

**Written Testimony Before the New York City Council Committee on Contracts
A Hearing on “Oversight - M/WBE Utilization in City Contracts”**

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Judge Glock is the director of research and a senior fellow at the Manhattan Institute and a contributing editor at *City Journal*. He was formerly the senior director of policy and research at the Cicero Institute, a nonpartisan think tank based in Austin, and a visiting professor of economics at West Virginia University. He writes about the intersection of economics, finance, and housing, with a perspective informed by his work in economic history. Glock’s work has been featured in *National Affairs*, *Tax Notes*, *the Journal of American History*, *NPR*, *The New York Times*, and the *Wall Street Journal*, among other places. He is the author of the book *The Dead Pledge: The Origins of the Mortgage Market and Federal Bailouts, 1913-1939*, published in 2021 by Columbia University Press. He received his Ph.D. in history with a focus on economic history from Rutgers University.

The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as an Institute scholar, the views represented today are solely my own, not my employer's.

Thank you for the opportunity to submit testimony on the issue of the city's minority and women-owned business enterprise (M/WBE) program.

Although supporting diverse suppliers is an understandable impulse, research shows that M/WBE goals increase costs, increase fraud, and do nothing to help truly disadvantaged women and minorities. New York City should end such goals or reduce them if possible.

The research is clear that minority contracting programs raise costs. A study by economist Justin Marion in 2009 showed that after California banned the consideration of race and sex in contracting decisions as part of Proposition 209 in 1996, the costs of state-funded contracts for highways declined 5.6% relative to federal projects.¹ A 2023 paper from the National Bureau of Economic Research found that on average for every ten percentage points in higher disadvantaged business contract requirements, costs for highway projects went up 25 percent per mile on average, although they did note that this was just a rough correlation.² A recent working paper found that disadvantaged business set-asides increased cost overruns by 31% and delays by 9%.³

We also know fraud is pervasive in such programs. In 2023 14 different individuals and companies were indicted on charges centering around fraud to meet M/WBE goals.⁴ This was less than ten years after the Manhattan district attorney noted systematic fraud was coloring the program, including over \$25 million in uncovered fraud over the previous four years.⁵ Many more such cases in New York City could be described.⁶ We know fraud is ubiquitous in similar programs as well. A federal Department of Transportation Inspector General analysis from 2016 found that over a third of its active fraud cases in contracting or grants involved disadvantaged business fraud and that over the previous five years these fraud cases resulted in \$245 million

¹ Justin Marion, "How Costly Is Affirmative Action? Government Contracting and California's Proposition 209," *The Review of Economics and Statistics* 91, no. 3 (2009): 503-522. <https://direct.mit.edu/rest/articleabstract/91/3/503/57781/How-Costly-Is-Affirmative-Action-Government?redirectedFrom=fulltext>

² Zachary Liscow, Will Nober, and Cailin Slattery, "Procurement and Infrastructure Costs," National Bureau of Economic Research Working Paper 31705, September 2023, https://www.nber.org/system/files/working_papers/w31705/w31705.pdf

³ Matilde Cappelletti and Leonardo Giuffrida, "Targeted Bidders in Government Tenders," CESifo Working Paper No. 11142, May 2024, https://www.ifo.de/DocDL/cesifo1_wp11142.pdf

⁴ "Construction Exec, Company Plead Guilty to MWBE Fraud," *The Real Deal*, January 11, 2024, <https://therealdeal.com/new-york/2024/01/11/construction-exec-company-plead-guilty-to-mwbe-fraud/>

⁵ Gabe Ponce de León, "Manhattan DA Promises to Fight MWBE Fraud," *City & State New York*, November 24, 2014, <https://www.cityandstateny.com/politics/2014/11/manhattan-da-promises-to-fight-mwbe-fraud/180095/>

⁶ New York City Department of Investigation, *DOI Report and Recommendations on the Citywide Construction Fraud Task Force's Investigation of a Procurement Fraud Scheme at the Department of Environmental Protection and Other Corruption Schemes* (New York: NYC DOI, April 2018), https://www.nyc.gov/assets/doi/reports/pdf/2018/April/ContractingReport41718_final2.pdf

in financial recoveries and 425 months of incarceration.⁷ A federal Small Business Administration Inspector General report found that 20 of the 25 disadvantaged firms they reviewed, which included 15 of the largest individual contractors, should not have been in program.⁸

It is highly likely that the program is unconstitutional and will be subject to extensive litigation. The Supreme Court's *Students for Fair Admission v. Harvard* case declared the consideration of race in government programs is generally impermissible. Soon after, a federal district court in *Ultima v. USDA* declared that using race as an automatic presumption in a federal contracting program ran afoul of the holding in the SFFA case.⁹ Similarly, the case of *Mid-America Milling Co v. DOT* resulted in a preliminary injunction against the federal Department of Transportation's program, which resulting in removing the department's assumption of eligibility based on race in its contracting program.¹⁰ A new disparity study would not necessarily cure the fundamental misalignment of New York City's program with federal court rulings.

If the Council is interested in expanding opportunities for disadvantaged businesses, it should focus on small businesses. The current M/WBE goals support only a select number of relatively successful businesses at a significant cost to general taxpayers. The M/WBE goals should be reduced or eliminated.

⁷ "The Real Cost of DBE Fraud," U.S. DOT Office of Inspector General, March 2, 2016, <https://www.transportation.gov/sites/dot.gov/files/docs/S3TheRealCostofDBEFraud.pdf>

⁸ Small Business Administration Office of Inspector General, "Improvements Needed in SBA's Oversight of 8(a) Continuing Eligibility Process," Audit Report, Report NO. 18-22, September 7, 2018, <https://www.oversight.gov/sites/default/files/documents/reports/2018-09/SBA-OIG-Report%252018-22.pdf>

⁹ *Ultima Servs. Corp. v. US Dept. of Agriculture*, 2:20-CV-00041-DCLC-CRW, July 19, 2023, <https://law.justia.com/cases/federal/district-courts/tennessee/tnedce/2:2020cv00041/93612/86/>

¹⁰ *Mid-America Milling Co. v. U.S. Department of Transp.*, No. 3:23-cv-00072-GFVT, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024). <https://law.justia.com/cases/federal/district-courts/kentucky/kyedce/3:2023cv00072/103125/44/>