High court strikes down Richmond set-aside program

By JAMES H. RUBIN
Associated Press Writer

WASHINGTON (AP) -- The Supreme Court, dealing a serious blow to some forms of affirmative action, earlier this week struck down a Richmond, Va., program aimed at helping construction industry businesses owned by minorities.

By a 6-3 vote, the court ruled the plan is an unlawful form of reverse discrimination.

Justice Sandra Day O'Connor, writing for the court, said, "Under Richmond's scheme, a successful black, Hispanic or Oriental entrepreneur from anywhere in the country enjoys an absolute preference over other citizens based solely on their race."

"We think it obvious that such a program is not narrowly tailored to remedy the effects of prior discrimination," she said.

The Richmond plan would require the prime contractor on any city building contract to subcontract at least 30 percent of the value of the project to firms that are at least one-half minority owned.

O'Connor said, "The 30 percent quota cannot be said to be narrowly tailored to any goal, except perhaps outright racial balancing. It rests upon the completely unrealistic assumption that minorities will choose a particular trade in lockstep proportion to their representation in the local population."

The ruling is expected to have far-reaching impact on the use of so-called set-aside programs by states and cities.

Most states and more than 190 local governments have such programs, according to a study by the Minority Business Enterprise Legal Defense Education Fund.

In California, a state law effective this month requires all state contractors to use best efforts to subcontract at least 15 percent of the project to firms controlled by minorities and 5 percent to firms controlled by women.

Deputy Attorney General Marian Johnston said that the law differs from the Richmond program in one important respect: "It establishes goals, not monetary requirements." But she said today's ruling would have to be reviewed to see whether it would invalidate the state measure.

Attorney John Findley of the Pacific Legal Foundation said the high court's ruling could apply to the California law because the state, like Richmond, has not justified the law with findings of past discrimination.

"This is not a response to past discrimination. This is pure pork-barreling," said Findley, whose suit last year challenging the law on behalf of the Associated General Contractors of California was dismissed as premature. He said the suit is likely to be revived.<

The high court in recent years has upheld key affirmative action programs in other areas, although always by narrow margins and with no clear consensus on how to evaluate their lawfulness.

In a stinging dissent today, Justice Thurgood Marshall said the Richmond ruling "marks a deliberate and giant step backward in this court's affirmative action jurisprudence. Cynical of one municipality's attempt to redress the effects of past racial discrimination in a particular industry, the majority launches a grapeshot attack on race-conscious remedies in general."

Marshall said the "harsh reality" of today's ruling will be to discourage or prevent cities and states from "acting to rectify the scourge of past discrimination."

He was joined by Justices William J. Brennan and Harry A. Blackmun.

O'Connor drew a distinction between Richmond's plan and one enacted by Congress that the court upheld in 1980. The congressional plan required 10 percent of federal public works contracts be earmarked for minority-controlled businesses.

O'Connor said Richmond officials are not entitled to rely on a finding by Congress that there has been nationwide discrimination in the construction industry.

Also, O'Connor said, the congressional set-aside excused local governments from complying under certain conditions.

Finally, she said, Congress has unique powers "in making a finding that past discrimination would cause federal funds to be distributed in a manner which reinforced prior pattenrs of discrimination."

"While the states and their subdivisions may take remedial action when they possess evidence that their own spending practices are exacerbating a pattern of prior discrimination, they must identify that discrimination, public or private, with some specificity before they may use race-conscious relief," she said.

The Richmond plan was challenged by building contractor J.A. Croson Co. after it lost a city contract to install stainless steel urinals and water closets at the city jail. Croson did not include a minority-owned business as a subcontractor.

Richmond officials adopted the affirmative action plan in 1983. While the minorities named in the plan included Hispanics, Orientals, Indians, Eskimos and Aleuts, the primary beneficiary would have been blacks.

Richmond's population is about half black. But the city's minority-owned businesses historically received less than 1 percent of the value of the city's public building contracts.

This ruling upheld a decision by the 4th U.S. Circuit Court of Appeals based in Richmond.

A coalition of groups representing local and state governments had said striking down the Richmond plan would reopen old wounds and discourage affirmative action if it means governments first must admit past discrimination before adopting remedial programs.

The case is Richmond vs. Croson, 87-998.

Associated Press Laser Photo

Press Secretary

Anna Perez, 37, a press aide to Rep. John Miller, R-Wash., recently confirmed that she will become first lady Barbara Bush's press secretary.

Speaker

From Page A2

with HIV. You can. If you do, it's because you think enough of yourself to take the precautions. If you don't get infected it will be because you decided that your life, your health, your future, your potential are more valuable than today or this relationship, or the next 15 minutes or this weekend. Only through that kind of commitment will anybody stay safe."

To overcome the fear and discrimination people associate with AIDS victims Keeling told audience members, "...we need to remember...that people with AIDS, and there will be people in our lives, need from us not our scorn or our judgement. What they need from us is the same thing that human beings with any other problem would need."