DOJ Ends 'Disparate Impact Liability' in a Huge Win for Equality Under the Law

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The Department of Justice struck a mighty blow for the primal constitutional principle of equality under the law when it implemented an executive order by Donald Trump, signed last April, that ordered the attorney general to rescind regulations that encouraged racial preferences.

Even the Washington Post (!) agreed with the action by Attorney General Pam Bondi to end the routine practice of using "disparate impact" metrics to "prove" discrimination.

All a plaintiff had to prove was that blacks or other minorities were "underrepresented" in a company's workforce to win a discrimination case.

Thus was born "disparate impact," and like any good bureaucratic rule, over the next 50 years, it grew into a monster. The rule tilted the playing field further and further against companies whose intentions to be fair were tossed out the window in favor of counting the color of noses to determine whether the company was discriminating.

For decades, the Justice Department has used disparate-impact liability to undermine the constitutional principle that all Americans must be treated equally under the law," said Attorney General Pamela Bondi.

“No longer. This Department of Justice is eliminating its regulations that for far too long required recipients of federal funding to make decisions based on race.”

The impact of this rule change by the DOJ will be felt immediately. EEOC will drop almost all its lawsuits that used disparate impact metrics to charge companies with violations of civil rights law.

“For over 50 years, the prior disparate-impact rule fostered the very thing the Civil Rights Act of 1964 prohibited — discrimination on the basis of race, color, or national origin,” said Chief of Staff and Supervisory Official for the Office of Legal Policy, Nicholas Schilling. “But with today’s rule, the Department reaffirms Congress’ commitment to measure all Americans by merit.”

The law, as enforced by the EEOC and the DOJ, was a confusing, incoherent mess. As Bondi put it, “The law seems to both forbid and require the same conduct," discriminating against some while giving other Americans a pass.

That will happen over the next few months. Any action is likely to be challenged, and the matter will almost certainly end up in the Supreme Court. This court is not likely to rule in favor of disparate impact statements.

But nothing is stopping a later court of leftists from reimposing it. Congress needs to codify the change into law before that happens.