



Written by [Veronika Kyrylenko](#) on May 28, 2021

Federal Court Rules Biden's Restaurant COVID Relief Fund Is "Racial Gerrymandering"

On Thursday, a federal appeals court issued an [injunction](#) against prioritizing COVID relief to restaurants based on the establishment owners' race and sex, finding that it was unconstitutionally discriminatory. The ruling involved the [Restaurant Revitalization Fund](#), a \$28.6 billion program in the COVID [relief law](#) President Biden signed in March. The law requires the Small Business Administration to give priority to restaurants owned by certain minorities and women, while bumping white males and other minorities to the back of the line.



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The court has decided that showing favoritism to small restaurants at least "51 percent owned and controlled by women, veterans, or the 'socially and economically disadvantaged'" is a violation of the 14th Constitutional Amendment equal-protection clause. According to the Constitution, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The ruling was in response to a lawsuit brought by the Wisconsin Institute for Law & Liberty on behalf of Antonio Vitolo, a white Tennessee restaurant owner, whose application for relief was not being processed until minority and female applications were fulfilled. After a trial judge denied his request for an injunction, he appealed to the Sixth Circuit Court of Appeals, which granted him an injunction in a 2-to-1 vote.

Judge Amul Thapar's opinion in [Vitolo v. Guzman](#) begins with a simple and straightforward description of the case and holding: "This case is about whether the government can allocate limited coronavirus relief funds based on the race and sex of the applicants. We hold that it cannot."

"The stark realities of the Small Business Administration's racial gerrymandering are inescapable," Judge Thapar states, slamming the "scattershot" manner in which the Biden administration decided which races to prioritize. For example, "black, Hispanic, or Native American" applicants are considered disadvantaged. "Subcontinent Asian Americans" are only presumed disadvantaged if they "have origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the



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Maldives Islands, or Nepal.”

But as the court noted, the government pointed to “little evidence of past intentional discrimination against the many groups to whom it grants preferences. Indeed, the schedule of racial preferences detailed in the government’s regulation — preferences for Pakistanis but not Afghans; Japanese but not Iraqis; Hispanics but not Middle Easterners — is not supported by any record evidence at all.”

The result was quite arbitrary, said the court: “Imagine two childhood friends — one Indian, one Afghan. Both own restaurants, and both have suffered devastating losses during the pandemic. If both apply to the Restaurant Revitalization Fund, the Indian applicant will presumptively receive priority consideration over his Afghan friend. Why? Because of his ethnic heritage. It is indeed ‘a sordid business’ to divide ‘us up by race.’”

Similarly, the government failed to justify handing out relief to women rather than men. Although the government offered “a few examples of statistical disparities between women-owned and male-owned businesses,” these statistics did “nothing to support an inference of intentional discrimination” against women that would justify giving them a preference, said the court.

Under Sixth Circuit rulings, women can be given a preference only if the government recently engaged in “intentional discrimination” against them. For example, an affirmative-action program for women was invalid because the government had not discriminated against women in the past 14 years.

To be [constitutional](#), any preference also has to be needed to remedy the [present effects](#) of past discrimination. But that’s not true in the restaurant industry, which isn’t shaped or pervaded by discrimination. It is not disproportionately male or white compared to most industries, so even if affirmative action were somehow justified in other industries, it wouldn’t be in the restaurant industry.

Recently, a federal judge in Texas [issued](#) a preliminary ruling finding that the Biden administration’s restaurant-relief fund discriminated against a white male restaurateur Philip Greer who brought a lawsuit, saying Greer is “experiencing race and sex discrimination at the hand of government officials.”

The Small Business Association isn’t the only government department opening the federal wallet wider for certain races. Biden’s American Rescue Plan [provides](#) billions of dollars of debt relief to “socially disadvantaged” farmers and ranchers, in the name of remedying “systemic racism.” A group of white farmers has already [sued](#) the Farm Service Agency and secretary of agriculture over this, setting up another constitutional showdown that, based on Thursday’s ruling in Ohio, they will likely win.

One of the farmers, a disabled man with two prosthetic legs, called the American Rescue Plan “out-and-out racist.”

“Everything that we have all learned growing up is racism is wrong, and now, all of a sudden, the federal government seems to think that racism is acceptable in certain ways. And it should never be acceptable,” he [stated](#).



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