

# Corporation Can Have a Specific Race

## Labor & Employment Law Update

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A few years ago, courts recognized that corporations have First Amendment rights to speech. *E.g. Citizens United v. Federal Elections Commission* (2010). Recently, a federal court deemed that a minority-owned contractor corporation – a legal entity, not a person – is African American for purposes of anti-discrimination in contracting law. Is recognizing a corporation's "race" just a logical "next step" or does this "race" attribute open up unworkable and unforeseen consequences?

Federal laws prohibit discrimination in contracting based on race. Title VI specifically prohibits race discrimination with any contract funded by federal monies. A minority-owned contractor, Carnell Construction Corporation, contracted with the Danville (Virginia) Housing Authority to perform site work on a Blaine Square Development for low income housing. *Carnell Construction Corp. v. Danville Redevelopment & Housing Authority*, 745 F.3d 703 (4<sup>th</sup> Cir. 2014). Disputes surfaced before the completion date for the site work, including failure to pay, re-work, and other issues the authority claimed were due to contractor competence and the contractor attributed to poor planning by the authority. When the owner failed to pay for completed work and when mediation failed, the contractor filed suit. The contractor alleged, in part, that the reason it was not paid for work completed was due to race discrimination. Carnell Construction was a certified minority-owned contractor, its president and sole shareholder being African American. On appeal from a jury verdict in favor of the contractor for \$915,000 on the \$793,000 site work contract, the court of appeals for the fourth circuit held that Carnell Construction could sue for race discrimination.

As surreal as it may seem, application of anti-discrimination laws to protect corporations, coupled with other rulings that corporations have certain constitutional rights, may result in corporations being sued specifically by employees on grounds of discrimination due to or arising from the corporation's specific race. Business owners should keep in mind that discrimination claims can come from both employees and other individuals — and now, from corporations.