



DISPARATE IMPACT CIVIL RIGHTS CLAIMS: A CRUCIAL TOOL UNDER ATTACK

Everyone deserves a fair chance to thrive, no matter who they are. And by removing unjust barriers to opportunity, we can help everyone in this country succeed. Families have better chances at finding homes, small business owners get the resources they need to keep their doors open, and our children have a better chance to receive a higher quality public education. Disparate impact claims, one type of civil rights protection, have been an important tool in bringing this vision to life by targeting policies that result in unjust discrimination. But these longstanding legal protections are under attack.

On April 23, 2025, President Trump announced a policy directive to eliminate the use of disparate impact liability “to the maximum degree possible” and directed federal agencies to deprioritize enforcement of laws and regulations that rely on the doctrine—undermining a cornerstone of civil rights protections that has expanded equal opportunity for decades.¹ The executive order, which is aligned with policy recommendations from the Heritage Foundation’s Project 2025, a playbook the President denied being familiar with during his campaign, threatens to eliminate protections against discrimination that prevent people from fairly participating in America’s economy.² Indeed, offices for civil rights and equal employment opportunity have been shuttered across the executive branch.³ The likely result is fewer people able to obtain living-wage jobs, fewer students able to use education as a tool to better their circumstances, fewer families able to find affordable homes. To help maintain disparate impact protections, it’s important to understand how this method of proving discrimination works and what we stand to lose as a country should it be further undermined.

WHAT IS DISPARATE IMPACT?

More than 50 years ago, the Supreme Court adopted the disparate impact framework for proving discrimination, which Congress codified in 1991 as one tool within our country's civil rights laws.⁴ Since then, it has been a vitally important way of challenging discrimination. The legal tool can be used to address policies and practices that appear neutral but nevertheless result in discrimination. For example, a financial institution may have lending policies that appear neutral, but their practices may result in qualified borrowers from communities of color being denied mortgage opportunities at much higher rates than white applicants.⁵ Proving discrimination through disparate impact does not require showing explicit bias (sometimes called “disparate treatment”), which can often be easy to hide and hard to prove.

Disparate impact protections are contained in statutes, regulations, and case law. This allows individuals and enforcement agencies to challenge artificial and unjustified barriers in a broad range of contexts, including getting hired for a job, fully participating in school, renting an apartment, and obtaining a loan.⁶ For decades, across administrations and Congresses, the federal government has consistently supported disparate impact protections, passing statutes and codifying regulations that use this framework to help root out unlawful discrimination that appears under the surface and creates unjust barriers to opportunity.⁷

HOW USING THE DISPARATE IMPACT FRAMEWORK HELPS ADVANCE FAIRNESS AND EQUAL OPPORTUNITY

ROOTING OUT HIDDEN BARRIERS. Equal opportunity requires not just addressing the most obvious forms of bias, but hidden discrimination as well. The disparate impact framework helps achieve this by recognizing that all barriers should be scrutinized to help ensure that they do not prevent people from getting a fair shot. Without the disparate impact theory, many harmful, less overt discriminatory practices would continue unchecked.

MAINTAINING ACCESS TO JUSTICE. Disparate impact claims make it possible to challenge systemic discrimination that would otherwise go unaddressed. They are often brought as class actions, enabling broad relief from discriminatory policies that affect many people at once—something that would be impractical to achieve through individual lawsuits. This ensures that people who may not have the resources to bring a case on their own can still benefit from meaningful enforcement of civil rights protections. Because disparate impact claims typically target uniform policies and practices rather than isolated individual decisions, they are especially effective in addressing widespread barriers and opening the courthouse doors to more people with legitimate claims.⁸

WHAT WE STAND TO LOSE

If protections against disparate impact are discouraged...

Families and individuals may find it harder to fight back when they are denied housing or loan opportunities because of who they are.

Students may struggle to get a quality education, if schools persist in practices that block equal access to learning opportunities.

Qualified individuals, including workers with disabilities, are more likely to be arbitrarily denied the opportunity to compete for a job.

Workers will be discouraged from using an essential tool for challenging discrimination when they face unfair treatment at work.

Federal civil rights enforcement may suffer if this central tool to prove discrimination is severely weakened, potentially allowing significant discrimination to remain unchecked.

IMPACT ON OUR LIVES AND OUR COMMUNITIES

REMOVING BARRIERS AT HOUSING, SCHOOL, AND WORK. Litigation using the disparate impact framework has successfully removed significant and unjust barriers in housing, school, and the workplace (see some examples below). The federal government's current lack of support for the disparate impact framework threatens decades of progress and will deepen inequalities. Research shows that Black and women workers have increased opportunities in more workplaces when the federal government fulfills its mandate to enforce U.S. equal employment opportunity laws.⁹

HOUSING. Disparate impact claims in housing have successfully challenged discriminatory practices like redlining, where institutions deny services to people in certain neighborhoods based on their race, color, or national origin.¹⁰ Some all-too common examples of this discrimination happen when banks avoid giving mortgages to communities of color and decision-makers choose public housing siting locations that concentrate affordable units in communities of color.

Example: In 2024, the U.S. Department of Justice (DOJ) secured over \$6.5 million to resolve allegations that Citadel Federal Credit Union engaged in redlining practices against predominately Black and Hispanic neighborhoods in Philadelphia. The DOJ found that from 2017 through 2021, Citadel failed to provide mortgages to majority Black and Hispanic communities, focusing its lending disproportionately on white areas. Other lenders generated mortgage applications in predominantly Black and Hispanic neighborhoods at nearly three times Citadel's rate. As part of the DOJ settlement, Citadel changed its practices by opening new branches in Philadelphia's Black and Hispanic neighborhoods, investing in loan subsidies, and hiring staff dedicated to expanding fair lending access.¹¹

EDUCATION. Disparate impact claims have successfully challenged practices at schools that excluded students who are English language learners and tracking systems that disproportionately channeled students of color into less challenging classes. These challenges have led to schools better serving students who are English language learners and providing more equal opportunities to students of color.¹²

Example: In 2014, a U.S. Department of Education Office of Civil Rights’ investigation revealed that Harmony charter schools in Texas enrolled English language learners at approximately half the rate of local school districts during the 2011–2012 school year. The investigation uncovered admissions and enrollment policies that required documentation that may have discouraged participation based on the immigration status of students or their parents. The settlement required Harmony to modify their admissions policies and practices to ensure equitable treatment of students who are English language learners.¹³

EMPLOYMENT. Disparate impact claims have been used to successfully challenge practices like unjustified strength tests that exclude qualified candidates, unnecessary height and weight standards, and the use of arrest records in hiring decisions, leading to more inclusive hiring practices that focus on job-relevant qualifications, fairer employment testing procedures, and expanded opportunities for workers to access quality jobs.¹⁴

Example: In *EEOC v. Walmart*, brought during the first Trump Administration, the agency sued Walmart over its physical ability tests for certain grocery warehouse jobs. These tests were not correlated to a person’s ability to do the work and made it more difficult for women to be hired for the positions. The company negotiated a \$20 million settlement and agreed to stop using the tests, allowing more women to compete for relatively high-paying entry-level jobs at grocery distribution centers.¹⁵

Example: In *Johnson v. AK Steel Corp.*, a federal court allowed the disparate impact discrimination claim of a female crane operator to continue after she explained that crane operators had to urinate off the back of their cranes instead of taking restroom breaks. The court found that this practice would have a significant discriminatory impact on women given the anatomical differences between men and women and women’s hygienic needs.¹⁶

DISPARATE IMPACT CLAIMS—DISPELLING MISCONCEPTIONS

President Trump’s Executive Order No. 1428 seeking to diminish or even eliminate disparate impact claims as an important tool in our nation’s civil rights legal protections contains several myths and misconceptions.¹⁷ Here are the facts and realities on the ground:

REALITY: The disparate impact framework doesn’t create any “presumption” of discrimination. Instead, it requires a careful, step-by-step analysis:

To prove a disparate impact claim, people alleging discrimination must first prove significant statistical disparities are caused by specific policies. Minor differences in outcomes don't qualify, and successful disparate impact claims require identifying which practice is causing harm.

To have any chance of defeating a disparate impact claim, an entity accused of disparate impact discrimination must justify its practices by showing they serve legitimate business purposes. Courts may accept these justifications when policies are important for operations.

Even when entities justify their practice, the burden shifts back: people alleging disparate impact must then show that a less discriminatory alternative exists that would serve the same goals without unfairly denying opportunities.

This framework is designed to protect legitimate business decisions while only targeting practices that unfairly exclude qualified people. Because plaintiffs must establish both significant disparities and show that there are viable, less discriminatory alternatives to meet the employer's goals, there is a high bar to bringing successful disparate impact cases.¹⁸

REALITY: The disparate impact theory of discrimination is consistent with promoting merit. It simply requires that policies with unequal impacts be justified based on the actual skills needed for the job. The typical remedy for a finding of disparate impact discrimination is removing artificial barriers that serve no legitimate necessary business function, and this removal benefits everyone. For example, if an employer removes an unnecessary college degree requirement, that opens opportunities for qualified workers of all backgrounds who were unfairly excluded by that policy. Employers can then focus on selecting the best candidates.

REALITY: Arbitrary barriers can cause discrimination without explicit bias, making accountability difficult in most cases. If disparate impact claims were discouraged, an intent-only framework would take its place. This would immunize practices that exclude qualified people, regardless of their lack of business necessity. Policies and practices that exclude qualified people without a legitimate business reason, particularly where a less discriminatory alternative exists, are unfair regardless of the intent behind them. Accordingly, the disparate impact framework is a necessary tool to address such instances of discrimination.

CONCLUSION

The Administration's efforts to discourage the use of the disparate impact framework threatens to roll back decades of civil rights and economic progress in the United States. The fight to protect these mechanisms is essential for continuing to promote fair access to opportunity across this country for women, people of color, people with disabilities, older adults, and others, in contexts ranging from the workplace to housing to education. Protecting these legal tools is about more than just policy, it is about defending the principle of equal opportunity that moves our communities and our country forward.

ENDNOTES

- 1 Exec. Order No. 14281, 90 F.R. 17537 (2025).
- 2 [Mandate for Leadership: The Conservative Promise](#), Project 2025, 335-36, 582-83 (2023).
- 3 [Cutting Civil Rights Offices Leaves Federal Workers Few Options](#) (Sept. 18, 2025); [Education Department Layoffs Hit Offices That Oversee Special Education and Civil Rights Enforcement](#) (Oct. 13, 2025); Rebecca Klar, [EEOC to Close Workers' Disparate Impact Discrimination Charges](#), *Bloomberg Law News* (Sept. 19, 2025).
- 4 *Griggs v. Duke Power Co.*, 401 U.S. 424, 424 (1971); 42 U.S.C. § 2000e-2(k).
- 5 An example is U.S. Dept. of Justice, [Justice Department Secures Over \\$6.5M from Citadel Federal Credit Union to Address Redlining of Black and Hispanic Communities](#) (Oct. 10, 2024).
- 6 42 U.S.C. § 2000e-2(k)(1)(A)(i); *Smith v. City of Jackson*, 544 U.S. 228 (2005); 42 U.S.C.S. § 2000d; 34 C.F.R. § 100.3(b)(2) (2023); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015).
- 7 42 U.S.C. § 2000e-2(k) (codifying disparate impact liability under Title VII; enacted as part of the Civil Rights Act of 1991, signed by President George H.W. Bush, a Republican); 24 C.F.R. § 100.500 (implementing the Department of Housing and Urban Development's disparate impact rule, originally issued under President Obama, a Democrat).
- 8 See Stephanie Bornstein and Joseph M. Sellers, *The Legacy of Wal-Mart v. Dukes and the Administrative Response*, 37 ABA Journal of Labor and Employment Law 3, 289, 294-96 (2023); See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (holding that a nationwide class of female employees could not proceed because the alleged discrimination arose from the discretionary decisions of individual store managers rather than a companywide policy).
- 9 Donald Tomaskovic-Devey, Kevin Stainback, & Corre L. Robinson, [Race and Workplace Integration: A Politically Mediated Process?](#), 48 Am. Behavioral Scientist 1200, 1201 (2005); C. Elizabeth Hirsh, [The Strength of Weak Enforcement: The Impact of Discrimination Charges, Legal Environments, and Organizational Conditions on Workplace Segregation](#), 74 Amer. Soc. Rev. 245, 245 (Apr. 2009).
- 10 Mitchell Feldman, [Statistically Speaking: Restrictive Changes to Fair Housing Act Disparate Impact Liability](#), 62 Boston Coll. L. Review 1321, 1330-1331 (2021).
- 11 U.S. Dept. of Justice, [Justice Department Secures Over \\$6.5M from Citadel Federal Credit Union to Address Redlining of Black and Hispanic Communities](#) (Oct. 10, 2024).
- 12 Rachel F. Moran, *Undone by Law: The Uncertain Legacy of Lau v. Nichols*, 16 Berkeley La Raza L.J. 1, 10 (2005); Kimberly Jenkins Robinson, [Protecting Education as a Civil Right: Remedying Racial Discrimination and Ensuring a High-Quality Education](#), Learning Policy Institute, 9 (December 2021).
- 13 Taylor D. August, [Letter: Harmony Public Schools RE: OCR Docket No. 06-11-5004](#), Dept. of Ed. (Nov. 26, 2014).
- 14 *Griggs v. Duke Power Co.*, 401 U.S. 424, 424 (1971); *Dothard v. Rawlinson*, 433 U.S. 321, 321 (1977); *Gregory v. Litton Systems, Inc.*, 472 F.2d 631 (9th Cir. 1972).
- 15 U.S. Equal Emp. Opportunity Comm'n, [Walmart, Inc. to Pay \\$20 Million to Settle EEOC Nationwide Hiring Discrimination Case](#) (Sept. 10, 2020).
- 16 *Johnson v. AK Steel Corp.*, No. 1:07-CV-291, 2008 WL 2184230 (S.D. Ohio May 23, 2008).
- 17 Exec. Order No. 14281, 90 F.R. 17537 (2025).
- 18 Nicholas Stephanopoulos, [Disparate Impact, Unified Law](#), 128 Yale L. J. 1566, 1622-23 (2019).