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MBELDEF
Minority Business Enterprise Legal Defense
and Education Fund, Inc.
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Testimony of Anthony W. Robinson, President
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Before the United States Senate Committee
on Small Business and Entrepreneurship

Washington, DC
May 22, 2007

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Good morning Mr. Chairman and members of the Committee on Small Business and Entrepreneurship. My name is Anthony W. Robinson and I'm president of the Minority Business Legal Defense and Educational Fund, affectionately referred to as MBELDEF. MBELDEF was founded and established in 1980 by former Maryland Congressman Parren J. Mitchell to act as a national advocate and legal representative for the minority business community. The organization has monitored barriers to minority business formation and development. We serve as a national advocate and legal representative for minority business enterprises (MBEs) by promoting policies affecting equitable and full participation of minority enterprises in the mainstream marketplace. We work with businesses in every sector of the American economy and we work with businesses in every corner of the country. We seek to advocate on behalf of firm owners from all disadvantaged minority groups. We attempt to provide non-partisan opinions on matters affecting minority firms and small businesses in general. We appreciate the committee providing us this opportunity to come before you to represent the tens of thousands minority and small entrepreneurs who continue to rely on the federal marketplace as their primary source of opportunity.

Since the federal government's first efforts to level the playing field on behalf of the minority business community in the 1970's there has been substantial progress. I should note that assisting minority businesses has always been a bi-partisan effort. In fact in the 1970's President Nixon was instrumental in promoting equal opportunity for minority businesses. And Assistant Secretary of Labor Arthur Fletcher worked closely with Senator Ed Brookes and Congressman Mitchell to pass the earliest minority business legislation. Minority firms have grown quantitatively and qualitatively. According to a recent study prepared by James H. Lowry & Assoc. sponsored by the Kauffman foundation the growth among MBEs has been dramatic in actual number of employees and revenues. In fact, in some measure their growth has outpaced the growth among all firms.[1] However, historically (and it remains a fact today) minority firms account for a disproportionately smaller share of overall business opportunities in many industry segments than do non-minority firms. According to the Milkin Institute, minority groups represent 26.1% of the population, but own only 11.6% of the nation's businesses.[2] Minority businesses receive only 6% of total business gross receipts[3] and employ only 3% of the nation's civilian labor

[1] The Boston Consulting Group, " The Agenda for Minority Business Development", p.4 (June,2005)
[2] Michael Harrington and Glenn Yago, "Mainstreaming Minority Business: Financing Domestic Emerging Markets," Milkin Institute, p.5. (1999) citing SBA Office of Advocacy, 1992 Economic Census
[3] Minority Business Development Agency, "The New Realities for Minority Business", p. 3 (1999), quoting data provided at the 1997 NMSDC annual convention .

force.[4] Perhaps more startling is the fact that in "19 industries with the largest representation of minority subcontractors, only 3.5% of supply dollars are estimated to have gone to minority businesses."[5]

The plight of the minority entrepreneur is brought into stark relief when he is faced with having to survive in the marketplace without the various minority contracting programs mandated by federal state and local laws in jurisdictions across the nation. An analysis performed by the Urban Institute compared jurisdictions where race-conscious programs were in place with those without such programs. Disparity was markedly greater in jurisdictions where there were no goals program in place.[6] Moreover, it is clear that ending or curtailing minority contracting programs causes real and immediate harm. This was confirmed in another study conducted by the former chair of the Dartmouth College Department of Economics D. G. Blanchflower and economist and disparity study expert, Jon Wainwright.[7]

After the Supreme Court decision in Croson v. City Of Richmond (1989) and Adarand Constructors v. Pena (1995), many state and local governments eliminated programs designed to provide opportunities to MBEs. Blanchflower Wainwright found that "Although Federal highway construction aid dollars increased from $14.7 billion in 1998 to $24.3 billion in 2002, and although *overall* disadvantaged business goals remained virtually constant during this time, the proportion of federal aid dollars actually awarded to such businesses declined almost 30% between 1998 and 2002."[8]

A recent study in the state of California analyzing the impact of proposition 209, which outlawed affirmative action, observed, " during the nine years before passage of proposition 209, the percentage of awards to MBEs was 16.0 percent. However that percentage significantly fell by more than half, to 7.9 percent for the nine years after [it's] passage. Of particular interest was FY 2002. This year had the highest amount of money awarded by CALTRANS, yet it was the year that MBEs received the lowest proportion of awards.[9] (Discrimination Research Center, "Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises", 2006).

What are the reasons for these disparities especially in the absence of a policy mandate? The Lowry study cited several reasons after concluding, "The gap that exists has not in any way been caused by a lack of effort on the part of minority entrepreneurs." The first reason cited by the Lowry study was that "discriminatory conditions that previously existed were deep and pervasive and have not been fully reversed." [10]

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[4] Ibid. quoting "estimate derived from 1992 and 1997 statistics quoted by Office of Advocacy, U.S. Small Business Administration, from data provided by U.S. Department of Commerce, Bureau of the Census.
[5] Ibid, quoting the Center for Advanced Purchasing Studies (1997).
[6] Enchautagui, et. al., "Do Minority-Owned Businesses Get a Fair Share of Government Contracts," Urban Institute, pp. 22-24, 1997.
[7] Blanchflower, D.G., & Wainwright, J., National Bureau of Economic Research (NBER) Working Paper, *An Analysis of the Impact of Affirmative Action Programs on Self-Employment in the Construction Industry*. Cambridge, MA: (2005, November).
[8] *Ibid.*
[9] Discrimination Research Center, "Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises," 2006.
[10] Boston Consulting Group, " The Agenda for Minority Business Development", (June,2005).

I would like to give you some examples of real business owners who have confronted discrimination. It is critical that the Committee understand how very difficult it is for these businesspersons to come forward and share their experiences. By coming forward they are putting their businesses in jeopardy of being blackballed and frozen out of future business opportunities with larger companies that dominate their market or industry. I hope that you will all carefully consider the sort of courage and commitment to justice required to take those kinds of risks. I will submit letters and e-mails providing details of these entrepreneurs' stories for the record, but in the interest of time I will provide only a short synopsis of the difficulties they have experienced. And Mr. Chairman, I would like to ask permission to submit a number of supporting documents to for the record after the hearing.

- **Maurice E. Coates, Jr.** An African-American mechanical contractor has experienced disparate treatment relative to the cost of materials from suppliers. Mr. Coates solicited a quote for HVAC equipment from his supplier which he then submitted with his bid. The supplier, a majority company, mistakenly faxed to Mr. Coates a lower quote supplied to his majority competitor. When Mr. Coates called the supplier asking for the same price quote provided his competitor they replied that they reserved the right to provide better pricing to their better customers. With all else being equal relative to labor Mr. Coates can never be competitive if materials cost are not the same.

- **John McDonald** is an African-American expert in the world of institutional real estate acquisition. He had a contract with Domino's Pizza to acquire and build several stores. After being the only African-American to attend a Domino's convention where his work was actually featured, he received a call asking him to agree to unreasonable and unheard of amendments to his contract with Domino's. When he refused the Domino's representative told him "I don't like doing business with you people anyway" and threatened to ruin his business. In the end the ensuing litigation bankrupted Mr. McDonald. He took his case all the way to the Supreme Court where the Court ruled against Mr. McDonald saying that only his corporation, not Mr. McDonald personally, had the right to sue for race discrimination in this instance. He never received a decision on the merits of his discrimination claim.

- **Soo San Choi, Choi Enterprises, Inc.** An Asian-American nuclear chemist and most recently for the past twenty years a general contractor. Mr. Choi intended to use Fay Corp., a majority owned specialty contractor, as a subcontractor on an Army Corp of Engineer's project – Charleroi Locks and Dam in Western Pennsylvania. The majority company desired to use Mr. Choi as a straw man for the SBA 8(a) contract and then become the de facto prime contractor. The minority firm complained to SBA and the Corp to no avail. Mr. Choi would receive $125,000 on a contract valued in excess of $12 million. Through various machinations and smaller majority owned smaller contractors which had worked with Fay in the past, the 5 foot 110 pound 82 year old Choi was coerced and threatened with financial ruin to complete the contract with Fay and his cohorts. Fay became the indemnifier on Choi's surety bond and attempted to include previously purchased materials to manipulate contract costs and assigned Fay employees to Choi's payroll. Mr. Choi has yet to recover financially and his physical health remains dire.

- **C. Earl Peek, Managing Partner of Diamond Ventures, LLC** is a young African-American entrepreneur. He is exactly the type of young businessman who should be leading the growth of minority businesses. Instead, Mr. Peek is embroiled in a race discrimination suit against the Small Business Administration. According to Mr. Peek, the SBA and the Small Business Investment Company have consistently discriminated against him (and others) on the basis of race. Indeed statistics show that 95% of SBIC's investment dollars went to white owned and managed firms between 2000 and 2004 as the result of an old boy network that is tolerated by SBA and SBIC. The SBA Inspector General identified several instances of bias and ill treatment of Mr. Peeks firm Diamond Ventures. Moreover Mr. Peek has also confronted instances of racial bias in attempting to obtain capital from private sources – including instances in which his minority management team was rejected while white teams with similar qualifications obtained investments.

- **John Layman, JRL Enterprises, Inc.** is a minority contractor who has experienced a common problem among minority businesses. It relates to corporations falsifying the dollar amounts reported to the federal government and others on the amount of work performed by MBE/DBE firms. The prime contractor, Mr. Layman's customer, claimed that he had performed $3.3 million on a project that he had actually performed less than $900,000. Mr. Layman learned that this occurs often because most transit authorities do not verify figures related to work actually performed by MBE/DBE firms. The customer later retaliated against Mr. Layman for reporting the exaggeration by excluding his firm on a major contract that had initially included his firm on the original proposal.

- **Charles Baker, President, MCB Lighting & Electrical, Inc**. An 8(a) and Service Disabled Veteran Firm has been acknowledged as a leader by the Department of Defense (DOD)in saving the tax payer money and a Federal Energy & Water Management Award. As the retired Chief of Facilities and ex-electrical Superintendent of Andrews Air Force Base responsible for all maintenance and electrical systems, he waited 2 years after he retired in accordance with ethical rules. Mr. Baker went through the formal processes including the OSDBU Offices. He had a local squadron commander take him to the contracting commander's office to vouch for his work using alternate procurement methods because local contracting office refused to give him a capability briefing for over 4 years despite multiple requests. After the last request he received feedback that the request had been sent to a former subordinate (electrical foreman) who had stated his company was "not qualified". This individual knew nothing of his capability or company experiences. He did know his race and the race of the incumbent, who was white, working illegally on an 8(a) contract. Additionally, the same individual directed his personnel not to order electrical products from his company even though they have delivered critical items timely in the past and white vendors have caused the organization money due to waiting for deliveries.

- **Fernando Galaviz, Centech Group, Inc.,** This Hispanic owned company teamed with an Asian owned company, both with excellent performance evaluations supporting the Air Force Base in Los Angeles California as subcontractors to Northrop-Grumman Corp. Centech's best business practices project management strategies were a major contributor to Northrop Grumman winning the contract. As a result the prime awarded 48 of the

approximately 130 slots to Centech for their contribution in obtaining the award. After the first performance period (nine months) on a five year contract and for no credible reason the prime removed minority owned firms. Appeals to senior executives have gone unheeded.

- **Paul Curtis,** Curtoom Companies, Inc., a veteran-owned minority (M/WBE) business located in South Florida, entered into agreement with HUD developer Auburn Development, Inc. (Developer) to perform as a team member on a HUD assisted public housing project in Delray Beach, Florida. The RFP called for Proposers team to act as a Partner to the Delray Beach Housing Authority (Authority), in the public housing project. The RFP required the Proposers to identify M/WBE participant firms and their percent of involvement. The Developer failed to provide the details of the M/WBE involvement, as required in the advertisement, but did identify Curtoom, as M/WBE participant. After bids were received, the M/WBE requirements became a matter of controversy. The Authority decided to rescind the M/WBE plan, included in the advertised RFP. The Developer later stated that it would not utilize the services of the M/WBE firm it had identified in its proposal, Curtoom. The RFP required proposed changes to key participants be submitted to the Authority, for approval in advance, with justification. According to the M/WBE firm's officials, DBHA officials informed them, "...any part of the RFP was subject to negotiation, including but not limited to, the M/WBE participation requirement." The Authority awarded the contract to the developer by the Authority in March 2007.

Mr. Chairman, members of the Committee, these examples are only the tip of the iceberg. And for every one of these minority entrepreneurs who is willing to come forward to tell their story, there are many, many more that cannot for fear of losing their business and being unable to support their families. We must work together to ensure that these businesses and other like them get the support they need. Thank you.