



ROY WILKINS CENTER FOR HUMAN RELATIONS AND SOCIAL JUSTICE

A LEADING RESEARCH CENTER DEDICATED TO FINDING RACIAL AND ETHNIC INEQUALITY SOLUTIONS

THE DETERRENT EFFECTS OF REVERSE DISCRIMINATION CLAIMS

ON FEDERAL RULE COMPLIANCE:

THE CASE OF PUBLIC PROCUREMENT AND CONTRACTING

Samuel L. Myers, Jr. and Yuan Gao

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Affirmative Action Programs in the U.S.: *Shift From Race Conscious to Color Blind*

- ***Public Education:***
 - Regents of the University of California v. Bakke (1978)
 - Gratz v. Bollinger (2003)
 - Grutter v. Bollinger (2003)
- ***Public Employment:***
 - Wygant v. Jackson Board of Education (1986)
 - Ricci v. DeStefano (2009)
- ***Public Procurement & Contracting:***
 - City of Richmond v. Croson (1989)
 - Adarand Constructors, Inc. v. Peña (1995)

Supreme Court Decisions & Federal Rule

- City of Richmond v. Croson (1989);
Adarand Constructors v. Peña (1995)
- Federal Rule 49 CFR Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” (Feb 1999)

Supreme Court Decisions & Federal Rule, cont.

- Racial classifications imposed by the federal government must be analyzed under a standard of strict scrutiny.
- Federal agencies need to consider race-neutral alternatives before implementing race-conscious federal procurement programs.
- Small business enterprises should be given the opportunity to seek judicial review of federal agency actions.

Theoretical Frameworks

- **Deterrence & Compliance**
 - When cost of compliance $<$ cost of noncompliance, enforcement/punishment deters noncompliance.
- **Inertia / Bounded Rationality**
 - Goal-setting not always responsive to small changes in incentives and disincentives.
- **Framing & Stakeholder Groups**
- **Prospect Theory**
 - More sensitive to increases in losses than changes in gains.

Empirical Test

- Data
 - Disadvantaged Business Enterprise (DBE) Program
 - Pooled Cross-section time-series: 50 state highway administration annual reports, 2001---2010
- Dependent Variable
 - Relative DBE Goal (U.S. DOT; Survey of Business Owners)
- Independent Variables
 - Litigation Activities
 - Race/Ethnicity of Plaintiff; Outcome of Lawsuit; Transportation Agency as Defendant; Level of Court
 - Political Factors
 - Political Party Compositions of State Legislatures; Party Affiliation of Governors
 - Public Attitudes; Citizen Ideology; State Anti-Affirmative Action Ballot Measures

Effects of Reverse Discrimination Litigation on Relative DBE Goals

	OLS	2SLS	FGLS
Any lawsuit in prior year(s)	0.129*** (0.041)	-0.086 (0.304)	0.024 (0.037)
Any lawsuit in current year	0.034 (0.042)	-0.160 (0.645)	-0.016 (0.026)
Never any lawsuit in current/prior years	-0.062 (0.048)	0.099 (0.336)	-0.046 (0.092)
Lawsuit at federal circuit court in current/prior years	0.032 (0.054)	-0.041 (0.242)	-0.011 (0.100)
White plaintiff in prior year(s)	0.121*** (0.042)	-0.063 (0.275)	0.043 (0.037)
White plaintiff in current year	0.026 (0.055)	-0.357 (1.210)	-0.002 (0.034)
Never any white plaintiff in current/prior years	-0.095** (0.044)	0.096 (0.353)	-0.075 (0.084)
White plaintiff at federal circuit court in current/prior years	0.041 (0.044)	-0.042 (0.252)	0.007 (0.081)

Significance level: *** .001, ** .01, * .1

Estimates of Specific Deterrent Effects of Litigation

	Coef.	Std. Err.	t	P> t
OLS, No Covariates	-0.0025	0.082	-0.03	0.98
OLS, with Ideology	0.0081	0.0817	0.1	0.92
OLS, Full Set of Covariates	-0.0604	0.0463	-1.31	0.19
2SLS	-0.5008	0.6364	-0.79	0.43
FGLS	-0.0286	0.1074	-0.27	0.79

Summary and Conclusions

- *Limited support for framing effects.*
- No support found for general or specific deterrence of reverse discrimination litigation on DBE goal-setting.
- No support found for hypothesis based on prospect theory.
- Additional research: organizational resources; qualitative data collection; threats of litigation

Thank you!

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