



Written by [Selwyn Duke](#) on June 23, 2026

Trump's DOJ Just Overturned Decades of Institutionalized Discrimination, Scoring a Victory for Merit

It was in 2014 that the Obama administration sued the Pennsylvania State Police for treating women equally. No, that's not a typo. Already dumbed down fitness standards, applied to applicants of *both* sexes, were deemed discriminatory for applying equality. How?

It was nothing new even back then, but the product of long-embraced "disparate-impact theory." This states that if different groups perform differently vis-à-vis even a fair test or hiring process, that yardstick is *by definition* "unjustly discriminatory." It's a way of trying to enforce equality of outcome when meritocracy would otherwise allow the cream to rise to the top.



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Now, though, after decades of bureaucratic embrace, disparate-impact theory (DIT) is finally being rejected. President Donald Trump's Department of Justice (DOJ) has declared it unconstitutional (yes, it can do that). This means that federal bureaucracies will no longer enforce any discretionary applications of the principle.

Reporting on the story, HR Dive [wrote](#) June 10:

The U.S. Department of Justice issued an opinion Tuesday to the U.S. Equal Employment Opportunity Commission finding that its guidelines about disparate impact liability under Title VII of the Civil Rights Act are unconstitutional.

The "guidelines are unconstitutional because they contemplate liability based on disparate effects alone, without regard to an employer's likely intent, and pressure employers to engage in race-based decisionmaking," per the 25-page opinion issued by DOJ's Office of Legal Counsel.

...The push against disparate impact liability has been a focus of the Trump administration.

President Donald Trump issued an executive order in April 2025 directing federal agencies, including EEOC, to stop enforcement of disparate impact liability under civil rights laws.

..."Despite trying to promote equality, EEOC's disparate impact liability interpretation under Title VII actually fosters the very discrimination its guidelines seek to address," acting Attorney General Todd Blanche said in a statement. "This opinion will now allow businesses to hire based on performance, restoring equal opportunities in the American workplace."



A Fantasyland Principle

To truly grasp the “thinking” behind DIT, however, an analogy is helpful. Imagine, for example, applying the theory to the NFL. The very rules of tackle football themselves would be found unjustly discriminatory. Why?

For starters, no women can qualify for the league. And how could you possibly level the playing field? Perhaps all participants would have to use motorized wheelchairs to eliminate the foot-speed factor. Maybe, too, they’d have to shift away from tackle and to “touch” football to negate the strength factor. This sounds outrageous, sure, but know this: It’s not the analogy that’s ridiculous.

It’s DIT itself that is.

Because my prescriptions are essentially the kind of “remedy” that would be deemed necessary were DIT visited on football.

If you still find this fanciful, consider the case concerning the Pennsylvania State Police (PSP) I mentioned in my opening line. As [I wrote in 2014](#), here are the applicant standards wokeness delivered:

- 300 meter run: 77 seconds
- Pushups: 13 (no time limit)
- Vertical jump: 14 inches
- 1.5 mile run: 17 minutes, 48 seconds
- Agility run: 23.5 seconds

I then stated:

Note that a nine-year-old girl has run two miles in 12:20.5, 43 percent less time than adult PSP cadet applicants are given to finish a half-mile shorter distance; and a seven-year-old girl has run 300 meters in 52.07, almost 15 seconds less than the PSP requires.

Oh, one more thing: The above are *not* the standards that resulted from the Obama administration DIT lawsuit.

They’re the ones that inspired the lawsuit!

In other words, unless the standards amounted to just going through the motions so that as many women as men could qualify, they’d be considered in violation of DIT.

Returning to football, DIT would never actually be applied to the NFL. One reason is explained by a paraphrase of Abraham Lincoln. “The best way to get a bad law repealed,” it goes, “is to enforce it strictly.” We would’ve been rid of DIT long ago if we’d had such a high-profile object lesson in its lunacy.

Equality Doesn’t Exist

Instead, DIT — and the affirmative-action mentality it reflects — is applied to arenas that really matter (sport is just frivolity). This includes not just police, but firefighters, pilots, air-traffic controllers, etc.

Of course, DIT’s defenders may reject my analogy. They may say they accept that immutable sex differences explain the NFL’s absence of females. Yet this is contradictory because they apply DIT in perhaps every non-sport arena. When they do, too, they explicitly or implicitly accept something as an article of faith. To wit:



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All groups are equal in terms of worldly abilities; therefore, they should perform equally in every endeavor.

Corollary:

If all these “equal” groups don’t rate equally, the only explanation could be unjust discrimination.

And then we must use government action to remedy that discrimination.

In reality, though, group performance disparities across endeavors are the nature-prescribed norm, not the exception. Just consider what the late Professor Walter E. Williams [wrote](#) in 2019. Despite being just two percent of the world’s population, he explained,

Jews have been awarded 40% of the Nobel Prizes in economics, 30% of those in medicine, 25% in physics, 20% in chemistry, 15% in literature and 10% of the Nobel Peace Prizes.

...Proportionality injustice doesn’t end with the Nobel Prize. Blacks are about 13% of the U.S. population but close to 70% of the players in the National Football League....

Proportionality and diversity injustice is worse in the National Basketball Association, with blacks being over 80% of the players.

Such group disparities [manifest themselves the world over](#), too (e.g., Chinese’s dominance in Malaysia). Explaining this, Williams [also wrote](#) that only “an idiot” would blame these disparities on unjust discrimination, as “it is excellence that explains the disproportionate numbers.”

DIT Isn’t Dead

Yet there’s something else disproportionate: the negative legacy media coverage of the DOJ’s DIT rejection. It’s not just that this important action doesn’t get the coverage it deserves, either. It’s that much news frames it as in the following *Forbes* [headline](#):

The DOJ Just Made Workplace Discrimination Harder To Prove.

Truth: The DOJ just made imaginary workplace discrimination harder to invent.

There are two cautionary notes as well. First, DIT was explicitly codified and enshrined into statute via the Civil Rights Act of 1991. So the Trump administration must work around this law (or ignore it. The executive branch *does* have the power to ignore what it considers unconstitutional law.)

Second, DIT returns *with a vengeance* the moment Democrats retake the White House. And the lesson here is that, again, elections have consequences — and disparate political parties produce disparate impacts.



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