OFCCP vs. Oracle

Three days before Barack Obama left office, his Department of Labor served a complaint against Oracle America, Inc., alleging gross systemic discrimination in both its hiring practices and its pay practices.

Specifically, it claims that Oracle discriminates against non-Asians in hiring for sixty-nine job titles, and discriminates against women, Asians, and African-Americans in pay for eighty job titles.

DID ORACLE DISCRIMINATE?

Is it strange that Oracle allegedly discriminates both in favor of and against Asians?

The OFCCP (the Office of Federal Contractor Compliance Programs) is the program at the center of this complaint; it is involved because Oracle is a government contractor. The only points supporting OFCCP's claim are statistical analyses.

The complaint mentions exactly zero employee complaints, and it doesn't even try to say that there is evidence that Oracle intended to discriminate.

It is difficult to determine and compare the myriad factors involved in assigning appropriate compensation, and the statistical analyses OFCCP conducted likely fall short. Economically speaking, any mutually agreeable level of compensation is appropriate, and in a free market, compensation will tend to be equitable.

SHOULD THE OFCCP HAVE THIS POWER?

However, when Oracle filed a countersuit on November 27, 2019, (yes, the case is still going on), its press release discussed none of those points. Instead, it focused on the unconstitutionality of the Department of Labor acting as "investigator, prosecutor, judge, jury, and appellate court."

Of course, such arrangements are not limited to the Department of Labor; they have become unfortunately common throughout the Federal bureaucracies. This is despite the blatant violation of the Constitutional separation of powers, arguably the most basic fact of American civics. For most of us, as soon as we started learning about the US Government, we learned about the separation of powers, and how the Founding Fathers designed the system with the famous checks and balances that prevent tyranny.

How well has that tyranny prevention worked out so far?

Oracle argues that the situation is not only unconstitutional but also statutorily illegal. It

remains to be seen how the suit and countersuit will turn out; typically, it takes extremely deep pockets to win such a fight against the feds. Oracle may yet come out on top, but so far, it appears that the checks and balances have failed to protect Oracle — a company that provides over 100,000 jobs and many billions of dollars of services to the economy each year.

COULD THE FREE MARKET HANDLE THIS?

The OFCCP has not made a compelling case for the existence of systemic discrimination within Oracle; its claims are prima facie incongruous and based exclusively on ambiguous data. Indeed, it appears that it has inserted itself into a situation in which no one has complained, no one has objected, no one has said that their compensation was not appropriate for their labor or that they objectively should have been hired when they were not.

But, what if there really were discrimination?

And, is there a better way to handle it than the intra-DoL system, or even the Constitutional system?

My interest is in how this situation would play out in a free market. Let's consider it.

A free market, with total freedom of association, would probably have no claims of hiring discrimination, because no one would be compelled to hire or retain anyone against their will. Of course, a reputation for discrimination could easily lead to a loss of revenue, as a consumer base that opposes discrimination would likely choose to take their business elsewhere.

Furthermore, formal anti-discrimination regulations could be voluntary. Associations or organizations could prescribe standards for avoiding discrimination, as well as regular audits to ensure compliance, and consumers could choose to patronize only those companies that subscribe to sufficiently stringent standards and pass the audits.

HOW WOULD THE FREE MARKET HANDLE THIS?

What would happen with a discrimination claim in a free market?

Let's say that Oracle is certified as discrimination-free by the standard-bearer anti-discrimination association. In this scenario, a prospective employee believes that Oracle has discriminated against him in the hiring process, or a current employee believes (despite mutual agreement) that Oracle has discriminated against him in his compensation.

He could discuss it directly with the appropriate people in Oracle, or he could take it to the anti-discrimination association that certifies Oracle as discrimination-free.

If his claim has merit, the association would need to ensure that Oracle settles the claim swiftly and fairly, or have its discrimination-free certification revoked. To do otherwise would risk the association's reputation and tarnish the value of their certifications.

IS THERE ANOTHER WAY TO LOOK AT THE SITUATION?

Of course, this is just one way it could play out. The best part about the free market — wait, is there a single best part? — is that one person can't conceive of all the remarkable ways that collaboration and competition can make the world a better place.

On the other hand, you may have noticed some similarities between how a discrimination claim would work in a free market, and how it works with a state-run system. Part of that is because the free market is impossible to get away from completely, and part of it is because my imagination is likely affected by the status quo. The main benefits of the free market vis-a-vis the state-run system are the lack of coercion (in both funding and association) and the opportunities for innovation.

CONCLUSION

In summary, it appears that the Constitutional system isn't working (since we have unconstitutional bureaucratic judicial pipelines all over the place), and those pipelines don't work too well either (since they use sketchy math to find problems where no one involved sees a problem). So, do you think a free market system would work better? How do you think it would function? How would you design it?