



# A FEDERAL JUDGE HAS ORDERED A US MINORITY BUSINESS AGENCY TO SERVE ALL RACES - ASSOCIATED PRESS

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A federal judge in Texas has ordered a 55-year-old U.S. agency that caters to minority-owned businesses to serve people regardless of race, siding with white business owners who claimed the program discriminated against them.

The ruling was a significant victory for conservative activists waging a far-ranging legal battle against race-conscious workplace programs, bolstered by the Supreme Court's ruling last June dismantling affirmative action programs in higher education.

Advocates for minority-owned businesses slammed the ruling as a serious blow to efforts to level the playing field for Black, Hispanic and other minority business owners who face barriers in accessing financing and other resources.

Judge Mark T. Pittman of the U.S. District Court of the Northern District of Texas, who was appointed by former President Donald Trump, ruled that the Minority Business Development Agency's eligibility parameters violate the Fifth Amendment's equal protection guarantees because they presume that racial minorities are inherently disadvantaged.

The agency, which is part of the U.S. Commerce Department, was first established during the Nixon administration to address discrimination in the business world. The Biden administration widened its scope and reach through the Infrastructure Investment and Jobs Act in 2021, making it a permanent agency and increasing its funding to \$550 million over five years.

The agency, which helps minority-owned businesses obtain financing and government contracts, now operates in 33 states and Puerto Rico. According to its yearly reports, the agency helped businesses raise more than \$1.2 billion in capital in fiscal year 2022, including more than \$50 million for Black-owned enterprises, and more than \$395 million for Hispanic-owned businesses.

In a sharply worded, 93-page ruling, Pittman said that while the agency's work may be intended to "alleviate opportunity gaps" faced by minority-owned businesses, "two wrongs don't make a right. And the MBDA's racial presumption is a wrong."

Pittman ruled that while the agency technically caters to any business that can show their "social or economic disadvantage," white people and others not included in the "list of preferred races" must overcome a presumption that they are not disadvantaged. The agency, he said, has been using the "unconstitutional presumption" for "fifty-five years too many."

"Today the clock runs out," Pittman wrote.

Dan Lenington, deputy counsel at the conservative Wisconsin Institute for Law & Liberty, which filed the lawsuit, said called it "a historic" victory that could affect dozens of similar federal, local and state government programs, which also consider people of certain races inherently disadvantaged. He said the ruling will pave the way for his and other conservative groups to target those programs.

"We just think that this decision is going to be applied far and wide to hundreds of programs using identical language," Lennington said. Justice Department lawyers representing Minority Business Development Agency declined to comment on the ruling, which can be appealed to the conservative-leaning 5th U.S. Circuit of Appeals in New Orleans. In court filings, the Justice Department cited congressional research showing that minority business owners face systemic barriers, including being denied loans at a rate three times higher than nonminority firms, often receiving smaller loans and being charged higher interest rates.

John F. Robinson, president of the National Minority Business Council, said the ruling is "a blow against minority owned businesses," and does nothing to help majority-owned businesses because they already enjoy access to federal resources through the Small Business Administration.

"It has the potential of damaging the whole minority business sector because there will be less service available to minority-owned businesses," Robinson said.

In a similar ruling last year, a Tennessee judge struck down a program run by the Small Business Administration that steered some government contracts toward minority-owned businesses.

Several other lawsuits have targeted government and private sector programs designed to benefit minority-owned businesses, including the case against the Fearless Fund, an Atlanta-based organization that provides early stage funding to businesses owned by women of color.

Arian Simone, CEO of the Fearless Fund, criticized what she called dwindling corporate commitment to equity programs in the face of the growing legal challenges.

"Practically every day there seems to be a new legal ruling that chips away at our attempt to close economic gaps that exist for people of color," she said in a statement. "The inaction by those who claim to be committed to equity has created the vacuum for this to happen."

But Alphonso David, president & CEO of The Global Black Economic Forum, who is helping to represent the Fearless Fund, said the Texas ruling is not necessarily predictive of how those other cases will play out.

He pointed to another ruling Wednesday in which a conservative group lost its attempt to reinstate a lawsuit against pharmaceutical giant Pfizer over a fellowship program for Black, Latino and Native American professionals.

The New York-based 2nd U.S. Circuit Court of Appeals ruled Wednesday that the group, Do No Harm, lacked standing because it didn't identify the plaintiffs by name. David said the Fearless Fund is making a similar argument against the American Alliance for Equal Rights, the conservative group that filed its lawsuit on behalf of anonymous women.

Do No Harm Chairman Dr. Stanley Goldfarb said he was "disappointed by the Court's decision" and would continue to pursue appeals.

Pfizer said it was pleased with the ruling and is "proud of its commitment to diversity, equity and inclusion." Despite winning dismissal of the original lawsuit, the company changed the criteria of its fellowship program last year to open it to all races.

DEI advocates celebrated a separate win on Tuesday when a Florida law that limits discussions on race and diversity in the workplace was ruled to be unconstitutional by a federal appeals court.

"I think what we're going to see over the next months — and years — is just a flurry of lawsuits from different directions, with conservative and liberal judges around the country reaching totally contradictory decisions to one another," said David Glasgow, executive director of the Meltzer Center for Diversity, Inclusion, and Belonging at New York University's School of Law. "And that ultimately it's going to have to wind its way back to the Supreme Court."

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AP Race & Ethnicity reporter Graham Lee Brewer and AP Business Writer Halleluya Hadero contributed to this story.