



Written by [Selwyn Duke](#) on September 3, 2014

## Eric Holder's DOJ Suing Police for Treating Women Equally

If you thought discriminating against women could get you in trouble today, try treating them equally.

The Pennsylvania State Police (PSP) is learning this the hard way. The Department of Justice (DOJ) filed a lawsuit in late July to end the PSP's practice of requiring that all state-police applicants, be they male or female, pass the same exact physical fitness test to be admitted for cadet training. Now it has been announced that the PSP will challenge the federal lawsuit, with State Police Commissioner Frank Noonan [saying](#) that dumbing down the standards "would be insulting to those men and women who already strove to achieve those standards.... We should not be bullied into lowering our standards for any applicants."



The DOJ's problem, it appears, with the PSP's equality of opportunity is that it doesn't create equality of outcome, as female applicants fail the physical test at higher rates than do their male counterparts. This inspired the Obama administration to launch an investigation of the PSP in 2009 and then [file its lawsuit](#) on July 29 of this year. CNSNews.com's Susan Jones provided more detail at the time, [writing](#):

Because more men than women pass the tests, their use is discriminatory and violates Title VII of the Civil Rights Act of 1964, the Justice Department says.

Because female applicants failed the 2003 physical fitness test and the revised 2009 test at "statistically higher rates than male applicants, female applicants were less likely to proceed through the selection process and thus less likely to be hired as entry-level troopers," DOJ stated in its lawsuit.

... From 2003-2008, approximately 94 percent of male applicants passed the test, while only 71 percent of female applicants passed.

In 2009, the state police added new elements to the physical fitness test, and between 2009 and 2012, approximately 98 percent of male applicants passed the revised test, while approximately 72 percent of female applicants passed.

Justice Department employees figure it this way: "If, between 2003 and 2012, female applicants had passed the 2003 PFT (physical fitness test) and 2009 PFT at the same rate as male applicants, approximately 119 additional women would have been available for further consideration for the position of entry-level trooper, resulting in approximately 45 additional women being hired as entry-level troopers."



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Critics would point out, however, that PSP physical standards are already quite low. The current [requirements](#) are:

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

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.

But none of this matters to Eric Holder's DOJ, which claims that the standards are "not job-related" and wrote in its lawsuit, "Through the use of these physical fitness tests, Defendants have engaged in a pattern or practice of employment discrimination against women." The DOJ is, consequently, seeking to have the standards scrapped based on the principle of "disparate impact."

This principle is nothing new. It essentially states that if different groups perform differently on a test — and it could be any test — it is by definition discriminatory. (Of course, tests are by definition discriminatory, and are supposed to be, as they're used to select some from among many; for sure they discriminate between the qualified and unqualified.) And disparate-impact rulings have been used for decades to eliminate height and other physical requirements from police and other first-responder exams.

Not surprisingly, the application of this principle has evoked some strong feelings from critics. For example, Town Hall's Michael Schaus [wrote](#) about the PSP case a few days ago:

The notion of disparate impact ... is nothing more than a tool for race hustlers to squeeze businesses, governments, and apparently police forces, into affirmative action.... In other words, if too many women fail to pass the [PSP] test, the test can be found discriminatory — even though it was never intended as a barrier to allowing women in the force.

... So, let me get this straight: We're supposed to treat women the same as men, unless they are incapable of achieving the same results. In that case, we're apparently supposed to give them a handicap. Well, I guess this explains the two sets of tees on the golf course; but I'm not totally on board with this separate-but-equal mentality when it comes to first responders, law enforcement officers, or even Walmart [sic] rent-a-cops.

... See, women are equal. Well, unless they're not. In which case, we should treat them unequal in order to make them equal.

And disparate-impact applications get more intrusive and bizarre all the time. For instance, the Obama administration is attempting to use the principle to achieve equality of outcomes in school punishment; as it stands now, black students get suspended and expelled at higher rates than do whites and students of Asian descent. But if the DOJ has its way, [writes](#) the *Washington Times*, these rates could be equalized via "de facto racial quotas in American schools."

Returning to the PSP case, the DOJ not only wants the test scrapped, but also compensation for the women who couldn't pass muster. As Schaus puts it, "The DOJ expects Pennsylvania's state police to



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pay women who fail the test. It's kinda like a consolation prize, but with a W-2 included." And this has happened before. As the Associated Press' Marc Levy [wrote](#) in July, "The Justice Department sued the city of Corpus Christi, Texas, in 2012, stating similar allegations. The city settled the lawsuit last year, approving a \$700,000 settlement for female police applicants who had failed the test. Corpus Christi police also agreed to stop using the test and hire 18 women who did not pass."

So, critics may say, the taxpayer pays more for less, as the feds sacrifice the good of the many so a few can fail their way to success.

*Photo: screen-grab from Pennsylvania State Police video*



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