

## USDOT'S DBE Program Blocked in Kentucky and Indiana

Article By:

William S. Wilson

---

The end of the U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) program is getting closer. The DBE program presumes women and minority-owned firms are disadvantaged and sets goals for them to be awarded at least 10% of the value in federal contracts. In a well-reasoned and compelling decision, the U.S. District Court for the Eastern District of Kentucky granted a limited preliminary injunction against USDOT's DBE program in the case *Mid-America Milling Co., LLC v. U.S. Department of Transportation, et al.*, No. 3:23-cv-72-GFVT, 2024 WL 4267183 (E.D. Ky Sept. 23, 2024). The *Mid-America* court found that the race and gender-based rebuttable presumptions used in the DBE program violate the U.S. Constitution's guarantee of equal protection under the Fourteenth Amendment.

The plaintiffs in *Mid-America* challenged the use of the DBE presumption when determining whether a person is socially disadvantaged on the grounds that such a program giving preference to certain companies based on race and gender constitutes unconstitutional racial discrimination. The plaintiffs alleged that the DBA program prevents them from competing on government contracts on equal footing with firms owned by women and certain racial minorities and filed suit seeking a declaratory judgment and preliminary and permanent injunctions enjoining the USDOT from applying the DBE's race and gender-based classifications.

The court methodically dismantled the government's arguments against the plaintiffs' standing to bring the lawsuit as well as its arguments against the requirements necessary to sustain a preliminary injunction. The plaintiffs have standing to bring suit because they sufficiently established an injury resulting from the denial of equal treatment, which is fairly traceable to the DBE program's race- and gender-based presumption. The plaintiffs also established that their injury resulting from the denial of equal treatment is redressable by a favorable decision by the court.

The court examined the requirements for a preliminary injunction and found all were satisfied. The court held that the plaintiffs would likely win on the merits of their constitutional claims. The government failed to prove that the racial classifications in the DBE program were being employed to further the only applicable compelling government interest of remediating past discrimination. The government offered only broad societal discrimination types of evidence, such as disparity studies, statistical disparity evidence, anecdotal evidence, and expert reports—the court found that such evidence is too broad and insufficient to prove past discrimination against the many groups to whom it grants a preference under the DBE program. The government also failed to prove that the DBE program's race-based rebuttable presumption was narrowly tailored because it only covers some

minority groups and lacks a logical endpoint. The government offered similar societal discrimination evidence to support the DBE program's gender classifications to remedy past discrimination, which the court also rejected because it failed to prove that the government participated in intentional discrimination within the context of USDOT-funded contracts.

The court also found the plaintiffs would suffer irreparable harm if a preliminary injunction was not issued because contracts with DBE goals would continue to be issued, and when they are, the plaintiffs would be at an automatic disadvantage to certain types of competitors. Lastly, the court concluded that the temporary relief sought would not cause substantial harm to others and would serve the public's interest.

While this decision is limited to the contracts the plaintiffs bid on in Kentucky and Indiana, its comprehensive analysis of the applicable law might serve as a guideline for similar actions nationwide and ultimately the U.S. Supreme Court.

Copyright © 2025 Robinson & Cole LLP. All rights reserved.

---

National Law Review, Volume XIV, Number 292

Source URL: <https://natlawreview.com/article/usdots-dbe-program-blocked-kentucky-and-indiana>