

THOMAS E. PEREZ
Assistant Attorney General
JOHN M. GADZICHOWSKI
Chief
ESTHER G. LANDER
Deputy Chief
BARBARA E. THAWLEY
MEREDITH BURRELL
Senior Trial Attorneys
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4908
Washington, D.C. 20530
(202) 514-3852
Attorneys for Plaintiff United States

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW JERSEY AND NEW JERSEY
CIVIL SERVICE COMMISSION,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, United States of America, alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (“Title VII”).
2. This Court has jurisdiction of this action under 42 U.S.C. § 2000e-6(b), 28 U.S.C.

§§ 1331 and 1343, and 28 U.S.C. § 1345.

3. Defendant State of New Jersey (“New Jersey”) is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

4. Defendant New Jersey Civil Service Commission (“NJCSC”) is a five-member body, each member of which is appointed by the Governor of New Jersey with the consent of the New Jersey Senate.

5. On June 30, 2008, the civil service responsibilities of the former New Jersey Department of Personnel were assumed by the NJCSC. With respect to time periods prior to that date, references to the NJCSC in this Complaint include and incorporate its predecessor, the former New Jersey Department of Personnel.

6. Under state law, the NJCSC is responsible for, *inter alia*, establishing procedures for the promotion of law enforcement officers in municipalities and counties that participate in the New Jersey Civil Service system.

7. Defendant NJCSC is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

8. Since at least 2000, the NJCSC has maintained, and it continues to maintain, selection procedures for promotion to the rank of Police Sergeant. These procedures are utilized by hundreds of New Jersey cities and counties that participate in the New Jersey Civil Service system.

9. Since at least 2000, the NJCSC has administered, and it continues to administer, a written multiple-choice examination as part of its Police Sergeant promotion procedures. At all relevant times, the NJCSC has been, and it continues to be, responsible for setting the minimum

qualifications for admission to the examination, developing and administering the examination, scoring the examination, determining the pass/fail cutoff score that will be used on the examination, establishing Police Sergeant eligibility lists and certifying Police Sergeant candidates to the local jurisdictions participating in the New Jersey Civil Service system.

10. Police officers in local jurisdictions participating in the New Jersey Civil Service system cannot be considered for promotion to the position of Police Sergeant unless they take and pass the written examination administered by the NJCSC. Participating local jurisdictions cannot implement alternative selection procedures, use different written examinations from those administered by the NJCSC, or set different passing scores from those set by the NJCSC.

11. Police Sergeant candidates who meet the minimum qualifications set by the NJCSC and achieve a passing score on the NJCSC's written examination are placed on separate Police Sergeant "eligibility lists" by jurisdiction. On each eligibility list, the candidates are listed in descending rank-order based on their "final scores," which are a combination of their Police Sergeant written examination scores, weighted 80%, and seniority credits, weighted 20%.

12. Local jurisdictions participating in the New Jersey Civil Service system can make promotions to the rank of Police Sergeant only from a "certification list" established by the NJCSC at the request of the local jurisdiction. The NJCSC creates certification lists using the "Rule of Three" pursuant to New Jersey state law, N.J. Stat. Ann., § 11A:4-8. Under the "Rule of Three," for the first Police Sergeant vacancy in a jurisdiction requesting a certification list, the NJCSC certifies the three highest-ranking candidates on the jurisdiction's eligibility list. For each additional vacancy, the NJCSC certifies the next ranked candidate on the eligibility list. If more than one candidate has the same final score, the tied candidates are certified together.

13. Each year between 2000 and 2008, the NJCSC administered a written examination as part of the Police Sergeant promotional process.

14. For the entire period between 2000 and 2008, approximately 89% of the white candidates who took the written examination passed the examination, while only approximately 73% of the African-American candidates passed the examination. This difference between the pass rate of African-American candidates and that of white candidates is statistically significant.

15. Moreover, when each administration of the written examination between 2000 and 2008 is considered separately, African-American candidates passed at a rate statistically significantly lower than did white candidates in each year.

16. For the entire period between 2000 and 2008, while approximately 89% of the white candidates who took the written examination passed the examination, only approximately 77% of the Hispanic candidates passed the examination. This difference between the pass rate of Hispanic candidates and that of white candidates is statistically significant.

17. Moreover, when each administration of the written examination between 2000 and 2008 is considered separately, Hispanic candidates passed at a rate lower than the rate at which white candidates passed in each year, and the difference in pass rates is statistically significant for each year between 2001 and 2008.

18. Because the NJCSC ranks candidates for promotion to Police Sergeant on eligibility lists based upon the candidates' combined written examination scores and seniority credits, and certifies candidates in descending rank-order from the eligibility lists, many candidates who pass the written examination do not rank high enough to be certified or promoted.

19. Among candidates who passed the NJCSC Police Sergeant written examination, African Americans were under-represented in the higher score ranges and over-represented in the lower score ranges for each year between 2000 and 2008. Thus, for each administration of the examination between 2000 and 2008, the mean written examination score of African-American candidates was statistically significantly lower than the mean written examination score of white candidates.

20. The difference between the African-American and white mean scores on the written examination are reflected in the final (*i.e.*, combined written examination and seniority) scores of candidates who passed the written examination. Thus, for each year from 2000 to 2008, the mean final score of African-American candidates was statistically significantly lower than the mean final score of white candidates.

21. Among candidates who passed the NJCSC Police Sergeant written examination, Hispanics were under-represented in the higher score ranges and over-represented in the lower score ranges for each year between 2001 and 2008. Thus, for each administration of the examination between 2001 and 2008, the mean written examination score of Hispanic candidates was statistically significantly lower than the mean written examination score of white candidates.

22. The difference between the Hispanic and white mean scores on the written examination are reflected in the final (*i.e.*, combined written examination and seniority) scores of candidates who passed the written examination. Thus, for each year from 2001 to 2008, the mean final score of Hispanic candidates was statistically significantly lower than the mean final score of white candidates.

23. In those jurisdictions for which the NJCSC established eligibility lists that

contained both white candidates and African-American or Hispanic candidates, African-American and Hispanic candidates were less likely to rank high enough to be placed on a certification list and considered for promotion than were white candidates. Between 2000 and 2008, approximately 35% of the white candidates on the eligibility lists in such jurisdictions were certified, while approximately 20% of African-American candidates and 22% of Hispanic candidates were certified. Similarly, while approximately 18% of the white candidates on the eligibility lists in such jurisdictions were promoted, approximately 9% of African-American candidates and 13% of Hispanic candidates were promoted.

24. Defendants' pass/fail use of the NJCSC Police Sergeant written examination to screen candidates for promotion and defendants' certification of candidates in descending rank-order, based on a combination of candidates' written examination scores and seniority credits, have resulted in disparate impact upon African-American candidates.

25. Defendants' pass/fail use of the NJCSC Police Sergeant written examination to screen candidates for promotion and defendants' certification of candidates in descending rank-order, based on a combination of candidates' written examination scores and seniority credits, have resulted in disparate impact upon Hispanic candidates.

26. Defendants have not demonstrated that their pass/fail use of the NJCSC Police Sergeant written examination or their certification of candidates in descending rank-order, based on a combination of candidates' written examination scores and seniority credits, is job related for the Police Sergeant position and consistent with business necessity.

27. Defendants have pursued and continue to pursue policies and practices that discriminate against African-American and Hispanic candidates and that deprive or tend to

deprive African Americans and Hispanics of employment opportunities or adversely affect their status as employees because of their race and national origin in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. Defendants have implemented these policies and practices, among other ways, as follows:

- a. by using written promotional examinations as pass/fail screening devices in a manner that results in disparate impact upon African-American and Hispanic candidates for promotion to the position of Police Sergeant, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);
- b. by certifying candidates for promotion to the position of Police Sergeant from eligibility lists in descending rank-order, based upon a combination of candidates' scores on the Police Sergeant written examination and seniority credits, where such rank-order certification results in disparate impact upon African-American and Hispanic candidates, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k); and
- c. by failing or refusing to take appropriate actions to correct the present effects of their discriminatory promotional practices.

28. The policies and practices of defendants described in Paragraphs 8 through 27 *supra*, constitute a pattern or practice of resistance to the full enjoyment by African Americans and Hispanics of their right to equal employment opportunities without discrimination based on

race or national origin, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. This pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by Title VII. Unless restrained by order of this Court, defendants will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

29. All conditions precedent to the filing of this lawsuit have been performed or have occurred.

WHEREFORE, the United States prays for an order enjoining defendants, the State of New Jersey and the New Jersey Civil Service Commission, and their officers, agents, employees, successors and all persons in active concert or participation with them from engaging in employment practices which discriminate against African Americans on the basis of Race and Hispanics on the basis of national origin in violation of Title VII, and specifically from:

- a. using written promotional examinations as pass/fail screening devices in a manner that results in disparate impact upon African-American and Hispanic candidates for promotion to the position of Police Sergeant, that are not job related for the position in question and consistent with business necessity, and do not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);
- b. certifying candidates for promotion to the position of Police Sergeant from eligibility lists in descending rank-order, based upon a combination of candidates scores on the written examination and seniority credits, where such rank-order certification results in disparate impact upon African-American and Hispanic candidates, is not job related for the position in question and consistent with business necessity, and does not otherwise meet the requirements of Section

703(k) of Title VII, 42 U.S.C. § 2000e-2(k);


- c. failing or refusing to provide make-whole relief, including back pay with interest and promotion with retroactive seniority, to individuals who have suffered loss or will suffer loss as a result of the discriminatory policies and practices alleged in this Complaint; and
- d. failing or refusing to take appropriate action to overcome the present effects of the defendants' discriminatory policies and practices, including but not limited to the following:
 - (i) adopting promotional procedures that do not result in disparate impact or that otherwise comply with Title VII; and
 - (ii) taking such other reasonable actions that are necessary to correct the present effects of past discrimination.

Plaintiff United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

ERIC H. HOLDER
Attorney General

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By:



JOHN M. GADZICHOWSKI
(WI Bar No. 1014294)
Chief
Employment Litigation Section

By: s/ Esther Lander
ESTHER LANDER (DC Bar No. 461316)
Deputy Chief

By: s/ Barbara E. Thawley
BARBARA THAWLEY (DC Bar No. 358944)
MEREDITH L. BURRELL (MD Bar, no number)
Senior Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4908
Washington, D.C. 20530
Telephone: (202) 514-3852
Facsimile: (202) 514-1105
Barbara.E.Thawley@usdoj.gov

United States Attorney's Office
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) 645-2700

Attorneys for Plaintiff United States