

## 7.2: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. ABERCROMBIE and FITCH STORES, INC.,

SUPREME COURT OF THE UNITED STATES

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. **ABERCROMBIE & FITCH STORES, INC.,**

575 U. S. \_\_\_\_ (2015)

(Case Syllabus edited by the Author)

Respondent (Abercrombie) refused to hire Samantha Elauf, a practicing Muslim, because the headscarf that she wore pursuant to her religious obligations conflicted with Abercrombie’s employee dress policy. The Equal Employment Opportunity Commission (EEOC) filed suit on Elauf’s behalf, alleging a violation of Title VII of the Civil Rights Act of 1964, which, *inter alia*, prohibits a prospective employer from refusing to hire an applicant because of the applicant’s religious practice when the practice could be accommodated without undue hardship. The EEOC prevailed in the District Court, but the Tenth Circuit reversed, awarding Abercrombie summary judgment on the ground that failure-to-accommodate liability attaches only when the applicant provides the employer with actual knowledge of his need for an accommodation.

**Held:** To prevail in a disparate-treatment claim, an applicant need show only that his need for an accommodation was a motivating factor in the employer’s decision, not that the employer had knowledge of his need. Title VII’s disparate-treatment provision requires Elauf to show that Abercrombie (1) “fail[ed]. . . to hire” her (2) “because of” (3) “[her] religion” (including a religious practice). 42 U. S. C. §2000e-2(a)(1). And its “because of” standard is understood to mean that the protected characteristic cannot be a “motivating factor” in an employment decision. § 2000e-2(m). Thus, rather than imposing a knowledge standard, § 2000e-2(a) (1) prohibits certain *motives*, regardless of the state of the actor’s knowledge: An employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions. Title VII contains no knowledge requirement. Furthermore, Title VII’s definition of religion clearly indicates that failure-to-accommodate challenges can be brought as disparate-treatment claims. And Title VII gives favored treatment to religious practices, rather than demanding that religious practices be treated no worse than other practices.

731 F. 3d 1106, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment. THOMAS, J., filed an opinion concurring in part and dissenting in part.

**DISPARATE IMPACT:** Disparate impact lacks discriminatory intent. It occurs when a neutral employment practice has an adverse impact on employees protected by anti-discrimination laws. While the employer’s action appears to be legal or proper on the surface, the employer’s action negatively affects certain employees more than others in an illegally discriminatory way. The plaintiff-claimant does not have to prove that the employer intended to discriminate; proof of the discrimination consists of the discriminatory outcome or adverse impact, regardless of the employer’s intent. However, if an employer can prove that there is a lawful business justification for the employer’s actions, then they will not be held liable under a disparate impact case.

The case that follows, *Frank Ricci, et al., v John DeStefano, et al.* 557 U.S. 557 (2009) is a U.S. Supreme Court decision regarding disparate impact. The Supreme Court held in a 5–4 decision that the city of New Haven’s decision to ignore the test results for promotion of some of its firefighters violated Title VII. The Court found that because the city did not have a “strong basis in evidence” that it would have subjected itself to disparate impact liability if it had promoted the white and Hispanic firefighters instead of the black firefighters, ignoring the test results was itself discriminatory.

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