

2023 SPECIAL REPORT

UPDATED DECEMBER 2023

On Efforts to Deny Minorities Equal Access to the U.S. Economy

An FSIC and SCL-GPI Collaboration



FSIC

Financial Services
Innovation Coalition





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Forward and Notes on Revision

Five years ago, we laid out the problem of extreme forces of hate, intolerance, and exclusion using the legal system to thwart any efforts to remedy past injustices against minorities, especially African Americans. We began chronicling these efforts and in 2021 released a special report. As you will see from this update, the effort has intensified since the Supreme Court ruled that affirmative action in education admission is unconstitutional.

Not only have racist and hateful billionaires increased their funding of hate groups who file these lawsuits, but Republican attorneys general have also jumped into the fray and threatened companies who wish to be inclusive.

While this report is overwhelming in the scope of hateful actions being taken against those seeking fairness and justice, we cannot ignore them and must stand against them.

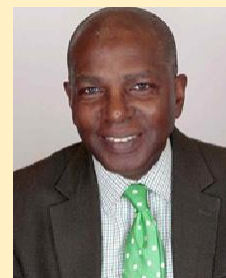
As was noted above, the original FSIC Special Report was released in August 2021, and the new examples of intolerance we added for this revision show that the economic inclusion landscape has not improved. Sadly, the battle has shifted from disadvantaged communities and businesses fighting to be included to fighting an assault of legal challenges designed to exclude people of color directly. FSIC believes this is not the American way, and the tide must be turned. If all communities are allowed to participate in the same wealth-building activities, the surging economy will benefit ALL Americans.



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FSIC Economic Inclusion Reverse Discrimination Defense Initiative

Over the years, the forces of intolerance have continued to thwart efforts to bring about economic inclusion and empowerment. From the Croson and Adarand cases, those who wish to stop African Americans from participating in the U.S. economy have used the legal system to stop any efforts at affirmative action.

Recently, as the U.S. tried yet again to come to grips with its long history of racism, these forces have again sought to thwart the efforts of the government to provide opportunities to minorities.

Previous Examples

1. A group of white farmers has sued the U.S. Department of Agriculture over its loan forgiveness program for farmers of color, claiming race-based discrimination.



2. A group of business owners and advocates in Tennessee and Texas has sued the Small Business Administration (SBA) when it gave a 21-day exclusive application opportunity to minority restaurants under the Restaurant Revitalization Fund. This is even though the data showed that less than 1% of SBA funds had been going to minority businesses.

3. A conservative group has filed a “reverse discrimination” lawsuit against the U.S. Securities and Exchange Commission over its board diversity proposal.

Current Examples

4. A group founded by the conservative activist instrumental in the U.S. Supreme Court’s June decision rejecting affirmative action in collegiate admissions sued an Atlanta-based venture capital fund that supports Black women who own small businesses, accusing it of unlawful racial discrimination.

5. Thirteen Republican attorneys general wrote a letter to leaders of Fortune 100 companies warning them against using race as a factor in hiring and promotion decisions, in light of the recent Supreme Court ruling ending the practice of affirmative action in college admissions.

6. A legal group run by former Trump aide Stephen Miller asked the U.S. Equal Employment Opportunity Commission to investigate the Kellogg Company over its policies and programs, which the group said are “infused with woke ideology.”



7. The Small Business Administration, the federal agency that administers the 8(a) Business Development Program, recently suspended 8(a) applications in response to a federal district court injunction. Following the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, in which the Court limited the role race and ethnicity may play in college admissions, a federal district court has applied the Supreme Court’s reasoning to SBA’s 8(a) program.

8. The National Center for Public Policy Research sued in August 2022 over Starbucks’ setting of hiring goals for Black people and other people of color, awarding contracts to “diverse” suppliers and advertisers, and tying executive pay to diversity.

FSIC and its allies are organizing to find ways to combat these overtly racist activities. To combat this, we plan to: (1) draft amicus briefs, (2) file lawsuits in places where minority businesses have been denied contracts or excluded, and (3) ask the Biden Administration to deny federal funds from states that are discriminating against minorities.



sclc

To: Kevin Kimble, DC Bureau Chief
From: Charles Brooks, General Counsel

Date: July 9, 2021

The federal government has long attempted to implement policies to maximize procurement opportunities for small businesses owned and controlled by socially/economically disadvantaged individuals. In 1978 Congress amended the Small Business Act to require federal agencies to, among other things, negotiate annually in good faith with the Small Business Administration to establish prime and sub-contracting goals for these businesses.

The United States government created the Office of Federal Contract Compliance Programs. A minority contractor can avail themselves of agency-level protests; however, such actions have a very low success rate. The Government Accountability Office typically provides the next level of intervention where "limited discovery" is allowed. The Federal Acquisition Regulation requires an issued result within 100 days of submission. The effects of such policies have not created a class of minority contractors who are consistently utilized for federal government contract work. Minority-owned businesses do not receive their fair share of available contracting opportunities.

The SCLC seeks the expansive power of the federal government to protect minority contractors in states which demonstrate overt hostility to minority rights.

continued »

The overwhelming majority of minority-owned businesses reside in the Southeast. The SCLC tracks the impediments to achieving parity in the contracting sphere to mirror the states which attempt to impose restrictions on minority voting opportunities.

Contractors hired under personal services contracts operate like government employees. The federal government reported spending about \$1.5 billion on personal services contracts for fiscal years 2011-2015. The U.S. Air Force, the U.S. Army, the U.S. Navy and the U.S. Agency for International Development together were responsible for most of the reported spending.

The executive branch maintains the ability to enforce proper and proportional distribution of all federal contracts throughout the U.S. The SCLC proposes we emphasize compliance with equitable distribution of resources in states with large minority populations. Between January 1 and May 14, 2021, at least 14 states enacted 22 new laws that restrict access to voting. The executive branch can increase scrutiny in any of the 14 states without the participation of the legislative branch. The SCLC seeks an executive order to emphasize majority contracting compliance in any state which passed a new wave of voter restrictions.

Sincerely,

Charles I. Brooks
General Counsel





Conservative Activist Behind U.S. Affirmative Action Cases Sues Venture Capital Fund

By Nate Raymond

August 2, 2023 2:47 PM EDT

Reuters

Aug 2 (Reuters) — A group founded by the conservative activist instrumental in the U.S. Supreme Court's June decision rejecting affirmative action in collegiate admissions on Wednesday sued an Atlanta-based venture capital fund that supports Black women who own small businesses, accusing it of unlawful racial discrimination.

The nonprofit American Alliance for Equal Rights, founded by affirmative action foe Edward Blum, said in its lawsuit that the firm, called Fearless Fund, is violating Section 1981 of the Civil Rights Act of 1866, a U.S. law

barring racial bias in private contracts, by making only Black women eligible in a grant competition. It was filed in federal court in Atlanta.

Fearless Fund was launched in 2019 by three prominent Black women — actress Keshia Knight Pulliam, entrepreneur Arian Simone and corporate executive Ayana Parsons — and counts as investors Bank of America, Costco Wholesale, General Mills, Mastercard and JPMorgan Chase.

Lawsuits brought by another group founded by Blum led to the Supreme Court's June ruling declaring unlawful the race-conscious student admissions policies used by Harvard University and the University of North Carolina

(UNC). The new lawsuit is Blum's first since that decision.

The conservative-majority court rejected policies used by many U.S. colleges and universities to use race as one of multiple factors in admissions in order to boost enrollment of Black, Hispanic and certain other minority students.

Blum's group had argued that such programs discriminated against white and Asian American applicants.

The lawsuit centers on Fearless Fund's Fearless Strivers Grant Contest, which awards Black women who own small businesses \$20,000 in grants, digital tools to help them grow their businesses and mentorship opportunities provided in conjunction with Mastercard.

Blum's group had argued that such programs discriminated against white and Asian American applicants.



Anti-affirmative action activist Edward Blum speaks to reporters at the "Rally for the American Dream-Equal Education Rights for All," ahead of the start of the trial in a lawsuit accusing Harvard University of discriminating against Asian American applicants, in Boston, Massachusetts, U.S., October 14, 2018.

REUTERS/Brian Snyder/File Photo

Blum and the Texas-based American Alliance for Equal Rights have said some of the group's approximately 60 members — white and Asian American — have been excluded from the grant program due to their race.

Fearless Fund did not immediately respond to requests for comment. In an interview, Blum said the lawsuit was the first of many he hopes to pursue through the American Alliance for Equal Rights to broadly

challenge race-based policies used by private corporations.

The cases before the Supreme Court against Harvard and UNC were filed by the Blum-founded Students for Fair Admissions. Blum, who is white, said he plans to model the new group's cases after that successful litigation.

"The common theme of these organizations is to challenge in the courts the use of racial classifications and preferences in our nation's policies," Blum said.

Reporting by Nate Raymond in Boston; Editing by Will Dunham



GOP Attorneys General Urge Corporations Against Using Affirmative Action to Hire, Promote

By Sarah Fortinsky

07/13/23 8:03 PM ET

The Hill

Thirteen Republican attorneys general wrote a letter to leaders of Fortune 100 companies Thursday warning them against using race as a factor in hiring and promotion decisions, in light of the recent Supreme Court ruling ending the practice of affirmative action in college admissions.

In the letter, the chief legal officers of their respective states made clear that the Supreme Court's decision rendering affirmative action in college admissions unconstitutional created a legal precedent that the attorneys general said must apply to their corporations

as well. They threatened legal action if the companies do not comply.

"The Supreme Court's recent decision should place every employer and contractor on notice of the illegality of racial quotas and race-based preferences in employment and contracting practices," they wrote in the letter.

"If your company previously resorted to racial preferences or naked quotas to offset its bigotry, that discriminatory path is now definitively closed. Your company must overcome its underlying bias and treat all employees, all applicants, and all contractors equally, without regard for race," they continued.

The attorneys general claimed racial discrimination was still common among many companies, even discrimination with “benign” effects. The warning suggests that taking into account a person’s race in any way would be a violation of the law and considered racial discrimination.

“We urge you to immediately cease any unlawful race-based quotas or preferences your company has adopted for its employment and contracting practices,” they wrote. “If you choose not to do so, know that you will be held accountable — sooner rather than later — for your decision to continue treating people differently because of the color of their skin.



The attorneys general of Kansas, Alabama, Tennessee, Arkansas, Indiana, Nebraska, Iowa, South Carolina, Kentucky, West Virginia, Mississippi, Missouri and Montana signed the letter.

In a recent Pew survey, a majority of workers indicated

they view diversity at work as a good thing, at 56 percent; 16 percent said it was a bad thing, and 28 percent said it was neither good nor bad. The same survey indicated most workers have some experience with diversity, equity and inclusion efforts in their jobs, but a relatively small share of workers place a lot of importance on those efforts, with only 3 in 10 saying it’s extremely or very important to them.

While the Supreme Court ruling ending affirmative action focused solely on university admissions, this letter represents the potential far-reaching effects the decision might still have.





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Ex-Trump Aide Stephen Miller's Legal Group Files Complaint Against Kellogg's 'Woke' Programs

By Rebecca Shabad

Updated Thu, August 10, 2023 at 10:31 PM EDT
NBC News

A legal group run by former Trump aide Stephen Miller on Wednesday asked the U.S. Equal Employment Opportunity Commission (EEOC) to investigate Kellogg Co. over its policies and programs, which the group said are “infused with woke ideology.”

In a letter to the EEOC, America First Legal Foundation's senior counselor, Reed D. Rubinstein, wrote that Kellogg's, a publicly traded company, “engages in unlawful employment practices by seeking to ‘balance’ its workforce based on race, color, national origin, and sex.”

“Instead of equality of opportunity, which Kellogg's defines as ‘giving each person the same things,’ Kellogg's employment practices are unlawfully based on ‘equity,’ which is a euphemism for illegal discrimination,” Rubinstein said.

Specifically, America First Legal — which Miller founded with former Trump chief of staff Mark Meadows to challenge “the radical activist left” — said it takes issue with the company's promise “that by the end of 2025, it will achieve an ‘aspirational gender parity goal [sic] of 50/50 at the management level’ in its global operations,” adding that it offers a leadership development program “only for women.”

Rubinstein also voiced opposition to Kellogg's efforts to diversify its leadership, which he said



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involve “advancing people based on skin color at the expense of others because of their skin color.” Rubinstein claimed that Kellogg’s “Chef in Residence” program is unlawful because “only Black or African American chefs are allowed, even if individuals with other immutable characteristics are otherwise qualified.”

“All of these race-based programs and apparent quotas are illegal under Title VII of the Civil Rights Act of 1964,” he wrote.

In a separate letter to Kellogg’s CEO Steven Cahillane, America First Legal said management “has hijacked the brand to advance an extreme political and social agenda” and “discarded the Company’s long-held family-friendly marketing approach to politicize and sexualize its products.”

America First Legal pointed to cereal boxes featuring

rainbow heart-shaped cereal, a cereal mascot holding an LGBTQ flag and boxes of Cheez-Its featuring drag queen RuPaul. It also criticized Kellogg’s for having its Tony the Tiger mascot “linking elbows with the controversial transgender activist Dylan Mulvaney at the 76th Annual Tony Awards in New York City.”

“Kellogg’s is yet another big corporation that will break the law and hurt its shareholders’ interests to serve the twisted woke ideology of its officers and directors; like Disney, Budweiser, and Target, Kellogg’s management has shown nothing but contempt and disdain for American families and American workers. America First Legal will keep fighting for big corporate accountability,” the group said.

Reached for comment, Kellogg’s said in a statement:

“At Kellogg, our aspiration is to better reflect the diversity of our consumers and to strengthen our inclusive culture. We are committed to compliance with all applicable employment laws, and we have policies in place that prohibit workplace discrimination.”

The EEOC, which investigates allegations of discrimination against employers and has the authority to file lawsuits, said that while it can confirm it received the letter, it can’t provide further comment.

“Under federal law, information on possible charges (complaints) made to the EEOC is strictly confidential. EEOC cannot confirm or deny the existence of a charge and we are prohibited from releasing any information about charges or any investigation of possible charges,” spokesperson Brandalyn Bickner said in a statement.

Conservative groups and elected officials have waged a campaign against major companies such as Budweiser and Disney over the last year because of what they have described as “woke” policies and programs.



SBA Suspends 8(a) Applications Following Federal District Court Injunction

By Shomari B. Wade and Timothy McLister

*Tuesday, August 8, 2023
National Law Review*

Go-To Guide:

- The SBA 8(a) Business Development Program application is currently suspended due to a Tennessee district court injunction.
- The SBA 8(a) program is a nine-year program created to help socially and economically disadvantaged entrepreneurs gain access to the federal marketplace.
- Applicants actively in the process of applying should seek guidance on how the recent decision will affect their application.
- Government contractors should prepare for SBA 8(a) program changes, which may affect both prospective and current participants.

The Small Business Administration (SBA), the federal agency that administers the 8(a) Business Development Program, recently suspended 8(a) applications in response to a federal district court injunction. Following the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, in which the Court limited the role race and ethnicity may play in college admissions, a federal district court has applied the Supreme Court’s reasoning to SBA’s 8(a) Program.

Background

On July 19, 2023, in *Ultima Servs. Corp. v. U.S. Dep’t. of Agric.*, the U.S. District Court for the Eastern District of Tennessee enjoined the SBA from applying a “rebuttable presumption”

of social disadvantage for certain minority groups when admitting applicants to its 8(a) program, thereby reversing decades of the SBA's use of a "rebuttable presumption," consistent with authority Congress granted the SBA. Congress granted the SBA use of the presumption through the Small Business Act, finding that certain groups "have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control" and "it is in the national interest to expeditiously ameliorate the conditions" of these groups. The court here ruled that this presumption violates the Fifth Amendment constitutional right of equal protection.

The U.S. District Court has denied the SBA the ability to apply the "rebuttable presumption" of disadvantage status for minorities, reversing decades of equity and inclusion policy.



The court ruled that the 8(a) program's use of a rebuttable presumption failed the strict scrutiny test, which requires a compelling government interest for use of a rebuttable presumption, and that the program be narrowly tailored. Citing the Supreme Court's *Students for Fair Admissions* decision, the district court recognized that the government has a compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or statute." Interestingly, the court decided that SBA's stated purpose in using a rebuttable presumption to remedy the effects of past racial discrimination in federal contracting failed for two general reasons: (1) the SBA does not require agencies to have goals for the 8(a) program; and (2) the SBA does not examine whether any racial group

is underrepresented in a particular industry relevant to a specific contract in the 8(a) program. These reasons led the court to conclude that "rebuttable presumption" was not susceptible to rational measure, so as to achieve the SBA's stated intent. It further ruled that the SBA's use of a rebuttable presumption failed to support a compelling interest because of the SBA's and/or Congress' failure to show:

- (1) specific instances of past discrimination to be addressed by the rebuttable presumption;
- (2) in their reports of national disparities on various industries ties to specific actions inferencing discrimination, or ties connecting the failure of any small, disadvantaged business to its being excluded from the 8(a) program; and



(3) that the government was a “passive participant” in any past discrimination identified, particularly in any industry relevant to the plaintiff.

In finding that the 8(a) program was not narrowly tailored, the court pointed to, among other things: the lack of a formal process to overcome the presumption, the lack of any termination date or endpoint to the 8(a) program (despite the nine-year limit for each 8(a) participant), and the fact that the SBA has not revisited the need for the rebuttable presumption or considered

any race-neutral alternatives since 1986.

Potential Outcomes

Ultimately, the court ruled in favor of the plaintiff, a small, non-minority-owned business ineligible for the 8(a) program. While the full effect of the decision (including its impact on current participants) is unclear, it has already impacted the 8(a) program. Last week, the SBA officially suspended applications in response to the court’s injunction and is now revising its application questionnaire to comply with the court’s decision. Potential changes

to the program may include, for example:

- **A change to the eligibility criteria.** The district court took issue with the fact that, historically, the 8(a) program has not considered whether an applicant was socially and economically disadvantaged for the particular industry in which the applicant operated. The SBA may examine this issue and could make certain changes accordingly, perhaps using the Woman-owned Small Business Program (WOSB)

as an example. If the SBA makes these changes, the review process for 8(a) applications may well be longer, and program eligibility altered as well.

- **A change to SBA's ability to accept a procurement.** The regulations at 13 C.F.R. §§ 124.502 and 124.504 outline rules for an agency intending to award a procurement as an 8(a) contract and the SBA's limits on accepting 8(a) offerings from agencies. These regulations consider the impact on small businesses or other small business programs an 8(a) procurement may have, and also the number of

This ruling has caused havoc with many businesses in the loan approval cue. Why are their needs not considered in this case?

8(a) contracts already awarded in a particular industry. However, they do not explicitly consider “whether any racial group is underrepresented in a particular industry relevant to a specific contract in the 8(a) program.” In

making such a revision, the SBA could lengthen the time it has to accept a procurement for an 8(a) contract award. It may also affect the eligibility of businesses already participating in the 8(a) program to bid on 8(a) set-aside contracts.

The 8(a) program's future is in flux, meaning businesses now 8(a)-qualified or considering applying to the program should monitor these legal developments and any resulting SBA regulatory changes, pending the SBA's decision whether to appeal the Ultima case or otherwise modify the 8(a) program as a result of this recent ruling.





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Conservative Starbucks Investor Loses Diversity Challenge

By Jody Godoy

*Fri, August 11, 2023 at 1:58 PM EDT
Reuters*

Aug 11 (Reuters) — A U.S. judge on Friday dismissed as frivolous a conservative activist investor's lawsuit against Starbucks' board for the coffee chain's diversity, equity and inclusion policies.

The National Center for Public Policy Research (NCPPr) sued in August 2022 over Starbucks' setting of hiring goals for Black and other people of color, awarding contracts to "diverse" suppliers and advertisers, and tying executive pay to diversity.

The nonprofit, which holds around \$6,000 in Starbucks stock, said those policies require the

company to make race-based decisions that violate federal and state civil rights laws.

Chief U.S. District Judge Stanley Bastian in Spokane, Washington, rejected the allegations at a hearing in the case on Friday, saying the lawsuit centered on public policy questions that are for lawmakers and corporations, not courts, to decide.

"If the plaintiff doesn't want to be invested in 'woke' corporate America, perhaps it should seek other investment opportunities rather than wasting this court's time," he said.

Starbucks said it was pleased with the decision and said it remains committed to "creating a culture of warmth and belonging."

Starbucks' attorney Gregory Watts argued at the hearing that NCPPr has condemned the

“evils” perpetrated by “woke” corporate America, and that the group has made demands of many other corporations, including JPMorgan Chase and American Airlines Group Inc.

“The use of such language shows what is motivating plaintiffs, and it is not the business interests of Starbucks,” he said.

The lawsuit is similar to those filed recently by conservative activist groups opposing corporate diversity and inclusion efforts in the wake of a June Supreme Court ruling.

The ruling declared unlawful the race-conscious student admissions policies used by Harvard University and the University of North Carolina.

Conservative group was denied in its attempt to block Starbucks from pursuing equity and inclusion.



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On Friday, Daniel Morenoff of The American Civil Rights Project, who represents NCPPR, argued that Starbucks policies seeking to increase racial diversity among its suppliers, vendors, and employees were discriminatory and that NCPPR’s cause was in the corporate interest.

Bastian rejected that argument, saying the group’s complaint did not represent the interests of Starbucks shareholders and failed to follow required legal procedure.

NCCPR may not refile its complaint, and Starbucks may seek legal fees, he said.

NCCPR spokesperson Scott Shepard called the judge’s comments “surprising and disappointing.”

“We will continue to pursue relief from illegal discrimination on behalf of shareholders and employees,” he said.

The case is *Craig v. Target Corp. et al.*, No. 23-00599, U.S. District Court, Middle District Of Florida.

Reporting by Jody Godoy in New York and Tom Hals in Wilmington, Delaware. Editing by Chris Reese and Marguerita Choy.



PROGRESSIVE

Kristina Blokhin - stock.adobe.com

Progressive Insurance Sued for ‘Patently Unlawful’ Racism for Offering \$25K Grants Only to Black-owned Businesses

By Shannon Thaler

*August 18, 2023 1:54 PM
New York Post*

Progressive Insurance, famed for its quirky commercials starring fictional saleswoman Flo, is being sued for “patently unlawful” racism for awarding exclusively Black-owned businesses \$25,000 — while allegedly banning white, Asian, Hispanic and owners of other backgrounds from applying.

The lawsuit — filed on behalf of Freedom Truck Dispatch owner Nathan Roberts in Ohio federal court on Wednesday — claims that Progressive racially discriminated against non-Black small-business owners like Roberts for offering a

five-figure award to 10 “Black-owned small businesses to use toward the purchase of a commercial vehicle.”

The class-action suit, which was filed by anti-radical-left group American First Legal (AFL), claimed that on May 24, Roberts, a Progressive customer, received an email “about a grant opportunity for their [Progressive’s] commercial-trucking small-business owners.”

However, “Progressive decided that only Black-owned businesses would be eligible for these grants” because, according to the insurance company, “studies have shown how inequities have made it harder for Black entrepreneurs to access capital.”

Progressive Insurance Sued for ‘Patently Unlawful’ Racism for Offering \$25k Grants Only to Black-Owned Businesses

Progressive partnered with grant administration company Hello Alice for the financial award.

The winners for the 2023 grant were announced in a press release on Tuesday, which said “Progressive is stepping in to provide funding to Black entrepreneurs to help navigate their small business journey.”

Applications for the grant have since closed, according to Hello Alice’s website, and it’s unclear if there will be another round of winners in 2024.

The Post has sought comment from Progressive and AFL.

When The Post sought to find more information on the grant on Progressive’s site, it appears that the landing page was taken down.

Conservative group files complaint to stop Progressive from awarding ten Black-owned small businesses \$25k grants to support economic inclusion.



Timon - stock.adobe.com

Roberts’ complaint called the entire scheme “racially discriminatory grantmaking,” with the “racially discriminatory requirement” to be Black in order to apply.

AFL lawyer Gene Hamilton told the Daily Mail that Roberts’ case was part of a broader assault against big corporations that inject “racial considerations into every aspect of their business operations, employment practices and so much more.” Roberts is a hard-working “small business owner fighting to create a better life for himself and his family,” Hamilton added, noting that

he was denied the opportunity to receive \$25,000 “solely because of the amount of pigment in his skin.”

In the 50-page lawsuit, Roberts says he wants the court to declare Progressive’s grants illegal and award him “nominal” compensation and pay his legal fees. It’s unclear what the total sum would likely be.

Aside from being Black, entrepreneurs had to have 10 or fewer employees and a turnaround below \$5 million in order to apply to the grant program, which is dubbed “Driving Small Business Forward.”

SUPPORTING ARTICLES

from Original Report

The Forces of Intolerance Continue to Fight Against Minority Inclusion



An FSIC & CIR Special Report

By: Kevin B. Kimble, Esq.
Founder & CEO, FSIC

William Michael Cunningham
Economist, CIR

A Case for Inclusion





SEC Sued for Approving Nasdaq's "Racist, Sexist" Board Diversity Rules

By Anna Peel

*Updated on Dec. 1, 2021, 11:02 PM
In the News*

Washington, D.C. — The National Center for Public Policy Research has filed a lawsuit against the U.S. Securities & Exchange Commission (SEC) over the SEC's approval of the Nasdaq Stock Market's board diversity rules, which require Nasdaq-listed companies to either establish board of director quotas on the basis of race, sex and sexual orientation, or explain why they have not done so.

The SEC Lacks the Authority to Establish Board Diversity Rules

The National Center, represented by the New Civil Liberties Alliance, argues that the SEC

lacks the authority to establish such quotas. The SEC's regulatory authority, established by the 1934 Securities and Exchange Act, is limited to regulation of securities to ensure honest markets and to enforce federal laws that punish fraud. The lawsuit asserts that approving market rules establishing quotas for boards of directors exceeds that limited authority.

"The SEC has grown increasingly politicized in recent years, and especially since the arrival of Chairman Gary Gensler," said Scott Shepard, Director of the National Center's Free Enterprise Project. "It has a narrowly circumscribed authority: that of protecting shareholders in limited ways. In no way does this extend to social engineering of the sort attempted by the Nasdaq rule. It was thus

illegitimate for the SEC to approve the rule. The approval was especially appalling because the rule in effect requires companies to either subordinate merit to illegal race-, sex- and orientation-based discrimination, or open themselves to the howling left-wing mob."

The SEC approved Nasdaq Stock Market LLC Rules 5605(f) and 5606 on August 6. The rules require that listed companies (a) must disclose information about their board members' self-identified gender, race and sexuality; and (b) either include on their board minimum quotas of individuals of certain gender, racial and sexual identities or publicly explain why the board does not meet such quotas. Nasdaq offers companies access to a list of "board-ready diverse candidates" who could meet the quotas. The ultimate enforcement mechanism for

Conservative group battles to stop SEC from promoting diversity.



failing to adhere to these rules is the delisting of the company from Nasdaq.

The National Center submitted a comment to the SEC during the approval process in which it argued that the quotas exceed the SEC's authority, are unconstitutional and illegal, and are impermissibly vague.

"In allowing Nasdaq's board plan to go forward, the SEC is completely flouting the U.S. Constitution," said Justin Danhof, executive vice president of the National Center. "The folks who run Nasdaq may have no clue what is and isn't

constitutionally permissible, but the lawyers and regulators at the SEC ought to know better. Companies should be free to appoint directors who will help their firms prosper. Mandating board appointments based on the color of candidates' skin, their gender and their sexual partners is not only unconstitutional, but also pandering, racist, sexist and just plain offensive. Let's hope the court issues a commonsense decision overturning this radical scheme."

Nasdaq's board diversity rules are also being challenged in parallel lawsuits.



Did the Small Business Administration Discriminate Against White Business Owners?

By Gene Marks, Opinion Contributor

06/24/21 05:00 PM EDT

The Hill

The views expressed by contributors are their own and not the view of The Hill

The Restaurant Revitalization Fund was setup as part of President Biden's American Rescue Plan to provide much-needed money to restaurant owners who were devastated by the economic recession caused by the COVID-19 pandemic. The approximately \$29 billion fund is providing grants representing the difference between the revenues a restaurant recorded in 2020 and 2019 — a potentially substantial check for many — and is being doled out by the Small Business Administration (SBA).

Except there's a problem: it's probably discriminatory against white men.

That's the case being made in multiple lawsuits filed last week by a group of business owners and advocates in Texas and Tennessee. They say that the program unfairly prioritizes the distribution of funds initially (for the first 21 days) to minority business owners and those in low- to moderate-income areas, who are statistically likely to be people of color. That, according to the plaintiffs, discriminates against everyone else.

The suit claims that nonminority business owners were "harmed" because they were "pushed to the back of the line," and because they were "treated differently because of their race and gender."

The SBA grant program is further accused of “giving priority to certain groups” and putting “white male applicants at significant risk that, by the time their applications are processed, the money will be gone.”

They’re right; the money is gone.

The owners filed the suit after learning that much of the program’s funding has been exhausted already, and that few or no funds would be remaining for them. In response, a group of congressmen have already begun talks to add another \$60 billion to the fund, but these talks are still in preliminary stages and have a long way to go. As a result, nearly 3,000 restaurant



owners have been notified that the funds they were approved to receive are in limbo until the lawsuit is resolved.

“You work so hard, and we made no money last year, like none,” Christine Ameigh, the owner of Christine’s Kitchens, a food hub and incubator in Madison, Wis., told the Capital Times. “It was exciting to be able to continue to move forward with the new project. The money was going to help keep us alive and hire a staff person. There are different things we could have achieved with that money.”

Data show that minority businesses were more severely impacted by the COVID-related shutdowns and the resulting economic recession. Studies have also shown that

it’s much more challenging for these same business owners to receive financing compared to their nonminority counterparts. But does that give them the right to receive these funds ahead of other business owners who were also significantly impacted, just because of the color of their skin or their gender?

“Under the guise of pandemic relief, the American Rescue Plan Act enables the federal government to engage in illegal and unconstitutional race and sex discrimination,” said Rick Esenberg, president and general counsel of the Wisconsin Institute for Law and Liberty, in a May press release announcing the suit. “This is ugly, pernicious, and toxic.” It’s a tough issue. But I’m betting the courts will side

Even though Black-owned businesses only received 1% of PPP loans, conservative groups sued to stop SBA from pursuing a policy of economic inclusion.

Did the Small Business Administration Discriminate Against White Business Owners?

with the plaintiffs. The SBA program is discriminatory. Although trying to do the just thing, the federal government probably went too far in shutting out a specific class of business owners rightly pursuing funds.

The good news is that it's a fixable problem, and it's not like the government hasn't been here before. Most government awards and contracts stipulate the inclusion of minority businesses. So, the answer would be to determine a more equitable distribution of funds, similar to the awarding of a government contract,

Given the dismal lack of African American participation in these programs, why are conservative groups working so hard to exclude them from the little they receive?

which gives opportunities both to minorities (with benchmarks and targets) and everyone else.

What about more funding for the program? That's

also an answer, but one that raises budget concerns and also calls into question the necessity of more stimulus when the economy is rebounding strongly and many restaurants are challenged more with finding workers than getting financing. If those issues can be resolved, then getting money out to business owners who are truly in need would be the best solution possible.

Gene Marks is founder of The Marks Group, a small-business consulting firm. He frequently appears on CNBC, FoxBusiness and MSNBC.





White Farmers Sue U.S. Government Over Stimulus for ‘Socially Disadvantaged Farmers’

By Adriana Belmonte
Senior Editor

06/24/21 05:00 PM EDT
Yahoo Finance (partial article)

A group of American farmers, all of them white, is suing the government for race-based discrimination, alleging that the U.S. Department of Agriculture (USDA)’s loan forgiveness program for farmers of color is a violation under the Constitution.

“All of my clients just want to be treated equally,” Daniel Lennington, deputy counsel and lead attorney for the lawsuit, told Yahoo Finance. “They’re not looking for any special treatment. If there is a loan forgiveness program,

they want it to be open to everyone, regardless of race. And if the USDA would like to formulate the loan forgiveness program to help farmers who have a particular need, my clients would be all in favor of that.”

The program, which allocated roughly \$4 billion for “socially disadvantaged farmers, ranchers, or forest landowners,” is part of a larger stimulus bill signed into law amid the coronavirus pandemic.

“Socially disadvantaged” in this case is defined as relating to groups “subjected to racial or ethnic prejudice because of their identity as members of a

‘Eight out of 10 Blacks in the state of Texas who applied for federal aid were denied’

—John W. Boyd Jr., Farmer

group without regard to their individual qualities.”

Agriculture Secretary Tom Vilsack previously stated that Biden administration policies aim to “root out whatever systemic racism and barriers may exist at the Department of Agriculture directed to Black farmers, socially disadvantaged farmers, and people who live in persistently poor areas of rural America.”

Conclusion

Although there are many takeaways from this report, below is a listing of the primary points to consider.

The U.S. government has made some attempt to help people in underserved communities through financial and social programs.

- A majority of Americans continues to support these efforts
- If you look at the relevant statistics, the results of these programs is marginal
- If improved through better policy and guidelines, their effectiveness would be improved and would stimulate the economy

The wealthy intolerants are no longer satisfied fighting against the inclusion of all people in these programs. They are now flooding the courts with lawsuits designed to exclude the underserved and disadvantaged.

- They don't seem to care that these actions hurt the economy
- The current conservative leaders and constituents view these actions as appropriate and not shameful

Without a concerted, significant and generational commitment to advocacy by affected communities, bad actors will continue to use racism, power, and money to exclude cultures they don't understand and see as undeserving of equity.

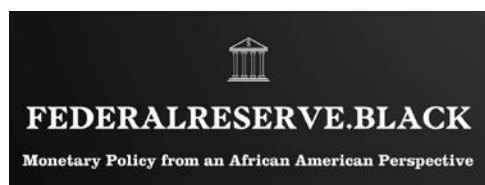
- Without a relentless advocacy effort, government program funds will continue to be siphoned away from their intended use
- Every generation that doesn't take meaningful action will be left out and leave the next generation with little footing to secure inclusion and economic equity



2023 SPECIAL REPORT

Acknowledgments

Many people worked countless hours to produce this report, and we would like to give a special thanks to the following individuals and organizations for providing resources.



We thank you for your continued support in our efforts to promote fair and inclusive policy so all communities can contribute to the economy and thrive.



FSIC

Financial Services
Innovation Coalition

About FSIC

FSIC Mission Statement

Designing policy to help ALL communities participate in the modern economy through research, programming, and advocacy

The Financial Services Innovation Coalition (FSIC) is an economic empowerment platform conducting research, instituting local and national programs, and advocating at all levels of government for a more inclusive economy.



About SCL-GPI

SCL-GPI Mission Statement

Advocating for social justice to benefit all communities

SCL-GPI's mission is to gather information from target communities, develop solutions, and educate the target communities on how to support the solutions through advocacy efforts locally and nationally. GPI's main areas of focus are on:

- 1) Economic empowerment and inclusion
- 2) Health care equity
- 3) Technology inclusion and equity
- 4) Minority leadership inclusion at all levels of government and industry, from small towns to the U.S. Congress, as well as federal agencies and corporate board rooms.

POLICY FOR GOOD

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