Investigating Supreme Court Impact on Federal Agency Efficiency in Procurement and Contracting

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Abstract

In this paper, I investigate the possible impact of judicial decisions on bureaucratic behavior, in the case of public procurement and contracting, which, as one of the three major categories of affirmative action programs in the U.S., remains largely unexplored in the political science literature. *Adarand Constructors, Inc. v. Pena* (1995) mandates that federal agencies fully explore race-neutral policy alternatives, so as to ensure that the race-conscious portions are narrowly-tailored. I search for evidence that the proportions of dollars federal bureaucracy spends on small minority contractors decrease in response to the *Adarand* decision. My findings suggest that the Supreme Court ideologies and decisions have very limited, if any, impact on agency decision-making. I propose several conditions under which the Supreme Court's race-neutral jurisprudence may lead to more efficient procurement and contracting programs.

Keywords: Supreme Court; judicial impact; principal-agent; *Adarand*; affirmative action

With the unprecedented expansion of the federal government and government programs, the bureaucracy has come to be recognized as a fourth branch in the U.S. political system, generally functioning as independent policy implementation bodies, with high levels of policy expertise. Nevertheless, studies have shown that administrative decision-making and policy outputs may still shift more or less in response to changing political climate (Wood 1988, 1990). In balancing between equity and efficiency, agency priorities and performance are at least partially conditioned by the partisan composition of the overseeing political institutions, especially in the cases of environmental, fiscal, and race-based policies (Winters 1976; Barrilleaux and Miller 1988; Hird 1994; Dilger 1998). Agency decisions of a redistributive nature, for example, are likely to receive closer examination, when the political principals are from the Democratic Party.

In a political system characterized by checks and balances among government branches, the U.S. Supreme Court's authority in constitutional interpretation and its implementation has oftentimes been dependent upon other pivotal political actors. Strategic presidents may lead an electorally unaccountable Court to assume constitutional leadership in order to avoid public pressure (Whittington 2007). Congress and state legislatures may defer to the Court's constitutional decisions, in order to reduce the probability of bill failure followed by judicial review (Glick 1994, 1970; Vanberg 2001; Pickerill 2004; Stiles and Bowen 2007). Nonetheless, judicial review provides no guarantee in the deterrence of legislative resistance when public and elite opinions on the policy issues at hand are deeply divided (Tushnet 2000; Rosenberg 2008).

In this paper, I attempt to examine judicial impact on bureaucratic actions concerning agency achievement of annual small business enterprise procurement and contracting goals. I search for evidence of immediate agency response to the Supreme Court's decision in Adarand Constructors v. Pena (1995). My findings suggest the absence of such immediate Court-induced

changes in the way federal bureaucracies award small minority and non-minority businesses. Moreover, I find the results largely consistent with the principal-agent theoretical predictions, which describes agency actions as highly responsive, instead, to their political principals in Congress and the Presidency. I conclude that the Supreme Court has been institutionally constrained in the policy implementation process, with rather limited, if any, immediate influence upon race-neutral efficiency in the federal procurement and contracting programs. Successful and consistent execution of Court decisions depends upon multiple political actors, intergovernmental relations, and policy reality.

Minority Business Enterprises and the *Adarand* Decision

Affirmative action programs have been part of an international endeavor to redress past discrimination against historically oppressed groups in terms of race, gender, sexual orientation, etc. In America, policies of this kind began to be widely adopted after the passage of the Civil Rights Act of 1964, primarily in three public spheres—public college admissions process, public services hiring and promotion process, and public procurement and contracting activities. Scholarly works abound in the investigation of the first two processes, and the actual execution of landmark Supreme Court decisions (Horowitz 1980; Jacobson 1983; Crowley 1985; Davila and Bohara 1994; Munroe 1995; Meier et al. 2005; Rose 2005), while public procurement and contracting remains a field rarely explored.

The U.S. federal government procures hundreds of billions worth of goods and services each year. Since the creation of the Small Business Administration in 1953 and the passage of Small Business Investment Act in 1958, federal agencies have been encouraged to contract with small

as well as large firms. The Small Business Administration works with other federal agencies in assessing and determining the small business procurement and contracting goals for the following year, in the hope of ensuring fair competition and maximizing small firms' participation in the provision of products and services to the federal government. Up to 2011, bureaucracies are obligated to reach the minimum statutory goals—23% of procurement and contracting dollars for small businesses in general, 5% for small minority-owned firms in particular.

Since the 1970s, the Supreme Court jurisprudence of affirmative action programs has been shifting from being race-conscious to a focus on race-neutrality. The Court has delivered a series of opinions, in the spheres of public education[1] and public employment[2], which make all racial classifications subject to a strict scrutiny test. On the grounds of reverse discrimination, the Supreme Court decides that preferential race-based policies are in violation of the Equal Protection Clause of the Fourteenth Constitutional Amendment, unless in the presence of sufficient evidence suggesting the existence of a compelling state interest and narrowly-tailored plans.

The race-neutral constitutional requirement has been extended to the sphere of public procurement and contracting as well. The Supreme Court decision in *City of Richmond v. J. A. Croson Co*. (1989), which declared the unconstitutionality of non-narrowly-tailored racial quotas in municipal government contracting programs, was successfully applied to the case of federal government, in *Adarand Constructors v. Pena* (1995). This case involves the small business program in the Department of Transportation, which was sued by a white construction company

[1] E.g. *Regents of the University of California v. Bakke* (1978); *Gratz v. Bollinger* (2003); *Grutter v. Bollinger* (2003)
[2] E.g. *Wygant v. Jackson Board of Education* (1986); *Ricci v. DeStefano* (2009)

for selecting winning bidders solely on the basis of race. The *Adarand* decision requires all federal agencies to explore race-neutral alternatives before implementing any race-based plans[3].

There was an approximately 30% increase in the number of small minority businesses between 1992 and 1997, with a 60% growth in general revenue[4]. Together with small non-minority firms, they have begun to be acknowledged as playing an equally important role in the national economy as large enterprises. Nevertheless, numerous studies have shown the persistence of disparities between minority and non-minority businesses (James and Clark 1987; Waldinger and Bailey 1991; Bates 1984, 2001, 2006; Blanchflower et al. 2003), and the limitations of government procurement programs in facilitating the development of firms owned by historically disadvantaged groups (Bates 1981, 1995, 2009; Black 1983; Myers 1996, 2012). The *Adarand* decision and the possibility of subsequent judicial review of race-conscious government goals may have posed further obstacles to the participation of minority firms in public procurement and contracting.

The *Adarand* decision directly applies to the small business program of the Department of Transportation (DOT), which remains so far the only federal bureaucracy that is required to establish both the race-conscious and the race-neutral portions of their annual small business contracting goals (49 Code of Federal Regulations Part 26), given the degree of historical discrimination and disparities in the construction business. Since 1995, the three leading organizations of DOT—Federal Transit Agency, Federal Aviation Administration, and Federal Highway Administration—have begun reporting procurement and contracting goals containing both race-neutral and race-conscious portions (Myers 2009). In the meantime, the Adarand decision is also generally applicable to the other federal agencies. Although the other agencies do

[3] *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995)
[4] Survey of Business Owners, 2002, 2007, U.S. Census Bureau

not, and are not required to, have separate contracting goals for majority and minority races, I hypothesize that the percentages of dollars these agencies specifically awarded minority contractors still tended to decrease immediately after the *Adarand* decision in 1995, as agencies began to reassess the extent to which their awards of small minority businesses were reality-based and narrowly-tailored, and to try to minimize the probability of lawsuits and legal sanctions initiated by small white firms.

Previous Research on the Implementation of Judicial Decisions

As a judicial branch, the Supreme Court is not equipped with the power or the means of carrying out its decisions. There may be one thing for the Court to deliver important and transformative opinions, and another thing for the bureaucracy to devise rules and ways of executing Court decisions in everyday life. What almost invariably happens is a less-than-satisfactory translation of the Court's constitutional visions into actual agency actions. Legal and political science scholars have long been intrigued by this translation process, which is essential in the maintenance of real-world judicial impact and the preservation of Supreme Court legacies. In this section of the paper, I conduct a brief review of existing scholarship on bureaucratic implementation of Court decisions. I divide the literature into four categories, based on the different proposed determinants of the translation process.

Status Quo

The first factor that has been considered to likely affect the implementation of Court opinions has to do with the power of status quo. When there appears to be an identifiable gap between the policy environment envisioned by the Supreme Court and the reality in which agency decision-makers are expected to substantially alter long-existing policies, Court decisions may be ill-, or, mistranslated. Every case that the Supreme Court justices have decided on will have real-world implications, wide or limited, depending on the nature and saliency of the issues in question. Court decisions regarding matters of, for example, civil rights, same-sex marriage, and abortion, are often perceived as highly controversial, as they mandate considerable changes in a society with sometimes deeply-divided sets of opinions and distinctive value systems (Gallas 1971; McIntosh 1990; Wahlbeck 1997; Rosenberg 2008). The implementation process will very likely be challenged, when the Court's decisions prove to be highly disruptive of the status quo, i.e. the long-established political and social orders, and the institutionalized beliefs. In this case, even if a bureaucracy had fully intended to comply with the judicial decisions, it would probably take long before the decision-makers of the bureaucracy came to develop new rules and programs for replacement. The power of the status quo and the impact of the so-called "policy inertia" (Johnson and Canon 1984; Kaplan and Henderson 2005) may provide considerable challenges to a successful and smooth translation of judicial policies into agency actions. Whether due to the institutionalization of previous policy solutions, or because of the Supreme Court justices' lack of attention to the feasibility of their judicial remedies (Katzmann 1980), there is very likely to be a gap between the justices' constitutional visions and the reality that the bureaucracy has to deal with on a daily basis.

Independence of the Bureaucracy

The way Court opinions are interpreted and implemented in everyday agency operations may also be mediated by the internal characteristics of the bureaucracy itself. One body of literature draws insights from organizational theories. A federal agency, after all, is an independent political entity with its own unique organizational procedures, institutional norms, policy priorities and political agenda. To have an army of bureaucratic personnel follow strict orders of the Judiciary entails great coordination and effective leadership. As independent organizations, federal agencies cannot simply be assumed to loyal translators of judicial policies. The same can be said of bureaucracies in all other forms. State and local hospitals and schools had also responded, in various ways, at various speeds, to the Supreme Court's ruling in *Roe v. Wade* (1973) and *Brown v. Board of Education* (1954) (McKay 1956; Shapiro 1968; Baum 1976; Bond and Johnson 1982; Gould 2001; Rosenberg 2008).

Court decisions may not only disrupt policy status quo, but will also disrupt organizational status quo. To carry out judicial decisions oftentimes means to adjust substantial portions of the existing procedures and programs, or to direct enormous financial and human resources to the establishment of new rules and policies. An agency may have to undergo four stages in the process of implementing Court decisions. Consistent implementation requires, successful understanding and interpretation of the decisions in the first place, followed by evaluation of the decisions. The agency then has to gather a great amount of policy information in the hope of developing effective policy alternatives that are in line with judicial opinions. Last but not least, the agency decision-makers will have to select at least one out of the available new policy options as a form of compliance with the Judiciary (Johnson 1979). Generally speaking, organizational and managerial characteristics may come into play, as a bureaucracy sets out to

executive Court decisions. What's more, the execution process may very likely be influenced by the agency's degree of commitment to existing policy programs.

Another line of reasoning is focused on the impact of political principals upon agency behavior. Although the bureaucracy generally functions as an independent policy implementation body, its rulemaking, decision-making processes, and its policy outputs, may still fluctuate in response to the changing political climate (Wood 1988, 1990). Studies have shown that agency priorities and performance are at least partly conditioned by the party composition of the legislatures and the Presidency, especially when it comes to environmental, fiscal, and racial policies (Erikson 1971; Winters 1976; Barrilleaux and Miller 1988; Plotnick and Winters 1990; Hird 1994; Dilger 1998). Policy programs of a redistributive nature, for example, are prone to be receiving more attention and guidance, when the political principals of the bureaucracy are from the Democratic Party. Both Congress and the President have the means of influencing bureaucratic decision-making, through, respectively speaking, the control over annual agency budgets, and the appointment of political appointees at multiple levels in the bureaucracy. Therefore, federal agencies often react strategically to the two primary political principals, and adjust their goals and actions accordingly (Kiewiet and McCubbins 1991; Whitford 2005).

The Supreme Court does not tend to be perceived as another principal of the federal bureaucracy. As a result, the extent to which agencies oversee the process of implementing Court decisions in real life may be conditioned by partisanship and the general political environment (Patton 2007). The Judiciary's tool of judicial review alone perhaps does not work as quickly or effectively as the powerful leverages that Congress and the Presidency hold in terms of agency appropriations and personnel management.

Faced oftentimes with more than one political principal, the bureaucracy tends to base their actions on a cost-benefit estimation of the need to comply with the Supreme Court constitutional requirement, versus the need to follow the policy agendas of the other two political branches (Rodgers and Bullock 1972; Spriggs 1996, 1997). Previous works conclude that one of the primary mechanisms through which judicial opinions exert influence upon bureaucratic behavior is the signaling of legal sanctions for agency noncompliance (North 1990; Knight 1992). When the legislative branch and/or the executive branch do(es) not share generally consistent political ideologies with a majority of the Supreme Court justices, it is possible that an agency will respond to the former at the expense of noncompliance with judicial policies, for the benefits of adherence to political principals—tangible, financial benefits, etc.—exceed the benefits of compliance with the Court's requirement, which will most likely be a lack of litigation threats. As the chances of litigants, private or public, successfully getting the Supreme Court hear their cases remain relatively small, the bureaucracy may sometimes be willing to take the risk of possible lawsuits in the presence of more attractive political and economic incentives.

Judicial Policy Vagueness

Another possible determinant of judicial impact on agency actions concerns the way Court opinions are written. A bureaucracy, with hierarchies of control, expects clear and consistent objectives and directives in their effort to implement public policies (Baum 1981). Judicial opinion-writing is sometimes conducted in a vague manner, containing less straightforward policy demands, and more legal reasoning. As a result of judicial ambiguity, the likelihood of agency noncompliance or imperfect translation of Court decisions increases (Wasby 1970; Baum

1976; Johnson 1979). It has been hypothesized that the Supreme Court justices, similar to the legislators in Congress who use deliberate discretions in the legislation-drafting process (Huber and Shipan 2002), tend to use ambiguous language, in opinion-writing, in an attempt to reduce the chances of public resistance and defiance, especially when the opinions being delivered are highly controversial, and when the justices themselves are not absolutely certain about the policy outcomes (Baum 1981; Staton and Vanberg 2008). In reality, though, there will hardly be a "*Brown v. Board* II" for each other case that requires "all deliberate speed" to facilitate fast and effective implementation of Court decisions. The vagueness of judicial opinions may necessarily lead to less satisfactory execution by the federal agencies.

Interest Group Influence

Last but not least, the existence of, or lack thereof, influential interest groups may also play a role in bureaucratic implementation of judicial policies. McKay (1956) discussed the way local chapters of the NAACP had pressured public schools to comply with *Brown v. Board* (1954) and its constitutional requirement of racial desegregation. With the help of large membership-based interest groups, the Judiciary's lack of powers in policy implementation and oversight may be compensated to a certain extent. National groups, such as American Civil Liberties Union and Planned Parenthood Federation of America, sometimes serve as an intermediary between the Supreme Court and today's federal bureaucracy, in terms of facilitating the implementation process in everyday life.

Previous literature on the execution of contemporary judicial racial policies had predominantly examined landmark affirmative action cases such as *Regents of the University of California v. Bakke* (1978), while the field of public procurement and contracting, which, as previously discussed, constitutes an important category of federal government annual expenditures, remains largely unexplored. This paper not only aims at identifying the existing gap in the judicial impact literature, but also attempts to investigate the possible reasons for the lack of judicial influence on the bureaucratic implementation process. In the next section, I present a more detailed description of my data and the statistical results.

Modeling Judicial Impact on Agency Procurement and Contracting Goaling

To test the impact of the Court and its *Adarand Constructors v. Pena* (1995) decision, I collect data from the Federal Procurement Data System database, maintained by the U.S. General Services Administration. This online database provides free and full access to federal and state government procurement and contracting activities, including information about acquisition amounts, contract amounts by federal agencies and states, and winning bidders. Its federal procurement reports list detailed information about the different categories of agency procurement and contracting spending, from dollars mandated by legislative initiatives, to dollars awarded to small minority and non-minority business enterprises, which are used for the purpose of this paper. The data collected are cross-sectional—across thirty-one federal agencies (see Appendix)—and in time-series format, from the year 1983 to 2007.

My dependent variable is the proportion of procurement and contracting dollars awarded specifically to small minority firms, in the total amount of dollars a federal agency spends on

small business contractors in general, in a given year. I derive these percentage numbers by first collecting the actual sums of annual agency expenditures on the different categories of small enterprise contractors divided by race/ethnicity, and then calculating the ratio for this paper. Although federal statutory goals require that at least 5% of governmental agency procurement funds be allocated to small minority businesses, a majority of the agencies sampled in this paper achieved over 10% in 2007. Department of Defense, Department of Energy and Department of Transportation, among others, had awarded as much as nearly 40% to certified and qualified minority-owned firms. The annual agency reports uploaded in the Federal Procurement Data System contain both agency small business contracting goals, and their small business contracting goaling achievements by year. The established annual goals are not taken into account in this paper, first of all because the U.S. Small Business Administration has been helping federal agencies in the goal-setting process each year, and goals being established do not fully reflect the degree to which bureaucracies voluntarily and independently facilitate minority business development. What's more, public law on government small business goaling specifies that penalties will be enforced only when agencies are proved, by strong evidence, that they are not making good faith efforts to level the playing field and encourage minority business participation in government-assisted contracts, not when they fail to meet their established contracting goals. Therefore, I consider the proportion of actual minority contracting awards in the annual total dollars to be a more appropriate measurement of independent agency efforts, which, as I predict, will adjust to the Court's *Adarand* decision accordingly.

My four independent variables measure the party affiliations and political ideologies of the three government branches. The first two try to capture judicial impact. One is the sheer number of non-conservative justices in the Court by year, based on the Martin-Quinn ideology scores. I

choose the Martin-Quinn measures over the Segal-Cover scores, as the former presents a more dynamic view of each justice's likely ideological shifts over time, which is desired in this time-series analysis. The Martin-Quinn dataset measures each Supreme Court justice on an ideological continuum, assigning negative values to liberal justices, positive to conservative justices, whereas zero stands for moderate preferences. The lowest ideological score so far is -5.36, the highest being 4.84. In this paper, the number of non-conservative justices, in a given year, equals the number of justices with scores lower than 0.5 (Martin and Quinn 2002; Martin et al. 2005). I hypothesize that the presence of a majority of liberal and/or moderate justices may send a signal to agency decision-makers that even if their non-narrowly-tailored small minority business procurement goaling had led to judicial review or lawsuits, the chances of legal sanctions imposed by a not-so-conservative Court might be small. The other Court variable is a dummy variable for the year 1995, when the *Adarand* decision was delivered. This variable measures the extent to which federal bureaucracy had immediately responded to the new constitutional requirement.

The other two political variables are both dummy variables for the partisan compositions of the House of Representatives and the Presidency, with 1 for the Democratic Party, 0 for Republicans. The data are collected from the annual statistical abstracts of the U.S. Census Bureau. These two variables aim at capturing the direct effects of political principals on bureaucratic behavior.

The two control variables included in the final model are the annual unemployment rates, collected by the Current Population Survey, and annual agency budgets published by the U.S. Government Printing Office. Originally I had also intended to add variables that measured racial

earnings gaps between white and black, white and Hispanic, and white and Asian. However, they were excluded from the final model due to collinearity problems.

Since the data is structured as strongly-balanced panels, I run a fixed-effects model and a random-effects model to test likely judicial impact on small business contracting achievements across the thirty-one federal agencies. Beta-coefficients and significance levels for the variables from statistical regressions are reported in the following table.

To capture the possible interaction effects between Congress and the executive branch, I also include an interaction variable for the two political branches, by subtracting each values of the variable "President" and the variable "Congress" with the variable means. Due to a few missing data[5], the final sample size is 521.

Table 1: Fixed-Effects & Random-Effects Models of Judicial Impact

Variables	Fixed Effects Model	Random Effects Model
Adarand	.111***	.111***
No. of Non-Conservative Justices	-.014	-.013
President (D/R)	.054***	.054***
Congress (D/R)	.008	.007
President*Congress	.126***	.128***
Unemployment	-.011*	-.012*
Agency Budget	-.001	-.007

[5] A few agencies did not report their contracting dollars to the Small Business Administration in the 1980s. In some other cases, missing values were caused by the fact that a few federal regulatory commissions had not been established until late 1990s or early 2000s.

Intercept	.462***	.470***
N	521	521

Significance level: *** .001, ** .01, * .1

The results strongly indicate that the Supreme Court has rather limited impact on bureaucratic decision-making. The positive and statistically significant correlation between variable "Adarand" and agency small business goaling suggests, contrary to my original predictions, that the Court's decision in *Adarand* (1995), which raised the constitutional requirement that all agency decisions regarding the allocation of benefits on the basis of race needed to be narrowly-tailored, and were to be replaced by completely race-neutral alternatives if no systematic racial discrimination could be found, hardly had any immediate effects on the way a bureaucracy awarded small minority contractors in 1995. Meanwhile, the presence of a non-conservative majority of justices in the Court hardly had any impact, either, suggesting that likely judicial review and litigation threats might not be top concerns of the agency decision-makers.

By contrast, the other two political branches are found to play a decisive role. The "Congress" variable, alone, is not statistically significant, but achieves high levels of significance as an interaction term with the Presidency, which indicates that its impact upon agency behavior, although mediated to the extent that agencies may strategically interact with and respond to both their two major principals, is still evident, even if it is through influencing the executive branch. Last but not least, national unemployment rates appear weakly correlated with agency selection of contractors. Overall, I do not find enough evidence to make an argument about judicial impact on bureaucratic actions. In the next section of the paper, I attempt to address some of the reasons why judicial impact, in the case of public procurement and contracting, may be limited, in light

of the four possible determinants of judicial policy implementation previously discussed in the literature review.

Discussion

As previous works suggest, even with the Court's constitutional mandate, changes may not happen swiftly and radically, when there appears to be a huge gap between constitutional visions and the policy reality, where institutional "stickiness", bureaucratic inertia, and long-established beliefs prevail. In the case of small business goaling, what may be discouraging federal agencies from developing race-neutral policies immediately following the *Adarand* decision in 1995? A major reason may be that the development of race-neutral alternatives itself is time-consuming, and expensive (La Noue and Sullivan 1995; La Noue 2008). If a bureaucracy had already been quite familiar with the pool of certified small minority business bidders, the agency would naturally tend to continue working with them. Exploring race-neutral alternatives necessarily means investing additional agency resources to search for evidence of past discrimination, to conduct racial disparity/availability studies, and to assess the agency's interests in awarding contracts regardless of race. The U.S. Transportation Research Board published a report in 2009 on disparity/availability studies conducted across state-level departments of transportation[6]. Their findings show that some states spent much more time developing the capacity, or finding qualified consultants, to conduct accurate studies of the market. Therefore, it is possible that the lack of immediate judicial effects resulted partly from the fact that agencies simply needed more time to respond to updated constitutional requirements.

[6] National Cooperative Highway Research Program (NCHRP) Report 644: "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program". Transportation Research Board of the National Academies.

Another reason may be the influence of political principals. Rosenberg (2008) discussed the limited independent impact of *Brown v. Board* (1954), and the relatively swift changes brought by the Congress' Civil Rights Act of 1964 and the Voting Rights Act of 1965. In this case, Congress passed the Small Business Regulatory Enforcement Fairness Act one year after *Adarand*, in the hope of promoting race-neutral policy-making and minimizing constituents' complains on the grounds of state-sponsored reverse discrimination. Also in 1996, the Clinton Administration's Department of Justice issued further guidance on race-neutral goal-setting in federal agencies. Judicial impact on agency decision-making may occur, in a rather indirect way, if the other political branches, to whom the bureaucracies directly report, begin to share similar agendas. Generally speaking, the efforts of the two political principals might have facilitated agency compliance more effectively than the Court decision. Even the U.S Commission on Civil Rights, in its 2005 report[7], called for prompt actions from Congress, to foster real incentives for federal agencies to comply with *Adarand*.

Another factor concerns judicial ambiguity. Studies have demonstrated that textual vagueness of judicial opinions opens up too many alternatives in the implementation process, thus increasing the chances of agency noncompliance or their imperfect translation of Court decisions. Indeed, *Adarand* did not specify, in details, how the Court expected federal agencies to develop race-neutral measures, which were still relatively new concepts in 1995. As large-sized organizations with hierarchical leadership structures, bureaucracies probably need clear objectives and policy guidance which are often found missing from Court opinions.

Last but not least, a bureaucracy's implementation of judicial policies may be precipitated by pressure groups. In this case, national interest groups that represent small businesses with race-neutral stances—such as National Small Business Association, National Federation of

[7] "Federal Procurement After *Adarand*". September 2005. U.S. Commission on Civil Rights.

Independent Business—are not as well-known as, say, the Planned Parenthood or the NAACP, and are not as active as, for example, the NRA or Greenpeace. Even as the *Adarand* decision has allowed small businesses the opportunity to seek judicial review of federal agency contracting processes, small business advocacy groups need to have rich resources and legal talents to form coherent strategies to challenge agency actions on their behalf (Polich 2000). The shortage of such influential groups may further contribute to the lack of agency compliance with *Adarand*.

Conclusion

To conclude, I employ fixed-effects and random-effects models to investigate the possible judicial impact upon agency small business goaling. Both two models indicate that the impact is rather limited. *Adarand*'s constitutional requirement on the importance of narrowly-tailored race-conscious measures, and of exploring race-neutral alternatives, failed to generate any immediate effect on agency allocation of procurement and contracting awards to small business enterprises owned by majority and minority races. My findings do suggest a strong causal link between political principals and bureaucratic behavior. Previous studies shed light on the possible reasons for limited judicial impact. The Supreme Court's race-neutral jurisprudence may lead to more efficient procurement and contracting programs under several conditions, such as lowered costs associated with agency fulfillment of the Court's constitutional requirement, more compliance incentives created by Congress and the White House, less textual vagueness of judicial opinion-writing, and an increased role of small business interest groups.

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Appendix: List of Federal Agencies Sampled
Sort by Total Small Business Procurement and Contracting Amounts in 2007

Department of Defense
Department of Energy
Department of Homeland Security
National Aeronautics and Space Administration
Department of Health and Human Services
Department of Veterans Affairs
General Services Administration
Department of Justice
Department of Agriculture
Department of the Interior
Department of State
Department of Commerce
Department of the Treasury
Department of Labor
Environmental Protection Agency
Department of Transportation
Department of Education
Department of Housing and Urban Development
Social Security Administration
Office of Personnel Management
Federal Emergency Management Agency
National Science Foundation
Smithsonian Institution
Executive Office of the President
Nuclear Regulatory Commission
Securities and Exchange Commission
Broadcasting Board of Governors
Federal Communications Commission
Small Business Administration
Equal Employment Opportunity Commission
Peace Corps