

**Wards Cove Packing Co. v. Atonio (1989)**

490 U.S. 642

*Jobs at the Alaskan canneries of Wards Cove Packing Co. were of two general types: unskilled “cannery” jobs on the cannery lines, filled predominantly by nonwhites, and higher-paying “noncannery” jobs, skilled posts filled predominantly by whites. Frank Atonio and other nonwhite cannery workers filed suit in U.S. District Court under Title VII of the Civil Rights Act of 1964, alleging that the petitioner’s hiring and promotion practices were responsible for the racial stratification of the work force and denied them noncannery jobs on the basis of race. The district court rejected the respondents’ claims, but the U.S. Court of Appeals for the Ninth Court reversed, holding that the respondents had, on the basis of their statistics, made out a prima facie case of disparate impact in hiring for both skilled and unskilled jobs. The Supreme Court granted certiorari.*

Opinion of the Court: White, Rehnquist, O’Connor, Scalia, Kennedy.

Dissenting opinions: Stevens, Brennan, Marshall, Blackmun; Blackmun, Brennan, Marshall

**JUSTICE WHITE delivered the opinion of the Court.**

Title VII of the Civil Rights Act of 1964 . . . makes it an unfair employment practice for an employer to discriminate against any individual with respect to hiring or the terms and condition of employment because of such individual’s race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees in ways that would adversely affect any employee because of the employee’s race, color, religion, sex, or national origin. *Griggs v. Duke Power Co.* (1971) construed Title VII to proscribe “not only overt discrimination but also practices that are fair in form but discriminatory in practice.” Under this basis for liability, which is known as the “disparate impact” theory and which is involved in this case, a facially neutral employment practice may be deemed violative of Title VII without evidence of the employer’s subjective intent to discriminate that is required in a “disparate treatment” case....

In holding that respondents had made out a *prima facie* case of disparate impact, the court of appeals relied solely on respondents’ statistics showing a high percentage of nonwhite workers in the cannery jobs and a low percentage of such workers in the noncannery positions. Although statistical proof can alone make out a *prima facie* case, ... the Court of Appeals’ ruling here misapprehends our precedents and the purposes of Title VII, and we therefore reverse....

It is clear to us that the Court of Appeals’ acceptance of the comparison between the racial composition of the cannery work force and that of the noncannery work force, as probative of a *prima facie* case of disparate impact in the selection of the latter group of workers, was flawed for several reasons. Most obviously, with respect to the skilled noncannery jobs at issue here, the cannery work force in no way reflected “the pool of *qualified* job applicants” or the “*qualified* population in the labor force.” Measuring alleged discrimination in the selection of accountants, managers, boat captains, electricians, doctors, and engineers—and the long list of other “skilled” noncannery positions found to exist by the District Court ...—by comparing the number of nonwhites occupying these jobs to the number of nonwhites filling cannery worker positions is nonsensical. If the absence of minorities holding such skilled positions is due to a dearth of

qualified nonwhite applicants (for reasons that are not petitioners' fault), petitioners' selection methods or employment practices cannot be said to have had a "disparate impact" on nonwhites.

One example illustrates why this must be so. Respondents' own statistics concerning the noncannery work force at one of the canneries at issue here indicate that approximately 17% of the new hires for medical jobs, and 15% of the new hires for officer worker positions, were nonwhite. ... If it were the case that less than 15–17% of the applicants for these jobs were nonwhite and that nonwhites made up a lower percentage of the relevant qualified labor market, it is hard to see how respondents ... would have made out a *prima facie* case of disparate impact. Yet, under the Court of Appeals' theory, simply because nonwhites comprise 52% of the cannery workers at the cannery in question, ... respondents would be successful in establishing a *prima facie* case of racial discrimination under Title VII.

Such a result cannot be squared with our cases or with the goals behind the statute. The Court of Appeals' theory, at the very least, would mean that any employer who had a segment of his work force that was—for some reason—racially imbalanced, could be haled into court and forced to engage in the expensive and time-consuming task of defending the "business necessity" of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, insuring that no portion of his work force deviates in racial composition from the other portions thereof; this is a result that Congress expressly rejected in drafting Title VII. ... The Court of Appeals' theory would "leave the employer little choice ... but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII."

The Court of Appeals also erred with respect to the unskilled noncannery positions. Racial imbalance in one segment of an employer's work force does not, without more, establish a *prima facie* case of disparate impact with respect to the selection of workers for the employer's other positions, even where workers for the different positions may have somewhat fungible skills (as is arguably the case for cannery and unskilled noncannery workers). As long as there are no barriers or practices deterring qualified nonwhites from applying for noncannery positions, if the percentage of selected applicants who are nonwhite is not significantly less than the percentage of qualified applicants who are nonwhite, the employer's selection mechanism probably does not operate with a disparate impact on minorities. Where this is the case, the percentage of nonwhite workers found in other positions in the employer's labor force is irrelevant to the question of a *prima facie* statistical case of disparate impact. As noted above, a contrary ruling on this point would almost inexorably lead to the use of numerical quotas in the workplace, a result that Congress and this Court have rejected repeatedly in the past.

Moreover, isolating the cannery workers as the potential "labor force" for unskilled noncannery positions is at once both too broad and too narrow in its focus. Too broad because the vast majority of these cannery workers did not seek jobs in unskilled noncannery positions; there is no showing that many of them would have done so even if none of the arguably "detering" practices existed. Thus, the pool of cannery workers cannot be used as a surrogate for the class of qualified job applicants because it contains many persons who have not (and would not) be noncannery job applicants. Conversely, if respondents propose to use the cannery workers for comparison purposes because they represent the "qualified labor population" generally, the group is too narrow because there are obviously many qualified persons in the labor market for noncannery jobs who are not cannery workers....

Consequently, we reverse the Court of Appeals' ruling that a comparison between the percentage of cannery workers who are nonwhite and the percentage of noncannery workers who are nonwhite makes out a *prima facie* case of disparate impact. Of course, this leaves unresolved whether the record made in the District Court will support a conclusion that a *prima facie* case of disparate impact has been established on some basis other than the racial disparity between cannery and noncannery workers. This is an issue that the Court of Appeals or the District Court should address in the first instance. ... Because we remand for further proceedings, however, on whether a *prima facie* case of disparate impact has been made in defensible fashion in this case, we address two other challenges petitioners have made to the decision of the Court of Appeals....

First is the question of causation in a disparate impact case....

Even if on remand respondents can show that nonwhites are underrepresented in the at-issue jobs ... this alone *will not* suffice to make out a *prima facie* case of disparate impact. Respondents will also have to demonstrate that the disparity they complain of is the result of one or more of the employment practices that they are attacking here, specifically showing that each challenged practice has a significantly disparate impact on employment opportunities for whites and nonwhites. To hold otherwise would result in employers being potentially liable for "the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces." ...

Some will complain that this specific causation requirement is unduly burdensome on Title VII plaintiffs. But liberal civil discovery rules give plaintiffs broad access to employers' records in an effort to document their claims....

If, on remand, respondents meet the proof burdens outlined above, and establish a *prima facie* case of disparate impact with respect to any of petitioners' employment practices, the case will shift to any business justification petitioners offer for their use of these practices....

In this phase, the employer carries the burden of producing evidence of a business justification for his employment practice. The burden of persuasion, however, remains with the disparate-impact plaintiff. ... "[T]he ultimate burden of proving that discrimination against a protected group has been caused by a specific employment practice remains with the plaintiff *at all times.*" ... This rule conforms with the usual method for allocating persuasion and production burdens in the federal courts, ... and more specifically, it conforms to the rule in disparate treatment cases that the plaintiff bears the burden of disproving an employer's assertion that the adverse employment action or practice was based solely on a legitimate neutral consideration....

The persuasion burden here must remain with the plaintiff, for it is he who must prove that it was "because of such individual's race, color," etc., that he was denied a desired employment opportunity....

For the reasons given above, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

**JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.**

. . . This industry long has been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there. The majority's legal rulings essentially immunize these practices from attack under a Title VII disparate-impact analysis.

Sadly, this comes as no surprise. One wonders whether the majority still believes that race discrimination—or, more accurately, race discrimination against nonwhites—is a problem in our society, or even remembers that it ever was.

**JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.**

Fully 18 years ago, this Court unanimously held that Title VII of the Civil Rights Act of 1964 prohibits employment practices that have discriminatory effects as well as those that are intended to discriminate. *Griggs v. Duke Power Co.* (1971). ... Federal courts and agencies consistently have enforced that interpretation, thus promoting our national goal of eliminating barriers that define economic opportunity not by aptitude and ability but by race, color, national origin, and other traits that are easily identified but utterly irrelevant to one's qualification for a particular job. Regrettably, the Court retreats from these efforts in its review of an interlocutory judgment respecting the "peculiar facts" of this lawsuit. Turning a blind eye to the meaning and purpose of Title VII, the majority's opinion perfunctorily rejects a longstanding rule of law and underestimates the probative value of evidence of a racially stratified work force. I cannot join this latest sojourn into judicial activism....

The majority's opinion begins with recognition of the settled rule that "a facially neutral employment practice may be deemed violative of Title VII without evidence of the employer's subjective intent to discriminate that is required in a 'disparate treatment' case." It then departs from the body of law engendered by this disparate impact theory, reformulating the order of proof and the weight of the parties' burdens. Why the Court undertakes these unwise changes in elementary and eminently fair rules is a mystery to me.

I respectfully dissent.