

# For Fairness Sake, it's Long Past Time to Kill 8A!

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The SBA 8A program is an *affirmative action* program. The program began in 1968 under the authority of Section 8(a) of the Small Business Act as a way to "balance the scales" with regard to *socially and economically disadvantaged* individuals. Participants in the 8(a) program may receive sole-source contracts, that is, contracts that are set aside and only awarded to 8(a) participants. Included in the contracts are guaranteed profits.

**"Under federal law, socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identification as members of groups without regard to their individual qualities."** For purposes of the 8(a) Business Development program, the following individuals are presumed socially disadvantaged (called "presumed groups"): 1) Black Americans, 2) Hispanic Americans, 3) Native Americans, 4) Asian Pacific Americans, 5) Subcontinent Asian Americans". Furthermore, any individual who 1) holds him or herself out to be a member of a presumed group and, 2) is currently identified by others as a member of a presumed group is presumed socially disadvantaged. What this means is that all individuals who are members, by virtue of the two criteria, of any one of the "presumed groups" are considered socially disadvantaged, period. No further criteria must be met exist for purposes of Section 8(a).

**"Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities."** Thus, one cannot be "economically disadvantaged" unless he/she has already been determined to be "socially disadvantaged". The threshold is not high in order to meet socially disadvantaged. One need simply hold oneself out as a member of one of the presumed groups and others must identify him/her as a member of that group. The criteria for economically disadvantaged are somewhat more difficult to meet. They are, 1) Narrative statement of economic disadvantage, and 2) Personal financial information (including tax returns and certain SBA forms).

Certain firms owned by an entity have different requirements and generally it is not necessary for the owners to prove economic disadvantage. Those entities are, 1) American Indians, Native Alaskans, Native Hawaiians, and Certified Development Companies. These entities are automatically deemed to be both socially and economically disadvantaged.

This entire methodology might appear to be, on the surface, a recipe for abuse. And in many cases, that's exactly what it is. For example, does the presumed group *Black Americans* include only those black Americans whose ancestors were imported directly to the United States from Africa in the slave trade? Or does it also include those black Americans whose ancestors were imported directly to the United States from Africa in the slave trade but who somehow, through shrewd bargaining, just plain good luck, or something else, also became slave owners and successful business people? Does it include black Americans whose ancestors, or they themselves, came to the United States for business purposes, who had already established themselves elsewhere and simply immigrated? Does it include athletes enticed to attend college in the United States? How about black Americans whose ancestors found themselves in Puerto Rico or one of the colonies of other nations, taken there in the slave trade, and who may have intermarried the local descendants of Spaniards or French or English? Are these immigrants to the United States from Puerto Rico, etc., also Black Americans whose "blackness" may be all but gone, perhaps down to 1/32? Does the presumed group include descendants of prominent black dignitaries such as Colin Powell, Barack Obama, Thomas Sowell, Dr. Ben Carson, and so on? Well, in each case the answer is yes. Any individual from each of these is included in the presumed group if that individual 1) holds him/herself out to be a member of that group and 2) is currently identified by others as a member of that group. And that's it. No further proof is required.

Then we have *Hispanics*, a term coined by the United States government to define certain groups of people. Included in *Hispanic* are Americans whose ancestors were speakers of Spanish, whether or not the individual himself/herself speaks a word of Spanish. Does the presumed group include recent immigrants who cannot possibly have experienced social disadvantage? Does the presumed group include descendants of Juan Ponce de

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Leon, the first major landowner in El Paso, Texas, whose ancestors, in a colossal strategic blunder, sold all his property to others sometime around 1851? Does the group include descendants of Raymond Telles, the first Mexican-American mayor of a major American city? Does the group include descendants of Joseph Magoffin, born in Chihuahua, Mexico, in 1837 and went on to become a mayor of El Paso, Texas and a prominent civic leader? Does the group include descendants of Oscar Leeser, the current and 53<sup>rd</sup> mayor of El Paso, Texas? How about Henry Cisneros who served as mayor of San Antonio, Texas from 1981 to 1989? Again, in each case the answer is yes. Any individual from each of these is included in the presumed group if that individual 1) holds him/herself out to be a member of that group and 2) is currently identified by others as a member of that group. And that's it. No further proof is required.

Back to the premise of this. Why is it time to kill this program? It's time to kill this program because the program itself is unfair. It's unfair because 1) the presumed groups are arbitrary, 2) membership in the presumed groups is virtually guaranteed if one so desires, 3) just because a group of government bureaucrats says it is so, membership in one of the presumed groups does not carry with it social disadvantage as seen above, 4) stealing from Peter to give to Paul is not fair, and, 5) the program is rife with abuse.

For example, the following is based on anecdotal evidence.

The son of a Mexican immigrant attended high school in a large border city. The young man did well in high school, participated in sports, learned English from friends in the neighborhood, and went on to university where he majored in civil engineering. After a few years he found himself working for a medium size general

contractor where he learned the trade and eventually became an owner. He sold his ownership in the general contractor and, using the proceeds of the sale, started a new general contracting firm and prospered.

To summarize, through hard work, a little help from his friends, and some luck, he prospered and his family became, financially, middle to upper middle class. A true American success story. His children attended very good private schools, participated in extra-curricular activities, graduated, and went on to university. His son also graduated with a civil engineering degree and soon was invited into the company.

As the company prospered the family prospered. After several years working with the company, the son started a new company, still a construction company, but concentrating on a specialty. And because the son is Hispanic as defined by the United States government and holds himself out as such and applied for 8A, and presented a narrative detailing his economic disadvantage and presented tax returns showing he qualified, he was accepted into the program. As a result, the new company, with the not insignificant resources of his father's company behind him, began to bid on sole source contracts and to win them. And along with the contracts came guaranteed profits.

Not quite the same American success story as his father's. And really not very "fair" when you stand it up against American capitalism and fair play.

Clearly, people have learned to "game" the 8A system. And it should be killed now in the interest of fair play.

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