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## Chicago Excludes Asians From Contract Program

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week, why should we make less than straight time? It makes no sense to me."

Some states, such as Illinois, have passed legislation to ensure that their workers will not be affected by the changes to the regulations.

"Governor Rod Blagojevich took a bold stand in defiance of President Bush and his administration by signing legislation this past spring that will ensure

that 375,000 workers in Illinois will not lose their overtime rights," said Jeff Weiss, communications director of the Chicago Federation of Labor, AFL-CIO. Despite their local victory, the Chicago Federation of Labor and the Illinois AFL-CIO continue to work closely with Illinois Congressional members to protect the rights of all workers to receive overtime pay.

## Chicago Excludes Asians From Contract Program

By Ameer Patel

In February 1996, the Builder's Association of Greater Chicago sued the City of Chicago in the U.S. District Court for the Northern District of Illinois claiming that the Minority Business Enterprise/Women Business Enterprise quota requirement has denied many association contractors of bids. BAGC asserted that "Chicago has encouraged racial, ethnic and gender-based discrimination against non-minority owned entities."

BAGC's strong assertions stemmed from an ordinance adopted in 1990 that established an affirmative action program for City procurement, encompassing construction, goods and services. Under this ordinance, 25 percent of City contracts were reserved for minority-owned firms while about 5 percent were reserved for women-owned companies. A company could qualify as a set-aside candidate as long as their revenues did not go beyond the ceiling of \$27.5 million. Consequently, BAGC felt that many rich and well-established companies could qualify for extra assistance unfairly.

With respect to the groups that could qualify, the ordinance specifically recognized as an MBE a local business, majority-owned and controlled by a minority group (defined as African-Americans, Hispanics, and Asian-Americans). It also recognized a local business majority-owned and controlled by women as a WBE. Whether the ordinance passed constitutional muster, however, came into question under BAGC's lawsuit.

After the *BAGC v. City of Chicago* hearing, Judge James B. Moran's December 29, 2003 opinion determined that while the program was needed, it was too broad and inflexible. Judge Moran deemed that while the "City has a compelling interest in not

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Judge Moran's Opinion

having its construction projects slip back to near-monopoly domination by white-male firms," he stated that the City had to demonstrate "that the current program was sufficiently narrowly tailored to meet strict constitutional scrutiny." Moran gave the City six months to review the ruling and adopt a new program.

The City's subsequent interpretation of Moran's decision has upset some minority groups. In April, which is coincidentally Asian-American Heritage Month, the City revised its set-aside ordinance to include only African-Americans, Hispanics and women within the presumptive socially disadvantaged groups. However, the City included a caveat that members of other groups who faced discriminatory construction contracting practices would still be able to participate in the program. By submitting an affidavit detailing the discrimination and presenting it to members of the City's Affirmative Action Advisory Board, other groups could be included in the program.

Despite the City's caveat, the Indian American Bar Association President Bina Sanghavi said it is clear that Moran's opinion did not call for an exclusion of any minority group such as Asians. "Moran specifically cites Asians as included within that group of racial and ethnic minorities, noting

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Hispanics and Asians were also virtually unrepresentative in that [building] industry," Sanghavi said.

In defending its ordinance, the City focused on Moran's statement that "statistical evidence of disparities respecting Asians that could support an inference of discrimination is thin." However, Asian organizations believe that the City has overlooked other parts of the opinion supporting a program to include Asians. For instance, Moran likened Asian difficulties to those of Hispanics, stating, "For both groups there remains the question whether they are victims of discrimination or whether they, like countless others before them, face language and cultural barriers..." Moran wrote that although Asians were an insignificant factor in the industry when the City affirmative action program was initially promulgated in 1990, immigration has swelled the Hispanic and Asian populations. If Hispanics will be included in the revised program, though, Asians deserve the

same right, Asian community leaders say.

"The consequences are severe" if Asians are not allowed to compete for contracts on par with other minorities, said Perry Nakachi, president of the Association of Asian Construction Enterprises. "Most Asian firms will lose significant portions of their business and some will go bankrupt."

Many similar programs across the country, in places such as Atlanta, Michigan, and Philadelphia, have been rejected by the courts. In California, residents supported a measure to cut minority contract awards from 20 percent to 10 percent.

Asian businesses and organizations in Chicago are still hopeful. The new ordinance will only be eliminated after five years if the City fails to show a compelling interest in remedying identified discrimination. The City says the program will be revised as necessary based upon new data, including regular disparity and availability studies.

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## Environmentalists and Policymakers Divided on Roadless Rule Changes

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**By Shauna Coleman**

In response to continuing controversy, policy concerns, and legal uncertainty surrounding the implementation of the 2001 Roadless Area Conservation Rule, the U.S. Dept. of Agriculture Forest Service proposed changes to the rule in July 2004.

The original rule established nationwide prohibitions on timber harvest, road construction, and road reconstruction within inventoried roadless areas on National Forest Service lands. After its finalization, this rule was targeted for litigation by the timber industry and states nine times. Plaintiffs argued that giving the authority to designate roadless lands to the National Forest Service prevented them from enacting forest management plans that required road construction and/or timber harvesting that were critical to restoring and maintaining forest health, and which could reduce the risk of potentially catastrophic wildfires.

In 2003, the District Court of Wyoming struck down the roadless rule. *Wyoming v. U.S. Dept. of Agric.*, 277 F. Supp. 2d 1197 (D. Wyo. 2003). The

court held that the rule violates the National Environmental Policy Act and the Wilderness Act. The Forest Service then worked to amend the rule to address state concerns.

The most significant proposed change is the establishment of a petitioning process, in which governors, in conjunction with local governments, stakeholders, and other interested parties would have the opportunity to propose and develop plans for the conservation of the roadless areas within their state. Under the petitioning process, according to the USDA, states would have occasion to determine areas for inclusion, as well as ways to protect public health and safety, reduce wildfire risks to communities and critical wildlife habitat, maintain critical infrastructure such as dams and utilities, and assure citizens' access to private property. If a state's petition is accepted by the Secretary of Agriculture, the Forest Service would initiate state-specific rulemaking for the management of inventoried roadless areas. State petitions are only accepted if they are submitted within 18 months of the

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