In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1007

H. EARL FULLILOVE, et al.,
Petitioners,

vs.

JUANITA KREPS, Secretary of Commerce, et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
For the Second Circuit

BRIEF OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, AMICUS CURIAE, IN SUPPORT OF PETITIONERS

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CONSENT OF THE PARTIES

Petitioners and Respondents have consented to the filing of this brief and their letters of consent have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews. The Anti-Defamation League was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all creeds and races, and to combat racial and religious

prejudice in the United States. The ADL is vitally interested in protecting the civil rights of all persons, be they minority or majority, and in assuring that every individual receives equal treatment under the law regardless of his or her race or religion.

Among its many other activities directed to these ends, the ADL has in the past filed amicus briefs in this Court urging the unconstitutionality or illegality of racially discriminatory laws or practices in such cases as, *e.g.*, *Shelley* v. *Kraemer*, 334 U.S. 1 (1948); *Sweatt* v. *Painter*, 339 U.S. 629 (1950); *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954); *Colorado Anti-Discrimination Comm'n.* v. *Continental Airlines, Inc.*, 372 U.S. 714 (1963); *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Sullivan* v. *Little Hunting Park*, 396 U.S. 229 (1969); *San Antonio Ind. School Dist.* v. *Rodriquez*, 411 U.S. 1 (1973); *De Funis* v. *Odegaard*, 416 U.S. 312 (1974); *Runyon* v. *McCrary*, 427 U.S. 160 (1976); *McDonald* v. *Sante Fe Trail Transport. Co.*, 427 U.S. 273 (1976); *Regents* v. *Bakke*, 438 U.S. 265 (1978); *Los Angeles* v. *Davis*, 47 U.S.L.W. 4317 (1979); and *United Steelworkers of America* v. *Weber*, 47 U.S.L.W. 4851 (1979).

The ADL deplores the continued existence in this country of discrimination based upon race, religion and perceived national or ethnic origins. Not until the discrimination is eliminated will the United States be in fact a nation where all citizens enjoy equal opportunities, as they should. However, hastily drawn "affirmative action" statutes such as the present one, based upon a grabbag of purported racial, ethnic and language classifications, do not promote equal opportunity; rather, they foster arbitrary, divisive and in turn discriminatory action by the Federal government. Such a statute cannot be squared with the Constitution.

Indeed, as a matter of principle, just as the ADL opposes every form of discrimination based on race, religion or ethnic

origin, so too is the ADL opposed to any scheme of government preferences or benefits based upon the race, religious beliefs or ethnic origin of individuals.

STATEMENT OF THE CASE

In May, 1977, Congress enacted the Public Works Employment Act of 1977 (PWEA), 42 U.S.C. §§ 6701-6736 (1978), which provided $4 billion in supplemental funds to be granted by the Secretary of Commerce to alleviate unemployment in the economically depressed construction industry.

Section 103(f)(2) of the PWEA contains a provision first proposed on the floor of the House of Representatives, and adopted without hearings in either House, the "minority business enterprise" requirement, which reads:

> Except to the extent that the Secretary determines otherwise, no grant shall be made under this chapter for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term "minority business enterprise" means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members. *For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos and Aleuts.* (Emphasis added.)

The regulations under the PWEA repeat, without elaboration, the statutory language. 13 C.F.R. § 317.2.

Petitioners are associations of contractors and subcontractors and a firm engaged in heating, ventilation and air conditioning work who do business in the State of New York. (R. 4a-6a.) They seek injunctive relief to prevent

enforcement of the minority business enterprise provision and a judgment declaring that that provision is unconstitutional and contrary to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. (R. 17a-19a). The District Court upheld the statute, and dismissed the complaint (R. 1689).

On appeal, the Secretary of Commerce acknowledged that in enacting the minority business enterprise provision Congress created an explicitly race-based condition on the receipt of funds. 584 F.2d 600, 602 (2d Cir. 1978). The Court of Appeals held that, under the principles of equal protection embodied in the Due Process Clause of the Fifth Amendment, this racial classification was "suspect." *Id.* at 602-03. The court stated that "[u]sually when a classification turns upon an individual's racial or ethnic background, 'he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest.'" *Id.* at 603. However, the court did not decide whether such rigid scrutiny is required here, because it found "that even under the most exacting standard of review the MBE provision passes constitutional muster," and therefore affirmed the judgment below. *Id.*

The petition for a writ of certiorari, granted by this Court, 47 U.S.L.W. 3562 (Feb. 20, 1979), presented the following questions:

1. Whether Congress' requirement that 10% of Federal grants for local public works projects be set aside for minority business enterprises is constitutionally permissible under the Due Process or Equal Protection Clauses of the Federal Constitution.

2. Whether the minority set-aside is in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq.*

ARGUMENT

I.

THE FIFTH AMENDMENT PROHIBITS GOVERNMENTAL PREFERENCES BASED UPON CLASSIFICATIONS OF RACE, ETHNIC ORIGINS AND LANGUAGE SPOKEN.

The minority business enterprise provision sets aside government construction contracts exclusively on the basis of the race, ethnic origins or language spoken of the owners of contracting firms. This is as impermissible under due process and equal protection concepts as reserving places in a medical school class for members of preferred racial or ethnic groups, *Regents* v. *Bakke*, 438 U.S. 265 (1978). Also see *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U.S. 273 (1976) (to grant privileges to nonwhites but to deny them to whites is an invalid denial of equal treatment under the law).[1]

Nor does the fact that Congress enacted the minority business enterprise provision render this quota permissible, because a quota remedy can never be "appropriate legislation to enforce the Equal Protection Clause," *Katzenbach* v. *Morgan*, 384 U.S. 641, 649-50 (1966). The minority business enterprise provision fences out individuals who are members of disfavored racial, ethnic and language spoken groups, a critical distinction from the legislative apportionment scheme upheld in *United Jewish Organizations* v. *Carey*,

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[1] *United Steelworkers of America* v. *Weber*, 47 U.S.L.W. 4851 (1979), is not apposite because it was limited to the legality of a private affirmative action plan under Title VII of the Civil Rights Act of 1964, and this Court specifically disclaimed any inquiry into matters of state action and the application of the Equal Protection Clause.

430 U.S. 144 (1977). The absolute lack of legislative history to support the quota means that it cannot even claim the deference which certain previous Congressional enactments have received from this Court. See *Bakke, supra,* 438 U.S. at 302 n.41 (opinion of Powell, J.).

II.

THE MINORITY BUSINESS ENTERPRISE PROVISION DOES NOT PASS ANY EQUAL PROTECTION TEST BECAUSE IT IS IMPOSSIBLE TO IDENTIFY WHICH PERSONS CONGRESS SOUGHT TO PREFER.

The minority business enterprise provision singles out six groups for preferred treatment, but fails to define them. The preferred groups are described as "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos and Aleuts." Congress did not explain what it meant by those open-ended terms, and the regulations promulgated by the Department of Commerce merely repeat the words of the statute. 13 C.F.R. § 317.2 (1978).

In this case, strict scrutiny is the proper standard of review. Classifications which deny a benefit to any individual because of race or ethnic background "are inherently suspect and thus call for the most exacting judicial examination." *Bakke, supra,* 438 U.S. at 291 (opinion of Powell, J.). Even under the less strict equal protection test, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation," *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920). More recently, in *San Antonio Ind. School Dist.* v. *Rodriguez,* 411 U.S. 1, 17 (1973), this Court said that even when strict judicial scrutiny is not required, the statute "must still be examined to determine whether it rationally furthers some legitimate, articulated

state purpose and . . . does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment."

The statutory set-aside, which reestablishes the Federal government as the arbiter of racial and ethnic identity, cannot satisfy the command of the Equal Protection Clause that all statutes "affecting constitutional rights must be drawn with 'precision' . . . and must be 'tailored' to serve their legitimate objectives." *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972).

Although Congress, in enacting the minority business set-aside, was obviously attempting to direct public works contracts to certain classes of U. S. citizens deemed to be historical victims of racial and ethnic discrimination, the statutory language is neither precise nor is it tailored to achieve the supposed benign end. Indeed, the minority business set-aside cannot pass even the easiest tests of equal protection because it is impossible for those who administer the statute to determine which U. S. citizens Congress meant to prefer. For example, the term "Oriental" may be so broad as to include all those who originated in the land mass east of Egypt or it might refer to a smaller number of particular groups; *e.g.*, those originating in Southeast Asia or China or Japan. The failure to distinguish between Indians of American origin and those of Asian origin will cause obvious problems of application. It is difficult to imagine a less meaningful standard than "Spanish-speaking" for conferring preferences in government contracting. Would a person of non-Latin antecedents who is fluent in Spanish qualify? Certainly, it would be a *reductio ad absurdum* to exclude U. S. citizens born and educated in Spain from the definition of "Spanish-speaking," even though they are not generally regarded as victims of discrimination.

U.S. citizens raised in Brazil have suffered discrimination along with others of Latin American origin, but they will qualify for a statutory preference only if they speak Spanish in addition to their native Portuguese. Cf. *Moore* v. *East Cleveland*, 431 U.S. 494, 498-500 (1977) (anomalies arising from city's arbitrary definition of "family"); and *Wilson* v. *Omaha Indian Tribe*, 47 U.S.L.W. 4758, 4764-65 (1979), (Blackmun, J., concurring). This statute's jumble of unparallel terms renders the task of classifying persons and businesses inherently arbitrary and cannot meet the standard of certainty by which the due process clause measures all statutes. See, *e.g.*, *A.B. Small Co.* v. *American Sugar Refining Co.*, 267 U.S. 233, 240 (1924) ("standard which was so vague and indefinite as really to be no standard at all"); also see *Neblett* v. *Carpenter*, 305 U.S. 297, 304 n.6 (1938).

Science has not evolved a precise definition of race or ethnicity, much less precise descriptions which can classify individuals.

> It is unlikely that the species *homo sapiens* was ever divided into "pure" races; but if it was, the fact that members of the species are both cross-fertile and migratory unquestionably means that virtually all of us would prove to be of mixed blood if the geneticists were to discover an infallible means of tracing the racial inheritance of individuals.

Bittker, *The Case of the Checkerboard Ordinance: An Experiment in Race Relations*, 71 Yale L.J. 1387, 1421 (1962) (collecting citations).[2] See also Myrdal, An American Dilemma 136 (1944) ("the concept of the American Negro is a

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[2] Many scientists have abandoned the word "race" altogether. *See, e.g.*, Livingstone, "On the Nonexistence of Human Races," The Concept of Race 46-60 (1967). Those who continue to use the word employ it only to describe general characteristics of populations, not individuals. See, *e.g.*, Dunn and Dobzhansky, Heredity, Race and Society 118 (1952) ("Races can be defined as populations which differ in the frequency of some gene or genes").

social concept and not a biological one"). "Ethnic groups" by definition do not purport to classify individuals; rather, scientists expressly developed the concept of ethnicity to describe the traits of human populations.[3]

Not surprisingly, social experience adds no precision to the racial terms which science cannot define. Montagu, *supra n.* 3, at 14. To be sure, some persons can agree about the conventional classification of many individuals into racial and ethnic groups. But for many others, there would be no consensus, and no objective method to arrive at such a classification. See *Legal Definition of Race,* 3 Race Rel. L. Rep. 571, 577-79 (1958) (collecting American cases considering proof of race).[4]

Moreover, stamping the imprimatur of the Federal government upon a particular racial or ethnic definition, and granting and withholding benefits to individuals accordingly, calls to mind notorious examples of attempts by other governments to define racial or ethnic groups, such as the Nuremburg laws in the Third Reich defining a "Jew"[5] or South Africa's laws

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[3] " '[E]thnic group' is a term of heuristic value. It raises questions, and doubts, leading to clarification and discovery. The term 'race,' since it takes for granted what requires to be demonstrated within its own limits, closes the mind on all that." Montagu, The Concept of Race 17 (1967). This Court has recognized that ethnic and racial classifications stand on the same constitutional footing. *See Hirabayashi* v. *United States,* 320 U.S. 81, 100 (1943).

[4] Allegations of fraud with regard to eligibility for this program have received considerable publicity. *See, e.g.,* Thompson, "Minority Firms vs. Minority Fronts," The Washington Post, June 12, 1979, at C1, col. 2. The article reports claims that "Minority fronts—firms secretly controlled by white contractors—have snapped up millions of dollars worth of government construction and service contracts set aside for minority contractors. . . ." It also refers to recent convictions of two persons in connection with such a fraud.

[5] *See* Article 5 of the First Regulation under the Reichs Citizenship Law of 14 November 1935 (RGB1. I, 1333), compiled in 4 Nazi Conspiracy and Aggression 1417-PS (1946), quoted in Statutory Appendix to this Brief.

defining "White", "Black," "Coloured" and "Yellow."[6] Enforcing the set-aside establishes the government as a sort of racial Inquisition, even if for a benign purpose. Officials will be required to look beneath an applicant's self-avowed racial identity, perhaps by tracing his ancestry.[7] These problems multiply when ascertaining the racial identity of businesses, or of the stockholders of a corporation, as the statute requires.[8] The idea that a business has a discernible racial or ethnic identity is new to American law, but, unfortunately, not entirely novel in recent history. *See* Third Regulation under the Reichs Citizenship Law of June 14, 1938 (RGBl. I 627) (defining "Jewish Industrial enterprise"), summarized in Statutory Appendix.

Nor does the experience of our courts in such matters provide any comfort. *See, e.g., Sipes* v. *McGhee*, 316 Mich. 614, 25 N.W.2d 638 (1947), *rev'd on other ground sub nom. Shelley* v. *Kraemer*, 334 U.S. 1 (1948), an action to enforce a racial restriction on occupancy of realty in which the main factual issue was the racial identity of the defendants. The trial court heard testimony from experts in sociology and anthropology who testified "that there is no simple way in which

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[6] Landis, *Southern African Apartheid Legislation I: Fundamental Structure*, 71 Yale L.J. 1, 4-16 (1961).

[7] The Washington Post article, *supra* at n.4, reports that one firm paid nearly $3,000 to trace the ancestry of two partners to document that they were Indians.

[8] The application of this law to corporations points up many of its absurdities. Owning a minority share of the stock may qualify as "control" within the meaning of the Federal securities laws, but under the minority set-aside provision, fully 51% of the outstanding shares must be owned by qualifying persons. This will involve continually polling the changing stockholders of publicly-held corporations that wish to qualify. No concession is made for companies managed by members of the preferred groups.

to determine whether a man is a member of the Mongoloid, Caucasoid, or Negroid race." 25 N.W.2d at 641. However, the court found that the defendants were "colored," based upon the following testimony:

> "I have seen Mr. McGhee, and he appears to have colored features. They are more darker [sic] than mine. I haven't got near enough to the man to recognize his eyes. I have seen Mrs. McGhee, and she appears to be the mullatto type."

Id. Also see *Green* v. *New Orleans*, 88 So. 2d 76 (Ct. App. La. 1956) (suit by a Negro for writ of mandamus to compel official change in the birth certificate designation of an infant girl, sought to be adopted by plaintiff, from "white" to "colored," where the court considered such evidence as love letters written from a Negro to the infant's mother, the shape of the girl's lip seam, the size of her ears, and the concentrations of pigments in "diagnostic positions of the anatomy").[9]

Even this Court could not improve upon the instinctive, "I-know-one-when-I-see-one," method of racial classification. In *United States* v. *Thind*, 261 U.S. 204 (1923), the Court ruled that a high caste Hindu was not a "white person" within the meaning of a now repealed naturalization statute. The Court recognized that to rely upon a scientific definition would mean "the substitution of one perplexity for another." *Id.* at 209. Instead, the Court interpreted the words of the statute according to "the understanding of the common man" from whose vocabulary they were taken, *id.* at 214:

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[9] *See also R.* v. *Ormonde*, [1952] 1 So. Afr. L.R. 272 (1951), and *R.* v. *Gill*, [1950] 4 So. Afr. L.R. 199 (1950), examples of Anglo-Saxon jurisprudence struggling with the unscientific nature of racial tests in a jurisdiction which has adopted the abhorent policy of classifying individuals by race.

> It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.

Id. at 215 (Sutherland, J.). *Accord, Morrison* v. *California*, 291 U.S. 82, 86 (1933) (Cardozo, J.) ("men are not white if the strain of colored blood in them is half or a quarter, or, not improbably, even less, the governing test always . . . being that of common understanding").

References to the foregoing cases involve much more than a matter of historical interest because of the real prospect that the courts will be required, for example in cases of alleged fraud under the set-aside program, to pass on the validity of claimed status of race, ethnicity or language spoken. Statutory distinctions based upon race also demonstrate the arbitrariness of official classifications of individuals.[10] The categories created in these laws were not

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[10] *See, e.g.*, Mangum, The Legal Status of the Negro 1-17 (1940); Murray, States' Laws on Race and Color (1950 and 1955 supp.) (see "Negro, definition of" under state name in index); and *Legal Definition of Race*, 3 Race Rel. L. Rep. 571 (1958). Reading this article, which calmly categorized "legal" tests for race in the busi-

only abhorent, but they often conflicted.[11]

Striking down the quota for minority business enterprises will not undermine the authority of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and this Court's other racial discrimination decisions. Those cases all involved the claims by victims of racial discrimination; the actual race of the claimant was never at issue.[12] In fact, upholding the constitutionality of the set-aside would quite literally mark a return to the principles of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), which arose from an ugly quarrel over racial identity between Plessy, a person of mixed heritage who claimed that the "mixture of colored blood was not discernible in him,"

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ness-like style of a law review, is a shocking reminder of how far we have progressed in certain aspects of race relations in the past 20 years and how unfortunate it would be to put the Federal government back in the business of classifying individuals according to their race. It is also true that the lessening of racial tensions actually increases the problems of enforcing racial classifications, for example when relaxed racial attitudes result in more frequent inter-marriage between the races.

[11] *Compare* Ala. Code tit. 1, § 2 (1940) ("negro" includes a person of mixed blood descended on the part of the father or mother from negro ancestors, without reference to or limit of time or number of generations), *with* Tex. Penal Code Art. 493 (1947) ("negro" includes a person of mixed blood descended from negro ancestry from the third generation inclusive, though one ancestor of each generation may have been a white person).

[12] We do not mean to say that Congress is powerless to fight the evil of racial or ethnic discrimination in the construction industry, but only that it chose an impermissible method when it enacted the minority business enterprise provision. *See Associated Gen. Contr.* v. *Secretary of Comm.*, 441 F. Supp. 955, 965-66 (C.D. Cal. 1977) (describing permissible programs, such as setting aside contracts for businesses which have experienced unemployment or low income, directing publicity to businesses in areas of low employment and familiarizing such businesses with large general contractors which customarily bid on Federal projects).

and a railroad conductor, who ordered Plessy to sit in a coach reserved by state law for colored persons. The Court upheld the constitutionality of Louisiana's statute, and stated that the matter of Plessy's race should be determined according to state law.

Decisions of this Court which have authorized the government to take race into account offer no precedent for the classifications created by the set-aside:

> "This Court has not sustained a racial classification since the wartime cases of *Korematsu* v. *United States*, 323 U.S. 214, and *Hirabayashi* v. *United States*, involving curfews and relocations imposed upon Japanese-Americans."

Bakke, supra, 438 U.S. at 298 n.37. (opinion of Powell, J.).[13] This Court has invalidated official racial classifications which would incite racial prejudice, *Anderson* v. *Martin*, 375 U.S. 399 (1964) (statute requiring designation on ballot of can-

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[13] Nor has experience with affirmative action plans under the EEOC yielded fixed definitions of race or ethnicity. The Commission's instructions to employers explain that the head-counting required of them does not involve anthropological or scientific definitions of race or ethnicity. EEOC, Employer Information Report (EEO-1) 5. The experience of the EEOC displays an awareness that asking a person about his race or ethnic origin can stir up animosity. Even though an employer must submit data about the racial and ethnic identity of his employees, "[e]liciting information on the race/ethnic identity of an employee is not encouraged." *Id.* If a complaint of discrimination is filed, the EEOC may regard such direct inquiries as evidence of discrimination. The preferred method for gathering such information is by *"visual survey of the work force." Id.* (Emphasis added.) Such a method is inherently imprecise, but it avoids directly inquiring about race or ethnicity or applying fixed definitions, problems which cannot be avoided with regard to the minority business set-aside.

didate's race).[14] In *Bakke*, Mr. Justice Powell's opinion, for example, contemplated at most an admissions program which is sensitive to the way that race, as one of many factors, may have affected an individual's qualifications as an applicant to medical school, without insulating the individual from comparison with all other candidates. 438 U.S. at 317-18 However, *Bakke* does not authorize tax-supported universities, let alone the Federal government, to adopt a program for identifying, and conferring benefits upon, individuals by race.

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[14] The employment preferences for Indians living on or near reservations are *sui generis;* they are not racial preferences but are rather efforts to further the cause of Indian self-government. *Morton* v. *Mancari*, 417 U.S. 535, 554 (1974).

CONCLUSION

Despite its apparently benign motive, the minority business set-aside necessarily bears the burden of any official effort to identify and treat individuals as members of racial or ethnic groups: it involves the Federal government in the imprecise and dirty business of fitting persons—and enterprises—into racial and ethnic categories, and it encourages racial and ethnic factionalism by marking off certain groups for special treatment on the basis of race, ethnic origin and language spoken. This overbroad and ill-defined attempt by Congress to cut through the Gordian Knot of discrimination cannot satisfy the requirements of equal protection and due process.

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STATUTORY APPENDIX

1935 REICHSGESETZBLATT, PART 1, PAGE 1333.

First Regulation to the Reichs Citizenship Law of 14 Nov. 1935, translation appearing in 4 Nazi Conspiracy and Aggression 1417-DS (1946):

"On the basis of Article 3, Reichs Citizenship Law, of 15 Sept. 1935 (RGBl. I, page 146) the following is ordered:

* * * * *

Article 5

"1. A Jew is anyone who descended from at least three grandparents who were racially full Jews. Article 2, par. 2, second sentence will apply.

"2. A Jew is also one who descended from two full Jewish parents, if: (a) he belonged to the Jewish religious community at the time this law was issued, or who joined the community later; (b) he was married to a Jewish person, at the time the law was issued, or married one subsequently; (c) he is the offspring from a marriage with a Jew, in the sense of Section 1, which was contracted after the Law for the protection of German blood and German honor became effective (RGBl. I, page 1146 of Sept. 1935); (d) he is the offspring of an extramarital relationship, with a Jew, according to Section 1, and will be born out of wedlock after July 31, 1936."

1938 REICHSGESETZBLATT, PART 1, PAGE 627.

Third Regulation under the Reichs Citizenship Law of June 14, 1938, summary appearing in Hilberg, The Destruction of the European Jews (1967):

"This decree provided that a business was Jewish if the proprietor was a Jew, if a partner was a Jew, or if, on January 1, 1938, one of the Vorstand or Aufsichtsrat [board of directors] members was a Jew. Also considered Jewish was a business in which Jews had more than one-fourth of the shares or more than one-half of the votes, or which was factually under predominantly Jewish influence. A branch of a Jewish business was declared Jewish, and a branch of a non-Jewish business was considered Jewish, if the manager of the branch was a Jew."