

35 of 82 DOCUMENTS

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MINORITY STATUS NOT SO SIMPLE -- POLITICS, AGENCY QUIRKS OFTEN SHAPE DEFINITION

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Paulo Da Cruz is confused. Sometimes he is a minority. Sometimes he is not.

Da Cruz owns a construction-related business, and the federal government, Washington state and most public agencies consider him a minority who can take advantage of affirmative action in public contracting.

But King County does not deem him a minority-business owner.

And he would not fit the definition of minority if he were a job-seeker or college applicant looking for help from affirmative action at any public agency anywhere.

Da Cruz is a Portuguese American, an ethnic group that, along with a handful of others, straddles the line between minority and nonminority in the complicated world of government affirmative action in the 1990s.

In that world, the definition of minority is much more than an exercise in semantics. It goes to the heart of what affirmative action is and what it is meant to do.

The landmark federal Civil Rights Act of 1964 dismantled segregation by outlawing discrimination based on certain characteristics: race, color, national origin, religion, gender.

But affirmative action, begun in 1965, moved beyond the ban of bias to provide active assistance to specific groups that had faced government-sanctioned discrimination. The history of how the government identified those minority groups helps explain the intensity of advocates for affirmative-action policies.

And the story of how Portuguese Americans were included in some definitions of minority, while remaining excluded from others, illustrates how public policies can be shaped by politics, pressure from interest groups and the quirks of bureaucratic regulations.

These are among the issues Washington state voters may ponder when they vote Nov. 3 on Initiative 200, which would ban preferences based on race, ethnicity and gender in state and local government employment, public contracting and public education, ending affirmative action as now practiced.

From fishing to new career

About two years ago, Da Cruz left his career as a commercial fisherman and began Northwest Erosion Control, a small

MINORITY STATUS NOT SO SIMPLE -- POLITICS, AGENCY QUIRKS OFTEN SHAPE DEFINITION The
Seattle Times October 05, 1998, Monday

firm contractors hire to contain runoff from construction sites.

He applied and obtained status as a minority-owned and disadvantaged business from the state and the federal government, because he fit their definitions of minority.

Da Cruz employs anywhere from two to 10 people on a job.

"Usually I use a lot of minorities," he said. "I go through El Centro de la Raza. And a lot of it comes word-of-mouth from the Hispanics working for me."

Da Cruz's shift of occupation has served him well.

This year, the 37-year-old projects his Issaquah-based business will have revenues of \$ 500,000 - 90 percent of it from public contracts he won through affirmative action as a minority-owned business.

But he bemoans the projects for which he did not qualify as a minority business - particularly those contracts with King County.

"I lost a \$ 300,000 job because of that," Da Cruz complained. "It's a really, really bad law. I don't know what they are doing. I have called everybody I can think of and I told them I am being discriminated against because I am Portuguese."

Who's a minority

Portuguese Americans were not among the minority groups initially targeted by affirmative action.

In 1965, when President Johnson ordered federal contractors to take affirmative action in hiring, he did not define the term "minority." But few questioned which groups fit the description: They had been identified at the birth of the civil-rights movement during World War II.

Shortly after Japanese Americans on the West Coast were rounded up and put into camps in the interior, author Carey McWilliams in 1942 voiced the view that the war had two fronts - one abroad with fascism and one at home with racism.

He wrote about the groups denied even the most basic civil rights. Using his terms:

- American Indians, whose treaties the government had trampled.
- Mexicans, deemed an inferior race in the West and Southwest.
- Chinese, Japanese and Filipinos, all excluded by law from immigration and citizenship.
- Negroes, legally segregated as a separate, second-class and stigmatized race.

Even U.S. immigration policy reflected white privilege: It used a quota system so focused on white Europeans that seven of 10 allowed in were to be from England, Ireland and Germany. The quotas lasted until 1965.

Although the civil-rights movement that began during the war was led by African Americans, it included organizations representing all other minority groups as well.

And after the Civil Rights Act of 1964 became law, the Equal Employment Opportunity Commission (EEOC) drew up a familiar list of minorities most likely to face workplace discrimination: "Negroes, Orientals, American Indians, and Spanish Surnamed Americans."

MINORITY STATUS NOT SO SIMPLE -- POLITICS, AGENCY QUIRKS OFTEN SHAPE DEFINITION The
Seattle Times October 05, 1998, Monday

William Taylor, a civil-rights attorney and former staff member of the U.S. Commission on Civil Rights in the 1960s, explained the reasoning:

"These were people who suffered discrimination by law and official policy of the government, as opposed to the private discrimination that affected so many other ethnic groups."

Who counts, who doesn't

That may have been the working definition of minority, but it wasn't necessarily the only official one.

The distinction became important as civil rights shifted from being a people's movement to a bureaucratic endeavor.

In the early 1970s, federal administrators found a lack of consistency in the data collected on minorities, and felt hindered in their efforts to track discrimination in government programs. So, at the behest of the Nixon administration, several agencies began meeting as a task force to create common racial and ethnic categories for statistical purposes.

The result would be used for population counts by the U.S. Census Bureau and for employment reports filed by businesses with the EEOC. In turn, those numbers would create the foundation for civil-rights enforcement and for affirmative-action plans by federal contractors and nearly every public agency in the country.

Finally, in May 1977, the federal Office of Management and Budget (OMB) issued the familiar categories: American Indian or Alaskan Native, Asian or Pacific Islander, Black, and Hispanic.

White ethnics fight exclusion

The significance was not lost on the growing "white ethnic" movement, made up of Americans with origins in Poland, Italy, Greece and other southern and eastern European countries. In 1979, they challenged their exclusion from the definition and from affirmative action, charging they, too, had faced discrimination.

The U.S. Civil Rights Commission heard them out but rejected their claim - ironically, because they had too little data to prove discrimination against them.

Meanwhile, the category that raised the most questions was Hispanic, a new term adopted by the federal government. OMB defined a Hispanic as "a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race."

This term was confusing enough that the OMB immediately added a special clarification: "Hispanic" excluded those of Portuguese origin, specifically people from Brazil, Guyana, Suriname, Trinidad, Belize and Portugal.

But the OMB also added another important proviso: The categories were for statistical purposes, not to determine who could participate in a federal program.

Rules for a new program

Deciding eligibility was exactly the task that the U.S. Department of Transportation faced when it established its first formal program for minority- and women-owned businesses in 1980.

The easiest path would have been to adopt the OMB definitions, already in use by public affirmative-action programs in employment. But key DOT policymakers had a problem: That definition excluded people from Brazil, the largest country in South America, and they felt everyone from Latin America should qualify.

"So what we did was to use the definition of Hispanic that included people of Spanish or Portuguese culture with origins

MINORITY STATUS NOT SO SIMPLE -- POLITICS, AGENCY QUIRKS OFTEN SHAPE DEFINITION The
Seattle Times October 05, 1998, Monday

in Mexico, South or Central America or the Caribbean Islands. But we specifically excluded European Portuguese and Spanish," said DOT attorney Robert Ashby, who has written regulations for the minority and women's contracting program since it began.

That rule lasted about a year - until a new president came to town.

In January 1981, the same month affirmative-action foe Ronald Reagan became president, a group calling itself the Hispanic American Contractors sent DOT a petition.

"The petition requested that the definition of Hispanic be expanded to include Hispanic people of European origin," Ashby said, because discrimination "could as easily apply to someone from Barcelona as from Mexico City."

When DOT floated the idea, it received 101 comments, 97 of them favorable. "The opposition wasn't particularly strong or strident," Ashby said, "so we then decided to go along with that change."

But, he said, "that created the problem of leaving out the Brazilians." To continue including them, DOT added the term "of Portuguese origin," which also brought in people from Portugal.

Public response to that change was minimal, Ashby said. So the Portuguese were in.

"It was one of the many minor technical changes in a large public program that did not receive wide public notice," he said.

Congress creates a quirk

Then Congress entered the picture.

DOT had set up its program on its own authority, but in 1983 Congress enacted legislation for all federal minority-business programs.

So DOT had to switch to the language and definitions of the new law. And it defined eligible firms based on Section 8d of the Small Business Act (SBA), a separate disadvantaged-business program set up in 1978.

"As it happened, Portuguese were not included in 8d," Ashby said. "So for reasons having nothing to do with policy, but purely as a definitional quirk in statutes and regulations, the Portuguese are out again."

And this change made waves.

"We got quite a few letters from Portuguese-American contractors and even some letters from congressmen, particularly from Barney Frank, who represents among other areas the Fall River (Mass.) area that has a particularly strong Portuguese population," said Ashby.

Despite the protests, the new definition remained in place until the Department of Transportation learned the SBA had quietly changed its definition in 1986, Ashby said.

The change apparently happened without going through normal rule-making procedures. How it came about mystifies Henry Wilfong, a black Reagan appointee who served from 1982 to 1985 as associate administrator for minority small business under the SBA, and it draws a blank from his successor, Wilfredo Gonzalez.

SBA lawyers now say it was just a legal interpretation - in use by other agencies - that defined Hispanics as coming from the Iberian peninsula, thus including Portuguese.

Through this circular route, DOT in October 1997 put the Portuguese back in, Ashby said, not only because of the

MINORITY STATUS NOT SO SIMPLE -- POLITICS, AGENCY QUIRKS OFTEN SHAPE DEFINITION The
Seattle Times October 05, 1998, Monday

complaints but also "to retain some consistency among federal programs."

And to this day, DOT and the SBA includes Portuguese Americans in the definition of minorities.

Most Portuguese Americans want little to do with being defined as minorities.

That point was made loud and clear by Frank, the Democrat from Massachusetts. Frank insists he has never lobbied to get Portuguese Americans defined as Hispanics or minorities for any affirmative-action programs, though he allowed he might have sent a letter to DOT 15 years ago.

Affirmative action, no thank you

"The undeviated view of the overwhelming majority of Portuguese Americans is that they don't want to be involved in affirmative action," said Frank.

That refrain was repeated by the staff of other representatives of the congressional districts with large numbers of Portuguese Americans, from California to Rhode Island.

And it is largely the view of Ronald Cruz, president of the Portuguese American Leadership Council of the United States, which represents some 2 million Portuguese Americans.

"We no more want to be categorized as Hispanics than Italians would want to be Hispanics, or Polish would want to be Hispanics," he said.

Cruz said Portuguese Americans want to be Americans first, not "minorities." He argued that no ethnic or racial group should get a break that others do not, and that affirmative action needs to be phased out.

But Cruz concedes, "I will not shy away from the fact that when our community has had a chance to take advantage of the minority category, we have."

Specifically, they have cashed in on minority-contracting policies.

"Where it has been to our advantage as a group to be able to participate with other minority groups in obtaining business contracts," he said, "then we have done so."

In Washington state, Portuguese Americans are included in minority-business programs run by every public agency - except King County.

Ironically, the county's minority-business program relies on the state's list of certified minority businesses, and even posts that list on its Web site. But when the county awards contracts to minority businesses, it excludes those owned by Portuguese Americans or European Spaniards.

Phyllis Aylene, who heads the program, explained why: "In a disparity study, we found no evidence that European Hispanics had been discriminated against."

A disparity study examines whether minority businesses face discrimination and whether they get their fair share of government contracts.

Meanwhile, Washington state government and its university system do not include Portuguese Americans in their definitions for minorities in employment and college admissions.

"Twenty to 25 years ago, we didn't fight so much about who were minorities, because we knew," said Jim Medina, who directs the state government's Office of Minority and Women's Business Enterprises. Now, he added, "We spend a lot of

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Seattle Times October 05, 1998, Monday

time on it."

And it is only going to get more difficult.

New categories in next census

Earlier this year, the OMB revised its racial and ethnic categories for the first time since 1977. Beginning with the census in the year 2000, people will be able to check more than one box to describe their race or ethnicity.

No one - from the chief federal enforcer of affirmative action for federal contractors to the lowest-level administrator of such programs - knows yet how this will ultimately affect affirmative action. But all agree that once the Census Bureau begins releasing its new population figures in 2001 or 2002, racial categorization will be much more difficult.

That complication is something Medina understands: His father was Mexican American; his mother, raised in Hawaii, was Chinese and Filipino. He said the whole question of racial categorization highlights the difficulty government programs face in dealing with discrimination.

"We're talking about a couple of things. One thing is the legal classification," he said. "The other is the real world."

On paper, he must describe his race or ethnicity. But in the real world, when he faces discrimination, Medina said, "Nobody asks me, What are you?" "

So, he said, "We try to work in that gap between the real world and the world of regulations."

Not a complaining person

Da Cruz rails against King County's regulations, but like many Portuguese Americans, he said he could not recall being discriminated against and wouldn't complain if he did. "I'm not that kind of a person," he said.

"The only bad thing I feel is when my wife gets discriminated against," he added.

When he and his wife decided to sell their house, she called and left their name with a couple of real-estate firms. Not one of the firms called back, he said.

So she called again later, but this time left her maiden name, Diana Merritt. And some of the same firms called right back.

"She was very astounded by it, and very upset by it," Da Cruz said. "She didn't think there were people like that."

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