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DAVID M. LAWRENCE, Editor

City of Richmond v. J. A. Croson Co.: The Decision and Its Implications for North Carolina Local Governments

A. Fleming Bell, II

On January 23, 1989, the United States Supreme Court decided City of Richmond v. J. A. Croson Co., 109 S. Ct. 706 (1989), a case with major implications for local governments that wish to encourage the use of minority contractors in public procurement and construction and repair projects. This *Bulletin* examines the *Croson* decision and discusses some of the effects that the rules announced in the case may have on North Carolina local governments. The latter inquiry includes an examination of the 1989 amendments to Chapter 143, Section 128, of the North Carolina General Statutes,[1] which deals with the use of multiple- or single-prime contractors for certain public construction projects. The amendments require local governments to adopt minority business participation goals for projects covered by that statute.

Setting the Stage: Equal Protection Clause Affirmative Action Cases Preceding *Croson*

Section 1 of the Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." It has long been recognized that the equal protection clause generally prohibits states and their political subdivisions from discriminating against individuals based on their race without a very good reason for doing so.

What has not been clear, however, is whether the same legal rules apply whenever racial discrimination is involved, without regard for the race of those adversely affected by the particular classification scheme. Or, are different guidelines appropriate if government takes affirmative action to favor members of a racial group that has been discriminated against in the past, in order to help remedy the effects of that past discrimination?

The first Supreme Court case to address this issue was Regents of University of California v. Bakke, 438 U.S. 265 (1978), which upheld the principle of affirmative action. *Bakke* stands for the proposition that government may take race into account to remedy past racial injustice, at least where appropriate findings of past discrimination have been made by a court, an administrative agency, or a legislative body. In *Bakke*, the affirmative action taken was to set aside sixteen of one hundred seats in the entering class at the University of California medical school for minority applicants. The Supreme Court upheld the set-aside as not violative of the Constitution's equal protection clause.

The question of affirmative action was next addressed by the Court in Fullilove v. Klutznick, 448 U.S. 448 (1980), a case involving the federal Public Works Employment Act. In 1977, Congress included a provision in the act requiring that, absent an administrative waiver, at least 10 percent of the

INSTITUTE OF GOVERNMENT, The University of North Carolina at Chapel Hill

federal funds for local public works projects be used by state or local grantees to procure services or supplies from "minority business enterprises (MBE)." Several contractors sought declaratory and injunctive relief, alleging that the MBE preference was unconstitutional on its face.

Although none of the five opinions in *Fullilove* could garner the support of more than three justices, a six-member majority approved the 10 percent set-aside. Chief Justice Burger, announcing the decision of the Court, emphasized the limited scope of the issue: the legislative authority of Congress. The majority agreed that Congress has broad remedial powers under the Fourteenth Amendment to which the Court must defer after due consideration. The Court, although couching its decision in terms of constitutional review, issued a judgment in which the MBE program was approved because it was deemed equitable and reasonably necessary to redress identified discrimination.

The Court next examined the effect of the equal protection clause on affirmative action in employment. In Wygant v. Jackson Board of Education, 476 U.S. 267 (1986), the Court held that a public employer's voluntary affirmative action plan must comply with the equal protection clause. The Court found that a plan's requirement that white employees with greater seniority be laid off while black employees with less seniority be retained was unconstitutional. The justification offered for the plan, that black students needed black teachers as role models, was found insufficient to justify lay offs of more senior white teachers. Said Justice Powell in a plurality opinion: "Societal discrimination, without more, is too amorphous a basis for imposing a racially classified remedy. The role model theory announced by the District Court and the resultant holding typify this indefiniteness."[2]

In the second case, United States v. Paradise, 480 U.S. 149 (1987), the Supreme Court held that a one-black-for-one-white promotion requirement is permissible under the equal protection clause, where the race-conscious relief is justified by pervasive, systematic, and obstinate discriminatory practices of the employer (in this case, the Alabama Department of Public Safety). Thus, in *Paradise*, where the employer had flaunted earlier court orders to desegregate its work force, the use of quotas was permissible. Note that this case did not involve a voluntary affirmative action plan, but was the result of a court determination that discrimination had occurred and that the employer had failed to comply with earlier court orders.

These four cases sent somewhat mixed, but on the whole increasingly conservative, signals concerning the appropriateness of race-conscious remedies for past discrimination. They "set the stage" for the issue the Court faced in *Croson*: whether, and under what circumstances, a state or local government may set aside a proportion of its public contracts to be awarded to members of particular minority groups, in an effort to "even the score" for past years of race-based discrimination.

City of Richmond v. J. A. Croson Co.

Richmond's Ordinance

In 1983, the city council of Richmond, Virginia, established by ordinance a Minority Business Utilization Plan. The plan required prime contractors (other than minority-owned prime contractors) to whom the city awarded construction contracts to subcontract at least 30 percent of the dollar amount of the contract to one or more minority business enterprises (MBEs). An MBE was defined as a business at least 51 percent owned and controlled by "minority group members" (United States citizens "who are Blacks, Spanish-speaking, Orientals, Indians, Eskimos, or Aleuts").

Plan rules allowed waivers of the set-aside requirement in "exceptional circumstances." Businesses requesting waivers had to show that "every feasible attempt" had been made to comply with the plan and that "sufficient, relevant, qualified" MBEs were "unavailable or unwilling to participate" to allow the 30 percent goal to be met. Richmond's ordinance was to be in effect for about five years, expiring on June 30, 1988.

Croson's Challenge

J. A. Croson Company, a contractor, was the only bidder on a project to provide and install plumbing fixtures in the Richmond city jail. To meet Richmond's MBE requirements, Croson would have had to use a minority supplier for the fixtures.

Croson submitted its bid prior to obtaining a commitment from a minority supplier. Although Croson subsequently found an MBE that could supply

the fixtures, the MBE could not do so for the price for fixtures that Croson had included in its bid to the city. Use of the MBE would have increased the cost of the $126,530 project by $7,663.16.

Croson's initial difficulty in obtaining a bid from a minority supplier led it to seek a waiver from the city of the MBE requirement. Later, it also asked permission to raise the contract price to cover the increased cost of fixtures from the MBE supplier. The city denied both requests and informed Croson that it had decided to rebid the project.

Croson next asked for a review of the waiver denial. The city attorney replied that the city had elected to rebid the project and that there was no appeal of such a decision.

Croson responded by bringing an action under Title 42, Section 1983, of the United States Code, arguing that the Richmond ordinance was unconstitutional on its face and as applied. The city of Richmond won in federal district court and in the Fourth Circuit Court of Appeals. The case next went to the Supreme Court, but was remanded to the fourth circuit for further consideration in light of the intervening decision in *Wygant v. Jackson Board of Education*, discussed above. Croson won on remand, and the city appealed.

The Supreme Court's Decision

Justice O'Connor authored the main Supreme Court opinion, which was joined in toto by Chief Justice Rehnquist and Justice White, and in part by Justice Stevens and Justice Kennedy. Justices Stevens and Kennedy also wrote separate opinions. Justice Scalia wrote a separate opinion concurring in the judgment. Justice Marshall wrote the main dissenting opinion, which was joined by Justice Blackmun and Justice Brennan; Justice Blackmun wrote a separate dissenting opinion joined by Justice Brennan.

The Court addressed two issues in *Croson*: (1) What is the proper standard of review under the equal protection clause for a minority set-aside ordinance such as Richmond's that is allegedly adopted for remedial purposes? (2) Does the Richmond ordinance meet the requirements of that standard?

Standard of review. A majority of the Court held that the standard of review in *all* racial classification cases is "strict scrutiny." Under this standard, a racially based classification scheme can only be upheld if a state or local government (1) demonstrates a compelling governmental interest that justifies the scheme and (2) shows that the racial classification plan is narrowly tailored to achieve that interest.

The Court's holding makes clear that a racial classification scheme that benefits past victims of discrimination will be analyzed under the same stringent rules as a racial classification scheme that is not adopted for remedial purposes. In a portion of her opinion joined by Chief Justice Rehnquist and justices Kennedy and White, Justice O'Connor reaffirmed the plurality view in *Wygant* that "the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification."[3] Justice Scalia, concurring in the judgment, agreed with "[the Court's] conclusion that strict scrutiny must be applied to all governmental classification by race, whether or not its asserted purpose is 'remedial' or 'benign.'"[4]

Analysis of Richmond's ordinance under strict scrutiny. The Court next analyzed Richmond's ordinance under the two-part strict scrutiny test. First, asked the Court, has the city of Richmond shown a *compelling interest* in apportioning public contracting opportunities on the basis of race?

Justice O'Connor reviewed five specific types of evidence presented by the city and relied on by the district court to show such an interest:

1. The ordinance's declaration that it was remedial
2. Statements by ordinance proponents when adoption of the ordinance was being considered that there had been discrimination in the Richmond construction industry
3. Evidence that minority businesses in Richmond had received .67 percent of the city's prime contracts while minorities made up 50 percent of the city's population
4. Evidence that few minority contractors in Richmond belonged to local and state contractors' associations
5. Findings made by Congress (and relied on by Congress in adopting the set-aside program upheld in *Fullilove v. Klutznick*) that the effects of past discrimination had stifled minority participation in the construction industry nationally

The evidence and findings presented were insufficient, Justice O'Connor concluded, to establish the

type of compelling governmental interest in remedying past discrimination needed to justify the city's set-aside program. "None of these 'findings,' singly or together, provide the city of Richmond with a 'strong basis in evidence for its conclusion that remedial action was necessary.' [quoting *Wygant*, citation omitted] There is nothing approaching a prima facie case of a constitutional or statutory violation by *anyone* in the Richmond construction industry. [citations omitted]"[5]

Justice O'Connor appeared to be looking for *specific evidence of past discrimination* in the Richmond construction industry, the effects of which were still being felt. If sufficiently detailed showings of such discrimination had been made, presumably she and five other justices (Justice White, Chief Justice Rehnquist, and the three dissenters) would have been willing to uphold Richmond's set-aside scheme as meeting the compelling interest test. Indeed, the three-person plurality portion of Justice O'Connor's opinion specifically states that "a state or local subdivision (if delegated the authority from the State) has the authority to eradicate the effects of private discrimination within its own legislative jurisdiction," as long as it does so within the constraints of Section 1 of the Fourteenth Amendment.[6]

Note that the three-person plurality does *not* limit the possibility of race-based remedial action to cases where there has been some showing of prior discrimination by the governmental unit itself. The fourth circuit had imposed such a limit, relying on *Wygant*; Justice O'Connor explained that a statement in *Wygant* suggesting such a limit was made in the context of a remedial scheme involving a governmental unit's own work force.

Note also that the majority of the Court is *unwilling to defer to state and local governments* concerning findings of and remedies for racial discrimination, as it did in *Fullilove* with respect to congressional action. As Justice O'Connor observes (in the three-person plurality portion of her opinion), "Section 1 of the Fourteenth Amendment [which contains the Equal Protection clause] is an explicit *constraint* on state power," rather than a source of additional power for state and local governments.[7] The plurality would give Congress more latitude because of its specific power to enforce the Fourteenth Amendment.[8]

The Court next examined whether Richmond's plan was *narrowly tailored* to remedy the effects of prior racial discrimination (part two of the two-part strict scrutiny test) and concluded emphatically that it was not. Indeed, said Justice O'Connor, "[a]s noted by the court below, it is almost impossible to assess whether the Richmond Plan is narrowly tailored to remedy past discrimination since it is not linked to identified discrimination in any way."[9]

In looking at the narrowness of Richmond's plan, the Court made several telling observations concerning what the city might have done or should have done. First, race-neutral means of achieving the city's objectives were not considered by Richmond. "[T]here does not appear to have been any consideration of the use of race-neutral means to increase minority business participation in city contracting. See *United States v. Paradise*, 480 U. S. 149, 171 (1987) ('In determining whether race-conscious remedies are appropriate, we look to several factors, including the efficacy of alternative remedies')."[10]

Second, the city did not justify its 30 percent standard. "[T]he 30% 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. [citation omitted]"[11]

Third, the plan gave a preference to any minority firm from any of six minority groups that bid on city projects, regardless of any past history of discrimination suffered by members of that group in the Richmond construction industry. "If a 30% set-aside was 'narrowly tailored' to compensate black contractors for past discrimination, one may legitimately ask why they are forced to share this 'remedial relief' with an Aleut citizen who moves to Richmond tomorrow? The gross overinclusiveness of Richmond's racial preference strongly impugns the city's claim of remedial motivation. [citations omitted]"[12]

Implications of *Croson*

The Supreme Court's decision in *Croson* will obviously have a great impact on local programs designed to assist minority contractors. These effects will vary, however, depending on the type of

program under consideration. At least three sorts of assistance must be examined in the light of *Croson*: minority set-aside programs, race-neutral programs of assistance for small or disadvantaged businesses, and programs such as the one mandated by G.S. 143-128 that require the setting of minority participation goals but do not enact rigid quotas.

Moreover, any program being considered by North Carolina local governments must also be examined in light of this state's competitive bidding requirements for purchase and construction or repair contracts. With the exception of the new provisions in G.S. 143-128, and the authorization with respect to federally funded contracts in G.S. 160A-17.1 (both discussed below), North Carolina's general law does not include minority participation as a factor that may be considered in awarding purchase and construction or repair contracts. State enabling legislation may be needed to allow for certain types of programs, even if they would otherwise be permitted under *Croson*.

MBE Set-Aside Programs

Generally. Are MBE set-aside programs in public contracting still possible, as a practical matter, in the wake of *Croson*? Note that the Court does not completely rule out such programs. Instead, it establishes a very difficult test that set-aside programs must pass and finds that the city of Richmond did not provide the type of evidence needed to pass the test.

Theoretically, a city or county may be able to develop a strong enough factual basis of past racial discrimination, and to draft an MBE plan that is sufficiently narrowly tailored, to meet the Court's requirements. The key task is to amass sufficient detailed information about past race discrimination to prove that remedial action is needed and that a carefully designed set-aside program is a necessary part of that remedy.

> Nothing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction. If the city of Richmond had evidence before it that nonminority contractors were systematically excluding minority businesses from subcontracting opportunities it could take action to end the discriminatory exclusion. Where 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. [citations omitted] Under such circumstances, the city could act to dismantle the closed business system by taking appropriate measures against those who discriminate on the basis of race or other illegitimate criteria. [citation omitted] *In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion.*
>
> Nor is local government powerless to deal with individual instances of racially motivated refusals to employ minority contractors. Where such discrimination occurs, a city would be justified in penalizing the discriminator and providing appropriate relief to the victim of such discrimination. [citation omitted] *Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified.* [citation omitted; four-person plurality opinion by Justice O'Connor; emphasis added][13]

As a practical matter, however, reliable evidence of discrimination, in the detail required by the Court, will be very difficult to obtain. While anecdotes may abound, actual admissions of discrimination will be rare and conclusive statistical evidence may not exist. Ironically, a local government that wants to rely on its own past discrimination to justify a set-aside program (as noted earlier, it is not required to do so) faces a "catch-22": if it admits that it has discriminated in the past in order to justify its remedial program, it may be opening itself to other legal challenges based on that past discrimination, particularly if the discrimination occurred in the recent past.

Set-aside programs established under federal law. As noted earlier, Justice O'Connor (writing in this instance for a three-person plurality) draws a distinction between minority set-aside programs established by a state or local government and those created by Congress. Because Congress has specific constitutional authority to enforce the equal protection clause and other parts of the Fourteenth Amendment,[14] two-thirds of the members of the Court (the plurality and presumably the dissenters) seem to be willing to uphold congressional use of set-asides to achieve goals relating to racial equality, even if the plurality disagrees with Congress's decision. And, as *Fullilove* shows, such congressionally required set-

asides can exist for *local government* projects, at least to the extent that federal funds are involved.

North Carolina law presently allows cities and counties to "[a]gree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies" for federally financed projects.[15] In light of the discussion above, local governments can safely assume that such programs remain constitutionally permissible, especially if they involve requirements similar to those upheld in *Fullilove*.

North Carolina local government set-aside programs. Minority contracting set-aside programs in North Carolina remain the exception rather than the rule. With the exception of the authorization just discussed for set-asides that are part of federally financed projects, programs requiring set-asides must be authorized by local act, as the general law does not include race as part of the standard used in awarding public contracts.[16] And, those communities with set-aside or other minority participation programs that are authorized by local legislation must of course reassess those programs in the light of *Croson*'s requirements.

Race-Neutral Assistance Programs

Race-neutral efforts to assist small, new, or economically disadvantaged businesses are not affected by the *Croson* decision, because by definition they do not discriminate on the basis of race. Indeed, both Justice O'Connor and Justice Scalia discuss favorably the use of such programs.

> Even in the absence of evidence of discrimination, the city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past societal discrimination or neglect. [four-person plurality opinion by Justice O'Connor][17]

. . . . . .

> A State can, of course, act 'to undo the effects of past discrimination' in many permissible ways that do not involve classification by race. In the particular field of state contracting, for example, it may adopt a preference for small businesses, or even for new businesses—which would make it easier for those previously excluded by discrimination to enter the field. Such programs may well have racially disproportionate impact, but they are not based on race. [opinion of Justice Scalia, concurring in the judgment][18]

Race-neutral preference programs will need to be authorized by the legislature for North Carolina local governments to make use of them. The fact that a business is small, new, or disadvantaged is not a factor that can be taken into account in awarding public contracts under G.S. 143-129 or G.S. 143-131. If such legislative authorization is obtained, however, it may be possible to use race-neutral programs that focus on aiding businesses with characteristics that are common to many minority enterprises as an indirect way of increasing minority participation in public contracting. A race-neutral program might, but need not, include a set-aside requirement.

Minority Participation Goals: *Croson* and G.S. 143-128

The goals program requirements. Important amendments recently made to G.S. 143-128, North Carolina's "separate specifications" statute, require the establishment of "verifiable percentage goals" for minority business participation in contracts for the erection, construction, alteration, or repair of public buildings, where the cost of the work exceeds $100,000.[19] (The goals are a percentage of the total value of work for which a contract or contracts are awarded.) These amendments accompanied changes to the statute to allow local governments and state agencies to use single-prime contracting (where contractors bid on performing all the work required by the project for a specified price) rather than multiple-prime contracting (where separate bids are solicited for various branches of work) in certain instances.

Under the new provisions, cities, counties, and other local public bodies covered by G.S. 143-128 must adopt appropriate minority business participation goals for *all* contracts covered by the statute, whether single- or multi-prime. (However, contracts awarded pursuant to the *multi-prime system* from June 28—the date the amendments were ratified—through December 31, 1989, are not invalidated even if the local governmental unit has not yet adopted goals.[20]) The statute itself sets the goal at 10 percent for state contracting.

These verifiable percentage goals for participation by minority businesses must be adopted after notice

and a public hearing. Governmental units and contractors *are not* required to make awards to, or purchases from, any bidder other than the lowest responsible bidder or bidders in order to meet minority participation goals, and contracts are to be awarded without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. A *good faith effort* to attain the participation goals *is* required, however.

The new provisions define a minority business as a business with at least 51 percent ownership by minority persons, which is managed by one or more of its minority owners. "Minority persons" include blacks, Hispanics, Asian Americans, American Indians, Alaskan natives, and women.

To have a "verifiable goal" under the multiple contract system, the authority awarding the contracts must adopt written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in these contracts. For purposes of the single-prime contract system, having a "verifiable goal" means that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in the contract. The contractor must provide the authority with written documentation that the required actions have been taken.

Are G.S. 143-128 goals programs subject to strict scrutiny under *Croson*? The first question that must be asked about these provisions, in the light of *Croson*, is whether the goals programs required by the statute amount to the sort of race-based system for making contract awards that triggers the "strict scrutiny" standard. As noted earlier, if strict scrutiny is the test, securing a passing grade for a goals program will be quite difficult. Detailed evidence of past discrimination in a particular community will need to be amassed, and it will have to be shown that the program is a narrowly tailored remedy for that discrimination.

It should be noted that the act amending G.S. 143-128 contains no findings or other evidence concerning past discrimination against particular minorities. Indeed, the definition of "minority person" used in the goals program provisions is the very sort of broadly inclusive listing of categories of persons, without showings of past discrimination, that Justice O'Connor condemns. It will therefore be up to individual local governments to develop the evidence needed to justify their goals programs, should strict scrutiny be applied to programs adopted under the statute.

On the other hand, it may be determined that a goals program is a benign attempt to increase minority participation in governmental contracting without discriminating on the basis of race, so that the strict scrutiny test under the equal protection clause is not implicated. If this is the case, then the program should be upheld if a rational basis for the program exists. Showing such a rational basis is generally easy for most governmental programs, as the courts are reluctant to "second-guess" local lawmakers when conducting a rational basis inquiry under the federal Constitution.

A persuasive argument can be made that the goals programs that the amendments to G.S. 143-128 envision are far-removed from the sort of race-based discrimination in public contracting that *Croson* condemns. The guidelines that are to be adopted under the statute are not required to provide for racially based set-asides. Rather, what seems to be contemplated are good faith general efforts by local governments and contractors to recruit and select minorities, consistent with the statutory standard that the award be made to the "lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract."[21] Such guidelines might include steps such as advertising contracting opportunities widely, including minority firms on bidders' lists, and holding meetings with minority businesses to explain bidding procedures. In effect, the "verifiable percentage goal" that the local government adopts is a prediction of the level of minority participation that such general efforts are expected to yield.

The argument for this interpretation of the goals program requirements is strengthened by the provisions of new G.S. 143-128(d). That subsection specifies, as discussed earlier, that public contracts are to be awarded under G.S. 143-128 without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. It also provides that nothing in the statute is to be construed to require

awards to or purchases from minority firms that do not submit the lowest responsible bid or bids.

Keeping contract award decisions "race-neutral." Assuming that the latter interpretation is the correct one, at least two cautions are in order. First, local governments should make sure that their written guidelines contain nothing that would lead a court to believe that the local government is allowing racial considerations to enter into its actual contract award decision. Even if the statutory scheme is relatively benign, a particular program adopted under the statute could be subjected to strict scrutiny if race were in some way made a part of the award criteria. The adopted goal is simply that; it is not a standard or quota that must be achieved before a contract will be awarded.

Second, the guidelines that local governments adopt for contractors to follow should make clear what sorts of good faith efforts are being required, possibly even suggesting a minimum standard for the amount of effort that must be shown. Contractors are accustomed to certainty in the specifications they receive from local governments and will be less likely to complain about a program if they know clearly what is expected of them.

If the local government chooses to disqualify a bidder for failure to make a good faith effort to recruit and select minority businesses, it should make very clear that the disqualification is *not* for failure to use minorities, but for failure to determine if qualified minorities are available. Authority to disqualify a bidder for this reason can be implied from G.S. 143-128(c): If a bidder fails to take the good faith actions specified in the written guidelines, guidelines that the local government has adopted in response to a statutory directive, that bidder has not met a statutorily required part of the specifications for the project.

Following these cautions will not guarantee that a local goals program is not subjected to a challenge that it is racially discriminatory. However, if local governments familiarize themselves with the *Croson* decision, and are careful in how they structure their guidelines, they should be able to obey the statutory directive in G.S. 143-128 without running an undue risk of an equal protection-based attack on their goals programs.

Notes

1. Hereinafter the General Statutes will be cited as G.S.
2. 476 U.S. at 276.
3. 109 S. Ct. at 721.
4. *Id.* at 735.
5. *Id.* at 724.
6. *Id.* at 720.
7. *Id.* at 719.
8. U.S. CONST. amend. XIV, § 5.
9. 109 S. Ct. at 728.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* at 729.
14. U.S. CONST. amend. XIV, § 5.
15. G.S. 160A-17.1.
16. G.S. 143-129 and -131.
17. 109 S. Ct. at 729.
18. *Id.* at 738.
19. 1989 N.C. Sess. Laws 480.
20. 1989 N.C. Sess. Laws 770, sec. 74.17.
21. G.S. 143-129.

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