierce:

I am writing to request that you support our call for the Justice Department to drop its challenge of the authority of state and local governments to set aside procurement contracts for minority owned businesses.

The President has a strong and positive record relative to minority business enterprise. However, the ill-advised action taken by William Bradford Reynolds, Assistant Attorney General for Civil Rights, places a cloud over this Administration's minority enterprise stance. Further, I am concerned that the Justice Department's brief will have an adverse impact on existing minority business enterprise programs at the state and local levels.

Given your commitment to the development of minority business, I strongly request that you assume a leadership role in correcting this injustice. This action, even more than the unfortunate circumstances surrounding the tax exemptions for Bob Jones University, strikes a potentially fatal blow to our Black and minority Republican business support. They represent one of the last bastions of outspoken Republican support in the minority communities.

Please find a copy of a fact sheet and related articles.

I cannot over emphasize the importance and urgency of this situation. Please let me hear from you.

Very sincerely yours,

LeGree S. Daniels

FACT SHEET ON DADE COUNTY BLACK SET-ASIDE LAW SUIT

Background

1. To expand contracting by Black businesses in order to redress past discrimination. In May 1980 disturbances in Liberty City prompted the county to investigate the economic and social opportunities of Blacks in the area. In response to their findings the Metropolitan Dade County Commission adopted County Ordinance No. 82-67, which authorized for all County Construction contracts:
 - (1) the setting-aside of contracts for bidding exclusively among Black prime contractors and
 - (2) the establishment of unlimited Black subcontractor goals.
2. The first application of the ordinance was to limit bidding exclusively to Black prime contractors for the construction of the Earlington Heights Subway Station in a predominately Black area near Liberty City. This amounted to a 100 percent set-aside. The County also established an additional 50 percent Black Sub-contractor goal. It should be noted that the estimated cost of approximately \$6 million for the Earlington Heights Subway Station constitutes less than 1 percent of the county's annual expenditures of \$620 million.
3. The project is one for which the U.S. Department of Transportation is paying 80 percent of the cost and which is subject to the Congressional mandate contained in Section 105(f) of the Surface Transportation Assistance Act, Public Law 97-424, that states "except to the extent the Secretary determines otherwise not less than 10 per centum of the amounts authorized to be appropriated under this Act shall be expended with small businesses owned and controlled by socially and economically disadvantaged individuals..." Dade County officials consulted with Urban Mass Transit Administration officials in establishing the set-aside and DOT approved the funding for the project knowing that it contained the set-aside.
4. This first set-aside was challenged in a law suit by the South Florida Chapter of the Associated General Contractors. Other chapters of AGC are challenging similar set-aside laws in Richmond, Atlanta and Seattle. A district court overturned the Dade County prime contractor set-aside, but upheld the subcontract provision. However, a three judge panel of the 11th U.S. Court of Appeals in Atlanta unanimously upheld the entire program.
5. On March 5, 1984, William Bradford Reynolds, Assistant Attorney General for Civil Rights, on behalf of the Justice Department, filed an amicus curiae brief in the 11th U.S. Court of Appeals asking that the entire appeals court reverse the ruling of the three judge panel and declare the entire program unconstitutional.
6. Mr. Reynolds acted without having the brief reviewed or approved by either the Cabinet Council on Legal Policy or the Cabinet Council on Commerce and Trade.

Presidential View on Minority Business Development

Philosophically as well as programmatically, President Reagan has repeatedly endorsed active government involvement in the development of minority business enterprise, including the use of contracting goals:

1. "We need to recapture the momentum black enterprise experienced in the early 1970's. The Republican record speaks for itself. Almost 7 out of every 10 of the 100 largest black businesses in America listed in the June edition of Black Enterprise magazine were formed during Republican administrations."
Urban League Address [August 5, 1980]
2. "We must adopt the goal of making black Americans more economically independent, through means of black enterprise and lasting, meaningful jobs in the private sector."
Id.
3. On December 17, 1982, in a White House ceremony the President announced a number of initiatives on behalf of minority business development including committing the Administration to:
-- \$15 Billion in Federal purchases of minority business goods and services over three fiscal years.
4. On July 14, 1983 the President signed Executive Order No. 12432 which mandated that each Federal agency having substantial procurement or grantmaking authority develop objectives for minority business development and methods for encouraging both prime contractors and grantees to utilize minority business enterprises.
5. "On December 17, 1982, I announced a series of initiatives to be undertaken by my Administration in support of minority business enterprises. Among these initiatives were specific minority business procurement goals. The Federal government must lead the way in providing contract opportunities for minority business."
Memorandum From the President to Heads
of Department and Agencies [August 5, 1983]
6. "In my December 17 Statement, I directed Federal contracting agencies to increase minority business procurement objectives for 1983 by at least ten percent over actual procurement in 1982. I urge you to take appropriate steps to ensure that these procurement objectives are met."
Id.

Office of Civil Rights Views

1. If an individual is discriminated against preferential treatment can be accorded to that individual by the government to make that particular victim of discrimination "whole."
2. There is no evidence that Black firms that would be aided by Dade County's set-aside law have been victims of discrimination.

3. Preferential treatment accorded to those who have not been specifically discriminated against necessarily deprives innocent third parties of their rights and privileges.
4. The 14th Amendment gives Congress special powers to fashion such remedies but that this authority does not extend to local governments.
5. Therefore, the Dade County ordinance should be declared unconstitutional.

Implications of the Justice Department Action

1. Casts a shadow over every state and local minority business development program involving contracting goals. It would also call into question Federal minority business activities not expressly approved by Congress.
2. Calls into question the President's commitment to minority business development. On the one hand the President is seen as advocating more Federal action while his Justice Department is making state and local action more difficult. Indeed, in the absence of a new statement by the President, the Justice Department's action will be perceived as a signal that the President is changing his position on minority business development.
3. Contradicts the Administration's avowed stance on Federalism by restricting the actions of local government.
4. As minority business development is a fundamental issue for most Black Republicans and Black Conservatives, the perception of retreat from minority business development will undermine their support for the Administration. Some Black Republican leaders may publicly break with the President and the Party.
5. Any significant loss of Black Republican support will remove the last organized support group the President and the Party have in Black communities. These leaders have been a stopgap against charges that the President does not enjoy Black support. With their departure the President will be even more vulnerable to charges of racial insensitivity and will have few if any Black persons outside the Administration willing to speak up in his defense.
6. Effectively removes Presidential minority business policy making from the Cabinet Council on Commerce and Trade, as provided by the Executive Order No. 12432, and places key aspects of it in the Office of Civil Rights at the Justice Department.

DOROTHY GILLIAM

WP 2-15-84

SET-ASIDES

The prevailing opinion in this heavily Democratic city is that if you're a black Republican, you are automatically in synch with the activities of the Reagan administration. But there is some independent thinking within this group, and probably no issue has called it forth recently as much as the Justice Department's action in challenging special set-asides for minority businessmen.

Affirmative action on behalf of minority business was begun during the Nixon administration and the principle of reserving a percentage of public contracts for minorities was upheld by the Supreme Court as recently as 1980. These actions recognized that due to a long history of past discrimination and denial of access to financial markets and clients, minorities paradoxically lacked a method of obtaining a business base in this capitalistic society.

But last week, the Justice Department challenged an ordinance in Dade County, Fla., that sets aside some county construction contracts for black-owned businesses, a law that had been adopted in response to deep racial unrest in Miami's Liberty City area.

"I'm quite upset," said LeGree Daniels, chairman of the National Black Republican Council and the likely point person for the black community in the national Reagan-Bush campaign. She has called a meeting of her organization here in Washington next week to discuss the administration action.

"Speaking personally, I do feel it would be a step in the wrong direction because if we are going to give our communities a hand up instead of a handout, we're going to have to depend on minority businesses.

"In order for us to make a difference in our communities, we are going to have to have role models, and what better persons to act as role models than minority businessmen who could hire and be aware of jobs coming into our communities? This is what it's all been about with black Americans. We've been able to help our own and this is one way to do it—with our minority business people."

William Bradford Reynolds, assistant attorney general for civil rights, has called the Dade County ordinance unconstitutional, holding that no local government has authority to limit contract bids on the basis of race.

But looking at the issue on that basis is not acceptable to another organization of black Republicans here. The Council of 100, which has written President Reagan for clarification asking whether "this is the personal position of Mr. Reynolds . . . or whether it is indeed the position of this administration." They have not received a response.

"Blacks have been so far behind that this just isn't acceptable," said Chairperson Elaine Jenkins in an interview. "We think decisions are made on the blind side, not with an understanding of the history of why there is the need for set-asides for blacks or of the history of Dade County where they have had so much tension."

Milton Bins, also of the council, added: "We are faced now with a Department of Justice which from our economic and political view is turning justice on top of its head—upside down. They say they are attempting to protect the Constitution, but in fact they are denying all of those remedies that have been fashioned since 1954 that have anything to do with racial preferences. They're out to get rid of them.

"We are at a very serious roadblock and the critical question that we are asking and we are going to push until we find some answer, is whether this is indeed a Constitutional issue or this administration's policy as pursued by the Department of Justice It is critical to our stake in building a two-party system among blacks to know where the president of the United States stands

"People are looking at it as a challenge to black people," Bins continued, "and this does add to the present misery index of blacks . . . but at the same time, as Jesse Jackson says, it adds to the future danger index for the country."

As a result of states and cities adopting ordinances to increase the share of public business awarded to minority firms, some minority firms have gained a chance for long-term success that would have been utterly missing without set-asides. These dedicated black Republicans are trying to tell their fellow party members that to close that door now would be ill-timed and ill-conceived.

U.S. Joins Group in Challenging the Right Of County to Set Aside Jobs for Black Firms

WSJ 3-6-84

By ROBERT E. TAYLOR

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The Justice Department joined a contractors group in challenging the right of a city or county to set aside construction contracts for black-owned businesses.

The department filed papers in the federal appeals court in Atlanta attacking a program established by Dade County, Fla., to boost contracting by black businesses in the wake of the Liberty City race riots in 1980.

In its brief, the department contends that local governments lack the authority to reserve contracts for any racial group as that action would put other groups at a disadvan-

tage. The department says that only the federal government may do this, and only when authorized by Congress. And even that power, the department asserts, can properly be used only to benefit actual victims of discrimination.

The case is the first in which the federal government has sought to overturn the practice of setting aside a portion of contracts for specific groups. Some states and several cities have similar set-aside procedures. These have generally been upheld in the courts, according to a spokesman for the National League of Cities. Yet in one case still under appeal, a New York City set-aside for businesses in economically depressed areas has been struck down by a state court.

The Supreme Court upheld in 1980 the authority of the federal government to reserve 10% of federally funded local public works projects for minority-owned businesses.

The Dade County program was aimed at awarding a portion of county projects to black-owned businesses until they reached a level comparable to the black portion of the local population, which is 17%.

The county started the program in the wake of the Liberty City riots after finding that less than 1% of its contracts were going to black-owned businesses. Robert Cuevas, assistant county attorney, said the county, state and U.S. Civil Rights Commission had each found evidence of discrimination there.

In the fall of 1982, the county attempted to set aside for black prime contractors all work on one rapid transit station planned for Arlington Heights, a predominantly black area near Liberty City. The program also reserved one-half of the subcontracts for black businesses.

This first set-aside by the county was challenged by the Associated General Contractors, a trade group. A district court overturned the prime contractor set-aside, but upheld the subcontract provision, according to Mr. Cuevas. But a three-judge appeals court panel unanimously upheld the entire program. It is that ruling that the Justice Department is asking the entire appeals court to reverse.

The department noted that Dade County sets aside contracts for black businesses without regard to whether each one is a victim of discrimination. It contended that this violates the constitutional rights of contractors who aren't black to equal protection under the laws.

The department suggests that preferential treatment by local governments can be constitutional only if limited to granting enough contracts to proven victims of discrimination to provide them what they would have attained in the absence of discrimination.

Set-Aside For Blacks Challenged

By Howard Kurtz
Washington Post Staff Writer

The Justice Department, in a new attempt to narrow legal remedies for racial discrimination, has challenged a law in Dade County, Fla., that sets aside some county construction contracts for black-owned businesses.

The county ordinance, adopted in response to racial unrest in May, 1980, in Miami's Liberty City area of the county, is similar to provisions that the federal government and many states and cities have adopted to increase the share of public business awarded to minority firms.

William Bradford Reynolds, assistant attorney general for civil rights, called the Dade County ordinance unconstitutional in a brief filed Monday in federal court in Atlanta. He said no local government has authority to limit contract bids on the basis of race.

A three-judge panel of the 11th U.S. Circuit Court of Appeals in Atlanta had upheld the Dade statute, and Reynolds asked the full court to reverse that ruling.

Reynolds said yesterday that the Justice Department's position, if upheld, could invalidate "race-conscious set-aside" laws in many cities and states. The District of Columbia, for example, requires that 35 percent of contracts awarded by each city agency be set aside for minority bidders, while Detroit sets aside 40 percent of its contracts for small firms and those owned by minorities and women.

According to Reynolds' brief, there is no evidence that black firms that would be aided by Dade County's set-aside law have been victims

U.S. Challenges Set-Aside for Blacks

CONTRACTS, From A1
of discrimination. He said that the 14th Amendment gives Congress special powers to fashion such remedies but that this authority does not extend to local governments.

The county's law "impermissibly infringes the equal-protection rights of non-black contractors in Dade County," the brief said, adding that "these racial selection devices" can be used only to help "identifiable victims of unlawful racial discrimination."

Reynolds said in an interview that Dade County officials "have discriminated against all those who are not of the particular race that is preferred. It plugs into the system a discriminatory selection process based on race . . . It is one of the most pernicious excuses for government to operate. We have to get beyond the point where we are endorsing government decisions based on race classifications."

Reynolds added that set-aside programs provide little help for most minorities and that an individual black firm must prove it was the victim of racial bias before receiving preferential treatment.

Rep. Parren J. Mitchell (D-Md.), chairman of the House Small Business

Committee, responded that "it's a specious argument to say that these contractors have not been victims." Local set-aside rules, he said, are aimed at "confronting ongoing, present discrimination. This is not an effort to reach back to remedy the ills of the past."

In 1980, the Supreme Court upheld Congress' right to set aside 10 percent of federal public-works contracts for minority firms in a broad endorsement of federal remedial programs, such as those run by the Small Business Administration. The ruling did not say whether local governments have similar powers, but such local laws have been upheld in several lower-court decisions.

Dade County Assistant Attorney Robert Cuevas said the Justice Department's brief is "consistent with the administration's policy" of trying to limit legal remedies in busing and affirmative-action cases. "I don't think Congress or Washington has all of the wisdom in terms of correcting past discrimination," he said.

Cuevas said Dade County, the state of Florida and the U.S. Commission on Civil Rights conducted studies after the Liberty City conflict and found that "a main cause of the riots was a total lack of participation by the black community in Dade's economic growth."

While blacks comprise 17 percent of the county's population, he said, black-

owned firms have received fewer than 1 percent of county construction contracts, which total about \$450 million annually.

In 1982, the county adopted an ordinance that would set aside an unspecified number of construction contracts for black-owned firms and set "goals" of reserving as much as half of some subcontracts if enough black bidders were available.

The first contract to be set aside was to build a subway station in a predominantly black area near Liberty City. Cuevas said the move was approved by the U.S. Transportation Department, which is paying 80 percent of the cost and has a minority set-aside program for highway contracts.

But the county was sued by Associated General Contractors, which represents 8,500 firms, most of them non-minority, and has challenged similar set-aside laws in Richmond, Atlanta and Seattle. The trial court rejected part of the Dade County law, but the appeals court upheld the entire program, prompting the Justice Department to intervene.

Bill Henry of the contractors' group said the county law does not consider whether black contractors are economically disadvantaged.

"It's such a sweeping and exclusive measure that it's robbing our members of their market," he said.

INTERVIEW:

William Bradford Reynolds Assistant Attorney General Civil Rights Division U.S. Department of Justice

Q: First, I would like to ask you a general question. What are the Justice Department's views on race conscious remedies or race conscious preferences?

REYNOLDS: The department's view is unequivocally that race conscious preferences, or remedies which incorporate preferences based on race, are impermissible. It is impermissible under the Constitution and impermissible under the statute.

To the extent that the Court has spoken to the issue in the context of public employment, it seems to me it is clear that there is nothing in the Supreme Court's opinions that indicates preferential treatment based on race is tolerable as a remedy.

There is a case, *Weber*, where the Court has said that, as to employment in the private sector, at least as to a training program and eligibility for a training program in a limited setting, some preferential treatment might be permissible. But the Supreme Court never has spoken to that question in the area of hiring or promotion preferences in the context of denying innocent individuals an opportunity that they would otherwise be entitled to based on their qualifications. And where it has spoken to the permissibility of preferential treatment in training programs, it has recognized severe restrictions and limitations. For example, in *Weber*, the Court made clear that that kind of a technique would not be permissible to maintain racial balance in the work force.

Our view in the Department is quite firmly that, once you get into preferential treatment, you move into the realm where the law has said in very clear terms



there is an impermissible infringement on individual rights. The one exception to that very general statement is in the remedial context: if you have a victim of discrimination and you're making that victim whole, in those circumstances there may be preferential treatment accorded to that individual. I would maintain, however, that preferential treatment of this

"The Department's view is unequivocally that race conscious preferences, or remedies which incorporate preferences based on race, are impermissible."

kind is accorded by virtue of one's status as an individual victim, not by virtue of one's status as any member of a class defined by legislation.

Q: You have been very outspoken in discussing your department's views. Are you assured of continued Administration support for these positions?

REYNOLDS: I think the President has been very outspoken and consistent about his views in terms of using these techniques as a remedy — a month ago

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in his address to the American Bar Association, he stated firmly that he is against the use of quotas or racial preferences as a remedy or otherwise.

The Attorney General has been equally outspoken in this area, and all the executive orders that I am aware of, assign to the Attorney General, in very clear terms, the ultimate responsibility to make the legal judgments and the legal calls in this area. So, I am confident that the Administration is supportive of the Department's position.

I think there are others in the Administration who are wrestling with outstanding regulations that are on the books, and until those regulations are changed, they probably have to be somewhat more modest in their approach to this question than I have to be because I don't have that baggage.

Q: To those who are affected by these regulations and statutes, it appears that certain Departments within the Administration are taking actions which are in conflict with the Administration's position regarding race-conscious preferences.

REYNOLDS: One of the things that is worth focusing on is exactly the dimensions of the problem that we're dealing with. We're talking about a monumental effort in a number of different areas. There are several layers that one needs to contend with before we remove what has been a rather prevalent approach in the past which endorsed these preferential techniques. There are a lot of layers to get through. There are the layers which address the laws that are passed, the laws on the books, and the litigator's policy pronouncements; the regulatory layer where you need to go in and do some extensive recutting of regulations; and then the layer composed of the people who are charged with the enforcement effort, those in Washington and those out in the field. I think a lot of what we are seeing is the phenomenon of treating with the problem at different levels, at different time periods. There's a catch-up factor. There are going to be people who are running the programs who have gotten in the habit of doing things a certain way and it takes some time to straighten that out. That's not an easy problem to contend with. There are people who, for example, at EEOC or the Office of Federal Contract Compliance Programs, have been talking to contractors or individual employers about consent decrees for many years and have gotten very much attuned to doing things a certain way. I think there is an inevitable time lag from putting the policy in place, making sure that the laws and regulations themselves are cleansed of whatever preferential connotations they might carry, and, at the implementation stage, assuring that everybody down the line is on board and is moving enthusiastically in the right direction.

A lot of what we are now seeing are the steps between the pronouncements and the litigators' efforts in court to halt the use of preferential treatment as a statutory remedy, and the implementors. I don't think we have gotten to the point where we've been as effective at all levels. I think the "layering phenomenon" is a reality that we're living with. You are correct that sometimes it looks like the right hand and the left hand don't have the same beat.

Q: Dating back to the Local Public Works Act of 1977, which required a 10 percent quota, the construction industry has been subjected to a myriad of affirmative action based MBE programs. The Fullilove case addressed the 10 percent provision contained in the 1977 LPW Act. Would you tell us what that decision provided?

REYNOLDS: As I read the decision, it upholds only the facial constitutionality of the statute. It does not treat with the question of what happens when it is implemented. The Court was very clear that all it was addressing is whether the statute on its face was constitutional. It found the statute to be constitutional, but, as I understand the plurality opinion, it went through a victim-specific analysis, concluding that preferences are permissible for the victims of discrimination.

The Court made a point of emphasizing that Congress had determined that the industry was involved with very pervasive discriminatory practices. The Court also made the point that, in putting in place the 10 percent set-asides, there was also an administrative process that was required to determine that the beneficiaries of that 10 percent set-aside had indeed suffered discrimination or exclusion from the industry. The Court also pointed out that there were safeguards within the legislation. It said if you could not come up with the right number, the full 10 percent of minority business enterprises that had indeed been discriminated against, that the Secretary could waive the 10 percent requirement.

As I read the Court's opinion, the analysis was not saying Congress had the authority or indeed had undertaken to impose on this industry a racial preference of whatever percentage, but rather it went through an elaborate legislative response to a finding of discrimination by Congress. It then said you repair that by allowing those people who have been excluded from the industry because of pervasive discrimination, to have the benefit of the 10 percent provided that they could demonstrate administratively that they were victims.

They left for another day the hard question of what to do when someone challenges an individual MBE getting a set-aside and saying, "wait a minute. That particular contractor would not normally have been disadvantaged. He was preferred over me because of race and that is discriminatory." That question was left to another day. I think the Court was saying that

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facially, because it is a victim-specific legislation, it is constitutional. But the court was not saying that they would sign off on the application of this rule if it is misapplied in a way to grant a preference to any particular subcontractor by reason of race alone.

Q: Based on what you said, is it fair to say that the Fullilove decision was a very narrow decision?

REYNOLDS: I think that's right, absolutely. I think that the Court made clear that we're dealing with a co-equal branch of government, the Congress, but that in order for a similar piece of legislation to satisfy constitutional requirements, it would have to have the



same set of facts that I just described. It would have to be the kind of legislation that is tailored to remedy a discriminatory situation and was tailored to give to those that have been discriminated against whatever slots were set aside. Even there the set-aside was not a rigid one, but one the Secretary could waive in the event that he could not find that many contractors that were indeed discriminated against.

Q: You just led me into my next question. We are now seeing a growing number of MBE preferential procurement programs in the states and local levels such as the MBE statute in Ohio and the ordinance established in Dade County, Florida. Does the Fullilove decision have a bearing on these local programs and does the Civil Rights Division have an interest in these state and local programs?

REYNOLDS: It would be inappropriate for me to address these specific state statutes. Generally, however, I think that if a state were to try to pass legislation similar to Fullilove, it would have to bear a terribly heavy burden to justify that kind of legislation. I think that if the state is going to get into that area it's going

to have to pass the strictest standards of judicial scrutiny and show that the enactment is necessary to advance a compelling interest. Fullilove signals very clearly that when the state begins to move into that direction, it is going to have to fit the outline that we've talked about in terms of something that is geared to an industry where the state legislature has made a very comprehensive finding of industry-wide discrimination and has crafted its legislation to benefit only victims identified either through a state administrative process or a state judicial process. There is a lawyer's fascination as to whether the states do have the authority under the Fourteenth Amendment to pass legislation of this sort to enforce the Equal Protection Clause. Certainly under Section 5 of the Four-

"...I think that it is unlawful — whether you are talking about discrimination in a pernicious sense or so-called benign sense. I think that it is as offensive to the Constitution and the laws to engage in reverse discrimination as it is to engage in discrimination. You cannot use race as a criterion for selection. It is no more justifiable in the context of reverse discrimination than any other."

teenth Amendment the Congress does. There's a question as to whether the states do.

My sense is that if a state were to go about doing this in the way that I described and were to promulgate legislation that was indeed victim-oriented, perhaps the state could pass that kind of legislation. But I do think that it would come under the strictest of judicial scrutiny and would have to bear the heaviest of burden in order for the state statute to be one that the courts would find to be constitutional.

Q: It seems to us that the implementation of these ordinances, laws and regulatory programs, result in a form of reverse discrimination. It seems, as well, that there is a growing perception that it is, in fact, some form of legalized reverse discrimination. Is reverse discrimination, under any circumstances, legal?

REYNOLDS: I am tempted to say absolutely not, but I hesitate because whenever you talk in terms of redressing or making whole victims of discrimination in the employment context, in so doing you say that part of the relief that the victims are entitled to is a slot in the work force in their rightful place. In doing that, one balances the interests of discriminatees against the interest of some of the people who are in the work force. One could, I guess under a loose definition of reverse discrimination, suggest that that was somehow reverse discrimination as to those other

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people in the work force.

I think as long as it is victim-specific it would be permissible. But if you're asking "can one use racial preference in a way that it would amount to reverse discrimination?" I think that it is unlawful — whether you are talking about discrimination in a pernicious sense or a so-called benign sense. I think that it is as offensive to the Constitution and the laws to engage in reverse discrimination as it is to engage in discrimination. You cannot use race as a criterion for selection. It is no more justifiable in the context of reverse discrimination than any other.

Q: Section 105(f) of the Surface Transportation Assistance Act of 1982, requires that 10 percent of the funds shall be expended with socially and economically disadvantaged firms. The nature of the highway industry is such that generally a prime contractor subcontracts only about 10 percent of the work, the remainder he does with his own forces for efficiency and economy. With this magical number in effect, what we are seeing is that the work that is usually available to the highway subcontractor, has to be directed to socially and economically disadvantaged firms. As a result we see a growing body of well-established, non-minority highway subcontractors who are no longer able to secure work. Is this trend of interest to the Civil Rights Division?

REYNOLDS: The Surface Transportation Act is written in a way that avoids what is the offensive feature of most of the legislation that we've been discussing. The Act speaks in terms of preferential treatment for socially and economically disadvantaged individual contractors. That does not carry with it, at least on its face, any kind of race-conscious preference. It would presumably apply evenhandedly whether they were white, Black, Asian or whatever, as long as they were socially and economically disadvantaged. The Courts have said that that is not a suspect classification. So I think that certainly in terms of the way that the law is written, it would not raise a constitutional concern. If it is being applied in a manner that indeed amounts to nothing more than a racial preference, then I think that such an application is something that we would not view as tolerable. If indeed there is a misapplication of the statute so that it does grant a preference on the basis of race, that is something that we would want to look into. There are, as I understand it, within the regulations certain presumptions that certain races are to be presumed to be socially and economically disadvantaged. I think that those presumptions are, at least facially, permissible constitutionally. But, if in practice contractors or subcontractors are simply given a nod according to their race, that would be very troublesome.

Q: There is great concern on the part of the average general contractor that indeed he is being forced or mandated as a result of the law and the implementation of the law to practice a form of reverse discrimination in the way that he must award subcontracts. Since he is generally only going to subcontract 10 percent, and if his contract requires that he achieve a 10 percent MBE subcontract requirement, he finds himself in a position of possibly having to award his subcontracts on a basis other than to the lowest responsible bidder. He now finds that he is required to use another criteria — race — in awarding subcontracts. Is that factor of interest to the Civil Rights Division?

REYNOLDS: If there are allegations in specific cases of reverse discrimination, then obviously those cases would be of interest to the Division. I would say that I think that the legislation as written, is constitutional, but if it is being applied in a way that suggests reverse discrimination, that would be something that we would certainly look into. And I would have to have

"I think that in the event that there are situations that come to your attention in which the law is being misinterpreted or misapplied, that it would make sense to bring it to the attention of the Department of Justice..."

more facts in a specific case to give you any kind of opinion as to whether it would or would not amount to reverse discrimination. But clearly if the allegation is that the statute is being applied in such a manner that racial discrimination is taking place, we would take a look at that.

Q: The President recently signed Executive Order 12432 on Minority Business Developments. Our membership is interested in whether this is going to result in a new round of affirmative action based Minority Business Development Programs?

REYNOLDS: The Executive Order is very carefully drawn, and purposefully so, to encourage the use of minority business enterprises but not to suggest that one needs to plug in quotas or to give preferences. The thrust of the Executive Order is more in terms of training and recruitment activities, and of the use of those techniques to seek, in a race-neutral manner, to increase the participation. It is not an Executive Order that says, anywhere in it, that there will be a preference on account of race, or that there will be a racial goal or a racial program. And that is something that is intentional and was carefully considered. It is in language that was drafted with a lot of thought and a lot of care and I think has to be read with that in mind. It is not something that affords

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preferences on account of race. It is not intended to be used that way or misused that way. It is rather designed to encourage the participation of minority business enterprise. To encourage by going out and finding minority businesses that would be available to participate and to give those minorities the opportunity to participate. That is what it is designed for.

Q: What can the individual construction contractor do to abate the growth of mandated reverse discrimination programs?

REYNOLDS: There are really only two avenues open. One is to go to the legislature and argue against the enactment of legislation that perpetuates or endorses racial practices, and to make the point that such legislation must pass a strict constitutional test.

The other avenue is the courts. I don't know of any other way that one can really challenge these kinds of programs. I think there is a need for challenging them wherever they are. And my view is that there are some that are very vulnerable.

Q: When federal agencies promulgate regulations implementing statutes such as Section 105(f) of the Surface Transportation Assistance Act, or when a federal agency administratively promulgates programs, is it a matter of course that those regulations need to be reviewed by the Department of Justice?

REYNOLDS: The Department of Justice does not have approval authority over regulations of that sort. Generally speaking, the Department is included in the review process and has an opportunity to comment. Sometimes those comments are listened to more attentively than other times. I think that in this area there would be good reason to consider investing the Attorney General with the kind of approval authority that he now has in regard to civil rights laws that deal with federally funded programs. By Executive Order, the Attorney General has to approve those regulations before they can be issued, but that's not the way, at the present time, things are set up in other areas. There are agencies that can promulgate regulations in this area without final signoff by the Attorney General. But generally there is some coordination with the Department of Justice.

I sense that at the federal level the problem usually is not as much with the wording of the statute or regulation as it is with the manner in which it is interpreted and applied. The Attorney General's ability to have an input in the regulatory area is really only at the threshold stage in determining whether the statute is written in a way that is constitutionally permissible. I think on that score his views are listened to quite closely. But when you get to the second and third stage of interpreting it, then generally the agencies are inclined to have it more on their own.

Q: We were hoping that there was a third option, in addition to litigation and legislation. We were hoping there was an effort within the Department of Justice to look into complaints that certain programs are being implemented in a race conscious manner.

REYNOLDS: Well, there is, and that certainly is an option and a very valid one. I think that in the event that there are situations that come to your attention in which the law is being misinterpreted or misapplied, that it would make sense to bring it to the attention of the Department of Justice and, in the private employment sector, to the attention of the EEOC. Certainly it would be an important step.

CONSTRUCTOR: Thank you.



- CLRC is an invaluable tool for owners, labor negotiators, estimators — interested in construction labor costs.

- CLRC is the most complete, up-to-date bank of construction wage and fringe information.

- CLRC is a computerized data bank which includes information on almost 3,000 construction labor agreements for all 17 crafts.

- CLRC is the place to turn for data on labor agreement terms and conditions contained in over 1,000 agreements.

- CLRC is the Construction Labor Research Council

See page 86
for ways
CLRC can
help you!

THE WHITE HOUSE
WASHINGTON

3/27/84

TO: JIM CICCONI

Frank Fahrenkopf, Ed Rollins and Drew Lewis all agree that Mel Bradley should be the one to see Legree Daniels regarding this letter.

They felt strongly that a meeting with the President should not happen on this and that, if possible, we should try to avoid getting JAB involved.

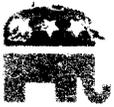
If this falls into your area, could you please handle it with Bradley? If you feel it doesn't belong in your area, just send it back to me.

Thanks a million.

*Mel will
call Legree
and schedule
a meeting.*

MARGARET D. TUTWILER
Office of James A. Baker III
456-6797

*JC
3/28*



National
Black
Republican
Council

March 22, 1984

LeGree S. Daniels
Chairman

The Honorable James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D.C. 20500

Dear Mr. Baker:

I am writing this letter as a follow-up to my letter of March 14, 1984, to seek your assistance in arranging for me to meet with the President at his earliest convenience on an urgent matter. I am requesting this official meeting in both my capacities as Chairman of the Party's designated auxiliary for Black Republicans, as well as Chairman of Black Voters for Reagan-Bush in the re-election campaign.

On March 3, 1984, William Bradford Reynolds, Assistant Attorney General for Civil Rights, challenged the Dade County set-aside for Black contractors. While this intervention has generated relatively few headlines thus far, no action of the Administration or any Republican Administration has struck such a damaging blow at Black Republicans and Black conservatives morale as this action has.

Without prompt and decisive steps taken to redress the perception that the Reynolds' friend of the court brief represents an Administration attack on governmental support for minority business development, a strong signal will be sent that the Administration has not only written off the Black vote but the Black Republican vote as well. As such, it is my considered opinion that the President focus the immediate loss of the bulk of his existing Black Republican base with a crippling blow struck to our efforts to marshal Black support for him in his re-election campaign. Already the Reynolds' action has had a chilling effect on fund-raising for the President among Black businessmen.

Yesterday, others and I met with Mr. Reynolds to seek a better understanding of his action and ways for the perception to be improved. While that meeting was promising, it nevertheless underscored my belief that this is a Presidential issue and its satisfactory resolution will require Presidential involvement.

The Honorable James A. Baker III - March 22, 1984

Your assistance in arranging for me to meet with the President will be appreciated. I may be reached at 662-1335.

Sincerely,

A handwritten signature in cursive script that reads "LeGree S. Daniels". The signature is written in dark ink and is positioned above the typed name.

LeGree S. Daniels

LSD:zs



call Cicconi

Office of the Assistant Attorney General

Washington, D.C. 20530

1. Dade county
2. Alram ltr.
- 3.

MEMORANDUM

TO: Craig Fuller
Assistant to the President
for Cabinet Affairs

FROM: Wm. Bradford Reynolds *WBR*
Assistant Attorney General
Civil Rights Division

SUBJECT: Guidelines for Minority Set-Asides by State
and Local Governments

Pursuant to our discussions, I have enclosed a number of guidelines or "principles" to assist state and local governments in establishing constitutionally permissible "set-asides" in their government contracting process. My initial impulse was to suggest that states and localities simply adopt the Small Business Administration's 8(a) program for the "socially and economically disadvantaged," a measure that we have defended as constitutional and that is far less discriminatory than the 100%, exclusively black set-aside that we challenged in our Dade County filing.

However, I was confronted with the Supreme Court's repeated admonition in Fullilove v. Klutznick, 448 U.S. 448 (1980) and other cases that such congressional programs are to be judged by a more lenient standard than those enacted by other organs of government because of Congress's "unique" remedial power under Section 5 of the Fourteenth Amendment to redress prior discrimination. Since state and local governments have no remedial authority comparable to Congress's Section 5 power, their "race-conscious" remedial procedures must be more narrowly tailored and are entitled to less judicial deference. Thus, while the 8(a) program may be viewed as constitutional because enacted by Congress, a similar state or local program might well not withstand constitutional scrutiny. */

*/ Indeed, the primary basis of our challenge to the court of appeals' decision upholding the Dade County set-aside was the court's failure to recognize this critical distinction between the differing powers of Congress and local legislatures to establish race-conscious remedial measures.

Accordingly, the guiding principles we have developed reflect the greater constitutional restraints on state and local governments and, of course, do not authorize preferences to non-victims of discrimination based solely on race.

Attachment

GUIDING PRINCIPLES FOR STATE AND LOCAL GOVERNMENTS IN
ESTABLISHING PROGRAMS DESIGNED TO REMEDY PRIOR
DISCRIMINATION AGAINST MINORITY BUSINESSES

Since its inception, this Administration has been firmly committed to ensuring that businesses owned and operated by members of minority groups are provided with an equal opportunity to fully enjoy the profits of our competitive economic system. This commitment, as reflected in President Reagan's Executive Order No. 12432 on Minority Business Enterprise Development, is based on the recognition that if minority businesses are given the proper incentives and assistance, they can participate more fully in the mainstream of American economic life, particularly in those industries from which they have traditionally been excluded, and serve as a dramatic catalyst for social progress by all of our Nation's citizens.

At the same time, this Administration has also emphasized that certain measures that have been established to accomplish this laudable goal are both counterproductive and constitutionally impermissible. One such measure was the ordinance enacted by Dade County, Florida, authorizing a 100 percent "set-aside" of the County's prime contracts for black businesses to the exclusion of all other groups, minority and nonminority. The Justice Department's constitutional challenge to this "set-aside" program has resulted in a number of organizations and groups expressing concern and confusion over the Administration's position on this question.

In response to these concerns, we have set forth the following general principles to assist those states and localities who intend to establish programs designed to remedy prior discrimination by increasing minority participation in the government contracting process. Close adherence to these principles will, in our view, both bring such programs into compliance with constitutional requirements and more effectively accomplish the goals of redressing previous discrimination and full participation by all groups in our Nation's economy.

Guiding Principles For Minority Business
Assistance Programs

(1) The power of state and municipal governments to establish "race-conscious" programs designed to remedy past discrimination is more restricted than that of Congress when it acts pursuant to Section 5 of the Fourteenth Amendment. As the Supreme Court emphasized in Fullilove v. Klutznick, 448 U.S. 448 (1980), the "unique" remedial power given to Congress under this

section provides it with broader authority than any other unit of government to redress the effects of past discriminatory action. Thus, the standards set forth in Fullilove concerning permissible congressional remedial action cannot simply be transposed to state and local governments; their remedial actions are to be judged by a stricter standard.

(2) No state or municipality may enact a "set-aside" or other numerical selection procedures that grant preferences to individuals solely on the basis of an individual's racial or ethnic status.

(3) Programs designed to redress prior discrimination against blacks or other ethnic groups must be supported by explicit findings, based on a full hearing record, that such discrimination has occurred. These findings should relate to specific discriminatory procedures or actions by the governmental entity enacting the remedial measure and not simply to disparities between racial groups attributable to other socio-economic factors for which the relevant governmental unit cannot be deemed responsible. Regents of the University of California v. Bakke, 438 U.S. 265 (1978) (Opinion of Powell, J.). NO PRESUM

(4) Only those governmental entities with broad authority to legislate for the general welfare, or which have the specific administrative mission of remedying unlawful discrimination, have the power to make such findings of prior discrimination and enact remedial measures. Other components of state and local governments, such as education and police departments, are not competent to do so. See Regents of the University of California v. Bakke, 438 U.S. 265, 308-309 (1978) (Opinion of Powell, J.).

(5) Remedial measures should be designed in the first instance to provide "make whole" relief to those individuals who have actually been victimized by the prior discriminatory behavior. Additional relief aimed at redressing the effects of past discrimination must not prefer any one racial or ethnic group over others nor award contracts to individuals or entities on a race-conscious or ethnic-conscious basis.

(6) Programs modeled after the 8(a) program of the federal Small Business Administration, favoring those who are "socially and economically disadvantaged," are less suspect than those which utilize racial and ethnic criteria. Nonetheless, these programs cannot be designed or administered simply as pretexts for granting racial or ethnic preferences; they therefore should be sufficiently

broad so as not to exclude any racial or ethnic group from consideration. Any listing of groups as presumptively within the protected class of "socially and economically disadvantaged" must be compiled on the basis of specific findings, after full hearings, must allow for rebuttal of the presumption, and should be comprehensive, not underinclusive. Even then, courts will likely view such a presumptive list in state and local programs with disfavor.

(7) "Affirmative outreach" programs designed to seek out and include previously neglected minority groups, and select participants on a nonpreferential basis, are greatly encouraged and constitutionally permissible in all respects.

THE WHITE HOUSE
WASHINGTON

April 2, 1984

TO: JAB III

Attached is a paper prepared by Jack Svahn, per your request, on the Dade County case. It is in the form of a suggested answer for the press conference.

I feel this draft covers all the points we wanted. If you agree, I will forward to Baroody with a request that it be included in the press conference briefing materials now being circulated.

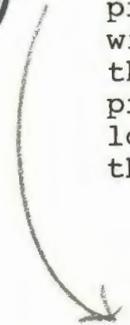
If the entire answer is given, we will go far toward curing our problem on this issue, especially with our own black supporters. If the question does not arise in the press conference, we may want to look at alternative means of getting the statement out.

JC

NOTE
Spoke to Baroody (who already had copy) and told him to include in materials being circulated.

JWC
4/2

4/2
JC
You
have
goby



April 2, 1984
Dade County Case

Status:

Justice Department filing in this case drew strong criticism from Civil Rights groups and Black Americans in general. Dade County officials set aside construction contracts solely for black firms. This was done after the Liberty City riots.

The Associated General Contractors in Dade County (primarily Hispanic contractors) challenged the set aside. Justice filed an amicus brief with the Circuit Court of Appeals to support the AGC. The Circuit Court denied the motion, thereby upholding the set aside. The next step is up to the AGC. They have 90 days with which to seek the Supreme Court's review of the ordinance. Justice will not file any further action in this case until it is determined whether the Supreme Court will hear the case. This will not occur until after October, 1984.

Talking Points:

- o RR is a strong supporter of minority set asides
 - the federal government under our Administration has an active set aside program.
 - RR has encouraged Cabinet officers to make extra efforts to direct more of the federal business to minority companies.
- o RR believes that minority business set asides should extend to State and local government and that the private sector should be encouraged to do the same.
 - The Justice Department, in its independent law enforcement role believed that the Dade County ordinance was improperly drawn and therefore not Constitutional.
 - Justice follows Administration policy in supporting minority set asides. The technical wording of this ordinance was what Justice challenged.
 - Justice believes that Dade County can accomplish its objective of setting aside contracts for minority firms by rewording its ordinance.
 - Justice is working on a set of guidelines at this time to help State and local governments, like Dade County, to develop properly drawn minority set aside programs.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/25/84 ACTION/CONCURRENCE/COMMENT DUE BY: 10:00 a.m. TUESDAY, 6/26

SUBJECT: PRESIDENTIAL REMARKS: NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

WEDNESDAY, JUNE 27, 1984

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McMANUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>TUIWILER</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	<u>WIRTHLIN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>ELLIOTT</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	<u>HENKEL</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward any edits/comments directly to Ben Elliott in room 100 by 10:00 a.m. TUESDAY, June 26, with an information copy to my office.

Thank you.

RESPONSE:

Ben -
 Language change recommended for p. 7 re set-asides. New language is attached, and has the support of Svahn and Verstandig. Am also confident Mac Baldrige would prefer the change. (This language is consistent w/ guidance Brad Reynolds provided re Talo County at the time of his filing) *Am Picconi*

Richard G. Darman
 Assistant to the President
 Ext. 2702

in new minority contracting opportunities for each of the past 2 years.

Here's what meeting our commitment will mean to you: Over the next 3 years, ^{and guarantee that} nearly \$3 billion more in contracting will be provided for minority businesses than was provided in all the 12 prior years during the last three administrations.

And just so no one forgets these commitments and the need for continued growth, we're starting a new tradition: From now on, the first full week in October will be designated Minority Enterprise Development Week.

I know some of you may have some questions about our policy in light of events involving the set-aside program in Dade County. Well, the Justice Department's position in that case resulted from ^[insert language] ~~local authorities setting aside an inflexible numerical quota for a project on which only one racial group was allowed to bid. What the Justice Department argued for would not prevent States and localities from exercising a broad range of options to reach out to disadvantaged sectors of the community and participation in Government contracting.~~

We are trying to provide the broadest possible range of opportunities to all Americans -- without regard to race, creed, color, or sex. And, sometimes, it makes your day when you hear from people who understand this and agree. I received a letter from a 39-year-old black man who said, your policies are not in the least bit anti-black or anti-poor. "As a matter of fact," he said, "it is my opinion that your fight against inflation, your war on drug traffic, your tough stand against street crime . . .

[which ~~applied~~ allowed bids by only one ~~minority~~ group to the exclusion of others.]

INSERT LANGUAGE RE SET-ASIDES

[resulted from] the technical wording of that particular ordinance, which ~~they felt was improperly drawn.~~ ^{allowed bids by only one ~~minority~~ minority group to the exclusion of others.} This

Administration has strongly supported ^{programs to provide special assistance} ~~minority business~~ ^{to minority businesses,} ~~set-asides,~~ as evidenced by our ~~very~~ ^{that} active federal set-aside program, and ~~that~~ support will continue. We would also encourage officials at the state and local level to reach out in similar fashion to assist business development among disadvantaged groups.

But the federal gov't should not stand alone

programs to provide special assistance to minority businesses, as evidenced by our active federal set-aside program,

Minority Business Enterprise Development

Statement by the President.
December 17, 1982

This Administration is committed to the goal of greater opportunity for economic progress and independence for all Americans. We began movement toward this goal last year with enactment of major elements of our Economic Recovery Program. By reducing inflation and stimulating economic growth, this program will promote the kind of economic environment essential to the formation and development of business enterprise. In addition, our economic program will result in increased private savings through incentives provided by tax rate reductions and will slow the growth of government spending. Both actions will expand the pool of financial resources from which businesses can obtain capital for development.

But these steps are only a beginning. We must maintain the momentum by keeping the tax rate cuts in place and by retaining the tax indexing scheduled to begin in 1985. This indexing will prevent inflation from forcing individuals, including investors, workers and small business owners, into higher and higher tax brackets.

Our Administration, however, has not stopped there. Today, I am announcing additional steps to promote an economic environment in which minority entrepreneurs can better marshal their talents and skills to achieve better lives for themselves and, in so doing, contribute to a stronger economic base for America.

Our program is based on the following important principles:

- A healthy, growing economy is fundamental to creating the opportunity for the formation and growth of minority-owned businesses.
- Greater economic independence for minority Americans will best be achieved through increased opportunities for private employment and business ownership.
- Creativity, private entrepreneurship, and individual initiative will ultimately determine the success or failure of individual minority businesses.

• Expanded involvement of other private firms is crucial to minority enterprise developmental efforts.

The specific steps, which reflect these principles, along with key elements of our economic recovery program, will provide the basis for a renewed and vigorous minority business effort for the 1980s.

The Minority Business Development Agency of the Department of Commerce and the Small Business Administration will assist directly in the formation of at least 60,000 new minority businesses over the next ten years.

During the same period, this Administration will assist in the expansion of at least 60,000 minority businesses or 10 percent of the approximately 600,000 minority businesses that already operate in America today. We will place particular emphasis on labor intensive businesses and those in industries with high growth potential.

The Federal government will procure an estimated \$15 billion in goods and services from minority businesses during the three-year period comprising Fiscal Years 1983, 1984, and 1985, based upon our current overall procurement plans. Actual procurement objectives will be set on an annual basis and will be based upon this Administration's objective of increasing the share of total procurement supplied by minority businesses. This does not include minority business procurement by recipients of Federal grants and cooperative agreements, which could amount to an additional \$6 to \$7 billion during this three-year period.

We will make available approximately \$1.5 billion in credit assistance and \$300 million in management and technical assistance to promote minority business development during this same three-year period.

To expand minority enterprise participation in Federal government subcontracts, I am directing department and agency heads to develop and implement incentive techniques that will encourage greater minority business subcontracting by Federal prime contractors.

To continue full minority business participation in procurement resulting from government grants and cooperative agreements, I am directing the major Federal grant-making agencies to encourage their grantees to achieve a reasonable minority business participation in contracts let from their grants and agreements. This will be done in a manner consistent with the Administration's commitment to the principles of federalism.

In order to spur private sector involvement in minority business development, I will ask the business leaders of this country to work with me to encourage private firms to expand their business transactions with minority enterprises.

I am asking the Vice President's Task Force on Regulatory Reform to explore opportunities for reducing regulatory and other barriers to small and minority business expansion, and for promoting meaningful entry into the international trade arena.

In order to ensure the success of these Federal Initiatives, I will be issuing a new Executive Order on Minority Business Development which reaffirms the Federal commitment. It will prescribe specific policies and actions to be taken in these programs and direct the Interagency Council for Minority Business Enterprise to establish uniform guidelines for all Federal minority business efforts. It will also direct the Cabinet Council on Commerce and Trade to submit an annual plan specifying minority-enterprise-development objectives for each agency.

The Minority Business Development Agency has established a national network of Minority Business Development Centers which, in concert with existing SBA Small Business Development Centers, will provide management and technical assistance to minority firms and promote increased participation of private firms and other public sector resources.

I am directing Federal contracting agencies to increase minority business procurement objectives for 1983 by at least 10 percent over actual procurement in 1982. In addition, we are taking measures designed to expand the number of minority firms participating in Federal procurement programs.

And beginning next year, I will designate annually the first full week in October as Minority Enterprise Development Week.

Together, our policies and programs for minority business development should set the stage for the expanded development of

minority business. But most important are the steps to be taken by minority entrepreneurs themselves and other private concerns. Recognizing that the realization of the American Dream is ultimately achieved in the private marketplace, we can, through a greater commitment to public and private cooperation, help minority Americans to achieve fuller participation in the market economy.

Ronald Reagan

Minority Business Enterprise Development

Remarks on Signing a Statement Regarding Policies and Programs. December 17, 1982

Thank you. Must be a power failure; the light's out on the podium here. Well, I'll try to turn over in this light here.

Welcome to the White House, and thank you for being with us to recognize the vital role that minority business plays in this country. Our Nation's 600,000 minority enterprises represent nearly 5 percent of the nonagricultural business. They also represent, I think, social mobility and economic advancement to millions of Americans.

Today, in signing this statement, we reaffirm our commitment to a healthy economy in general and to a vibrant and expanding minority business opportunity in particular. We believe that in the last 23 months, we've taken the steps that will bring the economic recovery our people want so badly.

Clearly, a general prosperity with growth, with low inflation, is the greatest single thing that this administration or any administration can provide for minority business and minority Americans. Our economy building measures, our tax rate cuts, and regulatory reform will spur minority businesses just as they do to the entire business community.

In some cases, our program gives minority business an even greater boost than perhaps is seen at first glance. Our tax rate reductions, for example, should have a major impact on minority business. Since the large proportion of minority businesses are proprietorships and partnerships, they report their income as individuals and thus receive the full benefits of the across-the-board tax rate cuts.

And these same enterprises will continue to be helped, because the tax rates will be increased—or, I mean, will be indexed, not increased. I don't know how that word slipped in—[laughter]—that was a Freudian slip—[laughter]—be indexed after 1984. And you know what that means, that no longer will the government be making a profit on inflation. Here again, all small businessmen are being helped with a minority enterprise and full participation.

Now, early in this century, Teddy Roosevelt said that it ought to be evident to everyone that business has to prosper before anybody can get any benefit from it. Well, just as the incredible productivity and efficiency of American business catapulted the standard of living of our people as a whole, we believe a thriving minority business community will be instrumental in bettering the lives of those formerly excluded from the prosperity enjoyed by most Americans. In signing this statement, we renew our pledge that as recovery takes hold, we're not leaving anybody behind.

Back in September, I spoke about this with the members of the National Black Republican Council. I know that some of you were there. And I said at that time that the administration would soon announce a program focusing on minority business development, including a commitment to increase the level of general procurement from minority-owned enterprises—the general procurement by the Federal Government. And although it's taken longer than expected, today we're making good on that promise. Among the other items detailed in today's statement is a 10-percent increase of the minority business procurement objectives in 1983 over those of 1982. Over the next 3 fiscal years, our goal will be to purchase some \$22 billion directly and indirectly from minority-owned businesses.

Increasing the procurement levels can be accomplished on our own, but we can't forget that enterprise zone legislation—something that promises to do much to encourage growth in the inner cities—is still tied up on the Hill. I know that Secretary Pierce has spoken to you about that and went into detail on this important piece of legislation. But I want to add my feelings that it's about time that we get some action on this job building legislation for the disadvantaged, and we'll continue to press for action on this vital legislation.

A great many of the so-called job projects that have been floated around up on the Hill are nothing more than pork-barrel items under the new name and taking advantage of unemployment in order to try and get pork-barrel projects for various, particular segments of the country. And we think that the enterprise zones is a real jobs program in addition to furthering, to a large extent, minority businesses in the inner cities. If there's one lesson that we should have learned over the last two decades, it is that focusing totally on government as a vehicle for social improvement is the least effective method of improving the lives of our people.

We're firmly committed to assuring our fellow citizens in the minority communities an equal opportunity to enjoy the profits of our competitive enterprise system. And given the proper incentives and a general environment for economic progress, American minority businesses can thrive and serve as a mighty engine for social progress.

And now, I'm going to go over and sign that paper, but again, I want to thank you all for being here.

Note: The President spoke at 11:47 a.m. in the East Room at the White House. The signing ceremony was attended by representatives of the small business community.



U.S. Department of Justice
Office of the Attorney General

Jim,
Tex wanted you to have
a copy of our comments
+ suggestions.

Ken Simon

(Elliott)
June 25, 1984
7:00 p.m.

PRESIDENTIAL REMARKS: NATIONAL ASSOCIATION OF
MINORITY CONTRACTORS
WEDNESDAY, JUNE 27, 1984

Well, good afternoon and a warm welcome to you all. Believe me, I extend that welcome with a special pleasure, because when it comes to lifting human hearts with a spirit of hope and hard work; when it comes to building progress with a spirit of enterprise; and when it comes to building America by serving the Nation with pride -- then, yes, we're talking about the members of the National Association of Minority Contractors.

Your group understands so well a central truth of human progress: The struggle by black Americans for freedom from the shackles of racial discrimination must be a spiritual struggle for tolerance and understanding; it must be a political struggle for full participation at the ballot box; but just as important -- it must be an economic struggle for opportunity in a growth economy that creates jobs, not welfare; wealth, not poverty; and, freedom, not dependency.

This is a lesson that America has been taking too long to learn. We know that, prior to the 1960's, it was an accepted, and sometimes legal practice to discriminate against blacks in housing, education, public accommodations, and in employment. Then, in the wake of the Kennedy tax cuts in 1964, the economy began growing rapidly, which only magnified differences in opportunities.

Society had been levying a tax of discrimination on blacks that was not levied on whites. In spite of that tax, we will always remember the historic achievements of great Americans who managed to overcome discrimination -- Americans like George Washington Carver, whose storehouse of discoveries helped revolutionize Southern agriculture and industry; Benjamin Banneker, who contributed to the original design and great beauty of the Nation's capitol; and Dr. Charles Drew, who developed the technique of storing blood plasma to permit blood transfusions, but then, in a terrible tragedy, bled to death after he could not receive a transfusion at a white hospital.

The turmoil of the 1960's was followed by the repeal of the unjust system of discrimination. But, beginning in 1966, on the very heels of the breakdown of these legal barriers, the economy entered a period of contraction that lasted through the decade of the 1970's.

Black Americans had seen the economic train moving, and had fought for and won the right to purchase a ticket. But just as they came aboard, the train stopped and then started moving backwards. The programs of the Great Society had compassionate, indeed, noble intentions; but they also had serious and adverse consequences; they marked a departure from creating wealth to creating dependency.

Good afternoon and welcome. It's a pleasure to be with you today and to be able to spend some time with a group that has done so much to support this Administration's efforts. I don't often have the chance to tell people how much they've done for our country, but in your case it is an easy tale. You are part of the foundation of this great nation. As minority contractors you are committed not only to the principle of building progress through free enterprise, but also to the belief that an America full of economic opportunity for each citizen is a strong America, a free America, and a fair America.

Those principles have not always been easy ones for our nation. We know only too well that prior to the 1960's it was an accepted and too often legal practice to discriminate against minorities in housing, education, public accommodations and employment. But despite these barriers, minority citizens have always harnessed their creative energies and turned small opportunities into major enterprises. People like Barbara Proctor, who came from a ghetto to build a multimillion dollar Chicago advertising agency; people like Carlos Perez, a Cuban refugee, who parlayed \$27 and a dream into a successful importing business; and people like John Johnson, who took a \$500 pawnshop loan on his mother's furniture and built it into a publishing empire. People like these -- indeed, people like you, Americans all -- are enduring testimony to human dignity and the entrepreneurial spirit.

To paraphrase Thomas Wolfe, to every man and woman, regardless of their birth, their shining golden opportunity -- to live, to work, to be themselves, and to become whatever their vision can combine to make them. This is the promise of America.

In 1967, two-thirds of blacks living at the poverty level were working, while only one-third were on welfare. By 1980, more than two-thirds were on welfare, while less than one-third were working. And we saw how that increased welfare dependency contributed to a breakdown in families and family values, with devastating consequences for our society.

I believe what black Americans need most is not more welfare but more opportunity through enterprise; not bigger handouts but a bigger cash box; and not greater dependency, but economic emancipation.

To paraphrase Thomas Wolfe, to every man and woman, regardless of their birth, their shining golden opportunity -- to live, to work, to be themselves, and to become whatever their vision can combine to make them. This is the promise of America.

And this promise is what we came to Washington to restore. When we arrived here we faced the worst economic crisis since the Great Depression. Double-digit inflation was destroying people's savings and brutally attacking the elderly and others on fixed incomes. Over-regulation, high taxes, and record interest rates were destroying the dream of black business ownership and homeownership for all but a select few.

So we went to work to make a fundamental change in direction -- a change from control by Government, to control of Government; a change from taxing you more, no matter how hard you tried, to rewarding you for working harder and producing more than before. We said we could not change over a decade of mistakes overnight; that our progress would come in inches and feet, rather than miles; but that progress would come.

Now I know the concerns that have been expressed about this Administration's programs. And, frankly, if I believed the things I've heard and read, I'd be concerned too. But when we look at America I think we can see a much different picture.

We can see inflation being cut from 12.4 to 4.2 percent, interest rates down significantly and the growth of regulations cut by a third -- and that's progress. We can see an American economic expansion being led by a surge of productivity, innovation, the highest rate of business investment since 1949 and a record number of business incorporations -- and that's progress. And, we can see more jobs being created, including nearly a million jobs for blacks in the last 18 months, than in any other major industrialized country in the world -- and, yes, that's progress, too.

Black unemployment is falling faster than white unemployment, but it's still much too high -- and it's needlessly high. For 3 years, a cruel charade has been perpetrated on people at the bottom of the income scale -- the very people who most desperately need opportunities to better themselves, to develop their skills, and to become productive, self-reliant members of the American community.

As you know, we've proposed an innovative idea called Enterprise Zones to begin providing opportunities in some of the most destitute areas of the country. But today, areas that could have become new sites for development and economic growth, areas that could have become thriving pockets of enterprise, jobs, and a bright and hopeful future, remain vacant and neglected and impoverished.

strong bipartisan

Despite 3 years of waiting, despite ~~support~~, from over 100 Democrats and the great majority of Republicans, and despite a track-record of success from many State and local governments, the liberal leadership in the House has deliberately blocked our Enterprise Zones proposal from coming to a vote -- and I think that's more than a tragedy -- it's an outrage.

So let me just say to them today: Please, spare us your sermons on fairness and compassion. If you want black Americans to have more opportunity, then quit your do-nothing attitude and give Enterprise Zones a hearing, a debate, and a vote.

We may finally see a vote on another important bill which could provide job opportunities, needed experience, discipline, and greater self-esteem for blacks teenagers. I'm talking about our Summer Youth Employment Opportunity Wage bill, which I know you support and we're very grateful for that support. We've seen that one of the greatest barriers to more jobs for youth is the single, minimum wage system.

But the truth is, while everyone must be ^{IN} assured a fair wage, there's no sense in mandating \$3.35 an hour for start-up jobs that simply aren't worth that much in the marketplace. All that does is guarantee that fewer jobs for teenagers will be created and fewer people will be hired. *

So, we hope you'll help us persuade the Congress to pass our youth opportunity wage, because we're talking about the potential of creating more than 400,000 new jobs for American youth.

If the dream of America is to be preserved, we must not waste the genius of one mind, the strength of one body, or the spirit of one soul. We must use every asset we have, and our greatest progress will come by mobilizing the power of private enterprise.

I don't think anything could better show our commitment to minority business development than the actions we have taken in your own area of minority contracting. We presented our program in December 1982, and some of the results are beginning to show. The major points of that initiative were:

A program to form 6,000 new minority businesses a year for the next 10 years; a commitment to expand, with Federal help, at least 60,000 existing minority business enterprises; and a commitment by the Federal Government to procure some \$15 billion in MBE goods and services over 3 fiscal years.

To get things rolling, agency MBE procurements were to be increased by at least 10 percent over FY 1982 levels, and I'm delighted to report that we have ^{accomplished this} met that goal. We also made and fulfilled commitments to increase minority vending by recipients of Federal grants and cooperative agreements, increase credit assistance, and maintain the level of management and technical assistance. *

** It's a good idea to avoid the word "goal".*

About a year ago, on July 14, 1983, I signed an Executive Order to improve Federal planning for minority business programs. Department and agency heads were directed to develop and implement incentives to encourage greater minority business subcontracting by Federal prime contractors. I directed SBA to *make special* expand the number of minority firms participating in Federal

efforts to

procurement programs. I encouraged American business leaders to expand their business transactions with minority firms. And I signed the ~~minority business provisions of the Surface~~ *that has resulted* ~~Transportation Act~~ *in* ~~mand~~ *that's* created an additional \$1 billion in new minority contracting opportunities for each of the past 2 years.

Here's what meeting our commitment will mean to you: Over the next 3 years, nearly \$3 billion more in contracting will be provided for minority businesses than was provided _____

And just so no one forgets these commitments and the need for continued growth, we're starting a new tradition: From now on, the first full week in October will be designated Minority Enterprise Development Week.

I know some of you may have some questions about our policy in light of events involving the set-aside program in Dade County. Well, the Justice Department's position in that case resulted from local authorities setting aside an inflexible numerical quota for a project on which only one racial group was allowed to bid. What the Justice Department argued for would not prevent States and localities from exercising a broad range of options to reach out to disadvantaged sectors of the community and participation in Government contracting.

We are trying to provide the broadest possible range of opportunities to all Americans -- without regard to race, creed, color, or sex. And, sometimes, it makes your day when you hear from people who understand this and agree. I received a letter from a 39-year-old black man who said, your policies are not in the least bit anti-black or anti-poor. "As a matter of fact," he said, "it is my opinion that your fight against inflation, your war on drug traffic, your tough stand against street crime . . . and your effort in revitalizing the Nation's economy, are all of great importance to us poor people and us black people in America."

To people like him, and to all of you, I can only say, thank you for what you are giving your country; thank you for helping us create a stronger America; thank you for helping keep the dream alive. Together, we will strive to make our beloved land the source of all the dreams and opportunities she was placed on this good Earth to provide. And I can't help but believe that we are on the good path, and that if we continue together, our children will walk together into a glorious future and prosperity.

God bless you.

* Del...
there are...
minority...
revisions...

1984 JUN 25 PM 7 31

(Elliott)
June 25, 1984
7:00 p.m.

PRESIDENTIAL REMARKS: NATIONAL ASSOCIATION OF
MINORITY CONTRACTORS
WEDNESDAY, JUNE 27, 1984

Well, good afternoon and a warm welcome to you all. Believe me, I extend that welcome with a special pleasure, because when it comes to lifting human hearts with a spirit of hope and hard work; when it comes to building progress with a spirit of enterprise; and when it comes to building America by serving the Nation with pride -- then, yes, we're talking about the members of the National Association of Minority Contractors.

Your group understands so well a central truth of human progress: The struggle by black Americans for freedom from the shackles of racial discrimination must be a spiritual struggle for tolerance and understanding; it must be a political struggle for full participation at the ballot box; but just as important -- it must be an economic struggle for opportunity in a growth economy that creates jobs, not welfare; wealth, not poverty; and, freedom, not dependency.

This is a lesson that America has been taking too long to learn. We know that, prior to the 1960's, it was an accepted, and sometimes legal practice to discriminate against blacks in housing, education, public accommodations, and in employment. Then, in the wake of the Kennedy tax cuts in 1964, the economy began growing rapidly, which only magnified differences in opportunities.

Society had been levying a tax of discrimination on blacks that was not levied on whites. In spite of that tax, we will

always remember the historic achievements of great Americans who managed to overcome discrimination -- Americans like George Washington Carver, whose storehouse of discoveries helped revolutionize Southern agriculture and industry; Benjamin Banneker, who contributed to the original design and great beauty of the Nation's capitol; and Dr. Charles Drew, who developed the technique of storing blood plasma to permit blood transfusions, but then, in a terrible tragedy, bled to death after he could not receive a transfusion at a white hospital.

The turmoil of the 1960's was followed by the repeal of the unjust system of discrimination. But, beginning in 1966, on the very heels of the breakdown of these legal barriers, the economy entered a period of contraction that lasted through the decade of the 1970's.

Black Americans had seen the economic train moving, and had fought for and won the right to purchase a ticket. But just as they came aboard, the train stopped and then started moving backwards. The programs of the Great Society had compassionate, indeed, noble intentions; but they also had serious and adverse consequences; they marked a departure from creating wealth to creating dependency.

In 1967, two-thirds of blacks living at the poverty level were working, while only one-third were on welfare. By 1980, more than two-thirds were on welfare, while less than one-third were working. And we saw how that increased welfare dependency contributed to a breakdown in families and family values, with devastating consequences for our society.

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And this promise is what we came to Washington to restore. When we arrived here we faced the worst economic crisis since the Great Depression. Double-digit inflation was destroying people's savings and brutally attacking the elderly and others on fixed incomes. Over-regulation, high taxes, and record interest rates were destroying the dream of black business ownership and homeownership for all but a select few.

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Despite 3 years of waiting, despite support from over 100 Democrats and the great majority of Republicans, and despite a track-record of success from many State and local governments,

the liberal leadership in the House has deliberately blocked our Enterprise Zones proposal from coming to a vote -- and I think that's more than a tragedy -- it's an outrage.

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But the truth is, while everyone must be assured a fair wage, there's no sense in mandating \$3.35 an hour for start-up jobs that simply aren't worth that much in the marketplace. All that does is guarantee that fewer jobs for teenagers will be created and fewer people will be hired.

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I don't think anything could better show our commitment to minority business development than the actions we have taken in your own area of minority contracting. We presented our program in December 1982, and some of the results are beginning to show. The major points of that initiative were:

A program to form 6,000 new minority businesses a year for the next 10 years; a commitment to expand, with Federal help, at least 60,000 existing minority business enterprises; and ~~a program~~ ^{by which the} ~~commitment by the~~ Federal Government ^{intends} to procure some \$15 billion in MBE goods and services over 3 fiscal years.

To get things rolling, agency MBE procurement ^{objectives} were to be increased by at least 10 percent over FY 1982 levels, and I'm delighted to report that we have met that goal. We ^{have also been successful} ~~also made and~~ ^{in our efforts} ~~fulfilled commitments~~ to increase minority vending by recipients of Federal grants and cooperative agreements, increase credit assistance, and maintain the level of management and technical assistance.

About a year ago, on July 14, 1983, I signed an Executive Order to improve Federal planning for minority business programs. Department and agency heads were directed to develop and implement incentives to encourage greater minority business subcontracting by Federal prime contractors. I directed SBA to ^{make special efforts to} expand the number of minority firms participating in Federal procurement programs. I encouraged American business leaders to expand their business transactions with minority firms. And I signed ~~the minority business provisions of~~ the Surface Transportation Act -- and that's created an additional \$1 billion

and your effort in revitalizing the Nation's economy, are all of great importance to us poor people and us black people in America."

To people like him, and to all of you, I can only say, thank you for what you are giving your country; thank you for helping us create a stronger America; thank you for helping keep the dream alive. Together, we will strive to make our beloved land the source of all the dreams and opportunities she was placed on this good Earth to provide. And I can't help but believe that we are on the good path, and that if we continue together, our children will walk together into a glorious future and prosperity.

God bless you.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE:

TO: JIM CICCONE

FROM: MIKE HOWWITZ

PER OUR CONVER-
SATION.

OMB FORM 38
Rev. Aug 73



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

June 26, 1984

MEMORANDUM TO: Connie Horner
FROM: Mike Horowitz *Jim Brown for*
SUBJECT: Draft Presidential Remarks to the National
Association of Minority Contractors

This draft reinforces a point I have made repeatedly: in practice, "goals" and "targets" invariably come to be treated as quotas.

Executive Order 12432, "Minority Business Enterprise Development", was carefully worded in terms of "objectives" and "opportunities". Yet the draft, at page 6, repeatedly refers to these objectives as if they were set-asides -- and, for good measure, would have the President endorse a statutory set-aside of the sort he has always opposed.

The following changes are absolutely essential:

Page 6, second paragraph: Change "a commitment by the Federal Government to procure some \$15 billion in MBE goods and services over 3 fiscal years" to "and a program to increase opportunities for minority firms to participate in Federal procurement. We estimate that Federal procurement from minority firms during that period will total some \$15 billion."

Page 6, third paragraph: change "agency MBE procurements were to be increased by at least 10 percent" to "we established a goal of increasing agency MBE procurements by 10%"; change "We also made and fulfilled commitments to increase minority vending ..." to "We also made and fulfilled commitments to encourage increased minority vending ...".

Page 6, fourth paragraph: change "I directed SBA to expand the number of minority firms participating in Federal procurement programs" to "I directed SBA to expand opportunities for minority firms to participate in Federal procurement programs". The reference implying Presidential endorsement of the minority setaside provisions of the Surface Transportation Act must be deleted.

Page 7, first full paragraph: Change "Here's what meeting our commitment will mean to you: Over the next 3 years, nearly \$3 billion more in contracting" to "Our goals for minority contracting during the next 3 years is \$3 billion higher than the total for all the twelve prior years combined ..."

Page 7, second full paragraph: Change the word "commitments" to "goals".

Page 7, change the third full paragraph to read: "But let one thing be clear: we are talking about increased opportunities -- based on the knowledge that minority firms can prevail in fair and open competition -- not the patronizing set-asides and quotas of the past. And while we will continue to support, at the Federal, State, and local levels, a broad range of programs to reach out to disadvantaged sectors of the community and increase their opportunities to participate in government contracting, we will continue to oppose programs, such as the program the Department of Justice challenged in Dade County, which restrict contracting opportunities on the basis of race".

DADE COUNTY CASE

NOTE: Justice Department filing in this case drew fire from Civil Rights groups and Black Americans in general. Dade county officials set aside construction contracts solely for black firms. This was done after the Liberty City riots.

The local chapter of Associated General Contractors in Dade County (primarily Hispanic firms) challenged the set-aside.

Justice filed an amicus brief with the Circuit Court of Appeals in support of the AGC. The Circuit Court denied the motion, thereby upholding the set-aside. The next step is up to AGC. They have 90 days to seek Supreme Court review.

Justice will not file any further action in the case until it is determined whether the Supreme Court will hear it. This will not occur until after October 1984.

- o RR is a strong supporter of minority set-asides.
 - The federal government has an active set-aside program in this Administration;
 - RR has encouraged Cabinet officers to make extra efforts to direct more federal business to minority companies.

- o RR believes that minority business set-asides should be encouraged at the state and local levels.
 - The Justice Department, in its independent law enforcement role believed that the Dade County ordinance was improperly drawn and therefore not Constitutional;
 - Justice follows Administration policy in supporting minority set-asides. The technical wording of this ordinance is what Justice challenged;
 - Justice believes that Dade County can accomplish its objective of setting aside contracts for minority firms by rewording its ordinance.
 - Justice is working on a set of guidelines at this time to help state and local governments, like Dade County, develop properly drawn minority set-aside programs.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/2/84 ACTION/CONCURRENCE/COMMENT DUE BY: FYI

SUBJECT: DADE COUNTY SET ASIDE CASE

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> S	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702



Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1984

MEMORANDUM

TO: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FROM: Wm. Bradford Reynolds *WBR*
Assistant Attorney General
Civil Rights Division

SUBJECT: Dade County Set Aside Case

In light of apparent misunderstandings regarding our filing as amicus curiae in the Dade County set-aside case, this memorandum should serve to clarify our position regarding minority business enterprise (MBE) programs.

Our filing pointed out several ways in which the Dade County set-aside deviated from constitutionally permissible set-aside programs. Most important, that program, framed exclusively in terms of race, absolutely excluded white and Hispanic contractors from bidding to be prime contractors on the Earlington Heights rapid transit station. Moreover, the County set a "goal" which operated to exclude non-black contractors from 50% of the subcontracts at that station. These features prompted our participation to challenge the content and application of the ordinance which led to the award of contracts based on race.

Our filing in no way suggests or implies any constitutional discomfort with federal programs designed to encourage the participation of MBEs in the federal contracting process, such as Executive Order 12432. We are convinced that the Constitution permits properly designed federal programs, just as it forbids the states to impose racial exclusions on contractors in order to provide racial preferences to other contractors who are not themselves victims of past discrimination. Thus, we fully endorse and support Executive Order 12432, which is designed to encourage efforts to help MBEs obtain contracts.

If Dade County had followed the pattern of federal programs which give special contract opportunities to those contractors who are socially and economically disadvantaged -- regardless of race -- its program would have escaped serious constitutional problems.

In view of the confusion which has been expressed to us, we are undertaking to develop a set of guiding principles for Dade County and others so that they can develop a constitutionally acceptable MBE program that avoids the problems set out in our court filing.

cc: Fred Fielding
Jack Svahn
Lowell Jensen

INSERT LANGUAGE RE SET-ASIDES

[resulted from] the technical wording of that particular ordinance, which they felt was improperly drawn. This Administration has strongly supported minority business set-asides, as evidenced by our very active federal set-aside program, and that support will continue. We would also encourage officials at the state and local level to reach out in similar fashion to assist business development among disadvantaged groups.