

# Court ruling determines Portuguese-owned construction companies are not minority-owned

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Portuguese-owned construction companies received an illegal and unfair advantage in being allowed to participate in a state affirmative action program for public construction projects in Massachusetts, according to a recent Superior Court ruling in Boston.

The ruling also says that a state official who in 2012 tried to remove Portuguese companies from the program received significant political pressure from the governor's office and state legislators in southeastern Massachusetts, including State Sen. Michael Rodrigues, D-Westport, to continue classifying those firms as minority-owned businesses for purposes of getting contracts for public construction projects.

Rodrigues did not immediately return a message seeking comment.

Suffolk Superior Court Judge Douglas Wilkins wrote in her ruling, dated Feb. 20, that the political pressures that forced Reginald Nunnally, the former executive director of the Supplier Diversity Office in the Executive Office for Administration and Finance, in January 2013 to keep Portuguese companies in the program "have not gone away."

"If this case were dismissed, the strong possibility exists that, free of Court scrutiny, the defendants would have a significant incentive to succumb to that pressure and do what, apparently, is their natural inclination," Wilkins wrote.

The ruling is the result of a lawsuit filed in 2016 by Janet Butler, president of Federal Concrete, Inc., a Hopkinton-based concrete company officially designed by the state as a woman-owned business enterprise. State regulations require that around 10 percent of state building contracts be awarded to firms owned by minorities and women, according to court documents.

Butler sued the Executive Office for Administration and Finance after she lost bids in 2015 for construction projects in Abington and Scituate. Those contracts instead went to several Portuguese-owned firms, according to court documents.

In 2015, Butler also filed a protest with the state Attorney General's Office when she lost out on the Abington school project to Marmelo Brothers Masonry, Inc., a company located in Dartmouth, and Colony Drywall, Inc., which is based in Westport. The owner of Colony Drywall was not immediately available for comment.

According to court documents, Butler argued that there was no evidence that Portuguese businesses had been discriminated against in the state's construction industry. Nunnally was of the same opinion. He had earlier determined that the state's Supplier Diversity Office had no information to suggest that Portuguese people suffered from any discrimination in Massachusetts.

In early 2015, Nunnally told an official in Gov. Charlie Baker's administration that he considered Portuguese firms to be white-owned businesses that had no difficulties getting capital or state contracts.

Wilkins' ruling says a former director of the state's Supplier Diversity Office in 2007 "arbitrarily" decided to certify Portuguese businesses as minority-owned firms without any process or investigation to determine if they had experienced discrimination.

As a result of being given the minority-owned designation, Portuguese-owned construction companies were awarded tens of millions of dollars in state construction projects. In the 2015 Fiscal Year, Portuguese-owned firms were awarded about \$15.6 million in state construction contracts, which was about 61 percent of the money that year that went to businesses certified as minority-owned firms, according to court documents.

In late 2012, Nunnally had sent letters to all Portuguese-owned businesses certified as minority-owned firms to inform them that they would be losing that status. Nunnally later rescinded his decision "at the behest" of Gov. Deval Patrick's Office, according to court documents.

Wilkins' ruling says the state can reclassify Portuguese-owned businesses as minority-owned only if a future "disparity study demonstrates a 'strong basis in evidence' of past discrimination against them.