

Clayton County 5th Annual Networking Vendor Fair SPLOST Projects



ATTORNEY RODNEY K. STRONG



ATTORNEYS AND PUBLIC POLICY CONSULTANTS



Current Programs

Procurement Programs

- Race Conscious
- Race Neutral

Federal Programs

- DBE programs
- ACDBE Programs

Anchor Institution Programs

Private Sector Programs

Community Economic Development Programs

Private Sector Programs

Procurement Programs

- Race Conscious
 - Goal Based Programs
 - Set Aside Programs
 - Incentive Programs
- Race Neutral
 - Outreach Efforts
 - Supportive Services
 - Small Business Programs

Federal Programs

- DBE Programs
 - Federal Grant Recipients of funds from:
 - Federal Highway Administration (FHWA)
 - Federal Aviation Administration (FAA)
 - Federal Transit Administration (FTA)

Must establish a Disadvantaged Business Enterprise (DBE) Program

- 49 CFR Part 26
- ACDBE Programs
 - Airport Concessions DBE
 - Operate under specific rules for the industry
 - 49 CFR Part 23



Amendment XIV

The Fourteenth Amendment's first section includes several clauses:

- The Citizenship Clause, Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause.
- The Citizenship Clause provides a broad definition of citizenship, nullifying the Supreme Court's decision in *Dred Scott v. Sandford* (1857), which had held that Americans descended from African slaves could not be citizens of the United States



Amendment XIV

The 14th Amendment (Amendment XIV) to the United States Constitution was adopted on July 9, 1868, as one of the Reconstruction Amendments. The amendment addresses citizenship rights and equal protection of the laws and was proposed in response to issues related to former slaves following the American Civil War.



Amendment XIV

Fourteenth Amendment to the U.S. Constitution Section

1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The City of Richmond v. J.A. Croson

In *City of Richmond v. J.A. Croson*, the United States Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy the requirements of "strict

"Strict scrutiny" review involves two equal considerations:

First, the need to demonstrate a compelling governmental interest;

Second, implementation of a program or method narrowly-tailored to achieve/remedy the compelling interest



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Judicial Scrutiny

The strict scrutiny standard is applied to any race based program involving government procurement of goods and services.

Strict scrutiny, the most stringent standard of judicial review used by U. S. courts, is a two-pronged test:

A "compelling governmental interest"

A "narrowly tailored" remedy



The City of Richmond J.A. Croson cont.

The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50 percent African-American) and awards of prime contracts to minority-owned firms (0.67 percent to African-American firms) was an irrelevant statistical comparison and insufficient to raise an inference of discrimination.

Croson, 488 U.S. at 509.

“[W]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise.”



The City of Richmond v. J.A. Croson cont.

- Regarding the second prong of the strict scrutiny test, the Croson Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination.
- First, the Court held that Richmond's MBE program was not remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no evidence of discrimination in Richmond. Thus, the scope of the City's program was too broad.



Narrow Tailoring

Under the Croson framework, any race-conscious plan must be narrowly tailored to ameliorate the effects of past discrimination. Croson's progeny provide significant guidance on how remedies should be narrowly tailored.

"Generally, while 'goals' are permissible, unyielding preferential 'quotas' will normally doom an affirmative action plan."

In addition to determining that a race-based measure serves a compelling government interest, a reviewing court applying strict scrutiny must determine if the measure is narrowly tailored, that is, whether the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose. . .



Narrow Tailoring cont.

In determining whether a race-conscious remedy is narrowly tailored, we look at factors such as the efficacy of alternative remedies, the flexibility and duration of the race-conscious remedy, the relationship of the numerical goals to the relevant labor market, and the impact of the remedy on third parties. .

..

Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require serious, good faith consideration of workable race-neutral alternatives.



Narrow Tailoring cont.

Factors in determining if a race conscious program is narrowly tailored

The necessity for the relief and the efficacy of alternative remedies

The flexibility and duration of the relief, including the availability of waiver provisions

The relationship of the numerical goals to the relevant market

The impact of the relief on the rights of innocent third parties



Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995)

Adarand held the federal government to the same standards as the state and local governments through a process of "reverse incorporation," in which the Fifth Amendment's Due Process Clause was held to bind the federal government to the same standards as state and local governments are bound under the 14th Amendment.

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; . . .

Narrow Tailoring cont.

- Is relief limited to minority groups for which there is identified discrimination?
- Are remedies limited to redressing the discrimination within the boundaries of the enacting jurisdiction?
- Are the goals of the program flexible and do they provide waiver provisions?

Have race and/or gender neutral measures been considered?

Does the program include provisions or mechanisms for periodic review and sunset?

Community
Economic
Development
Programs



- Outreach
- Financial Assistance
- Training
- Technical Assistance

**Private
Sector
Initiatives**

- I. Negotiated MWBE Programs**
- II. Anchor Institution Programs**
- I. Corporate Supplier Diversity Programs**

Available Supportive Services



- **Technical Assistance**
- **Bonding Assistance**
- **Financial Assistance**

Bonding Assistance Programs



**Small Business
Administration
Programs**

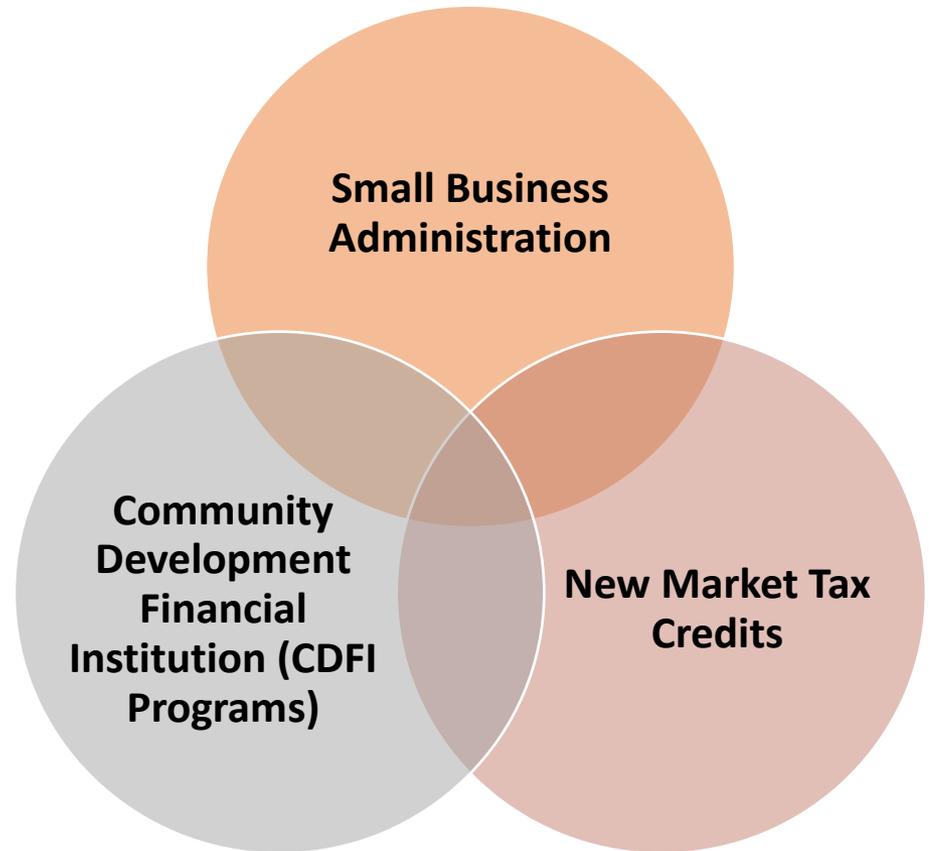
**Owner Controlled
Insurance
Programs (OCIP)**

**Department of
Transportation**

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Financial Assistance Programs



**Technical
Assistance:
Leveraging the
Entrepreneurial
Ecosystem**



- **External Stakeholders**
(Chambers of Commerce/Minority Supplier Development Council (NMSDC), Trade Unions, Entrepreneurship Centers/NFPs)
- **Small Business Administration Programs**
- **Small Business Development Center Programs**
- **Minority Business Development Center (MBDC) Programs**
- **Department of Transportation (DOT) Programs**
- **Corporate Programs**

Utilizing the Private Sector

- Tax Incentive Programs
- Real Estate Programs
- Anchor Programs
 - Hospitals
 - Universities
 - Sports Franchises
 - Other Public Agencies
 - Corporations
 - Financial Institutions



Anchor Programs

- **Private Sector Supplier Diversity Programs**
- **University Programs (MWBE/DBE/SBE)**
- **Urban Revitalization**
- **Public Sector Local Purchasing Programs**
- **Local Benefits**
 - Impact at all three levels of Economic Impact (Direct, Indirect and Induced)



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