

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF LUBBOCK, TEXAS)	Civil Action No: 5:15-cv-234
)	
Defendant,)	
)	
)	
_____)	

COMPLAINT

Plaintiff United States of America alleges as follows:

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”).

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under 42 U.S.C. §§ 2000e-5(f) & 2000e-6(b) and 28 U.S.C. §§ 1343(a)(3) & 1345.

3. Venue is proper in the Lubbock Division of the United States District Court for the Northern District of Texas, pursuant to 28 U.S.C. § 1391, because Defendant City of Lubbock, Texas (“Lubbock”), is located in this judicial district and a substantial part of the events giving rise to this action took place in this judicial district.

PARTIES

4. Lubbock is a municipal government and a political subdivision created pursuant to the laws of the State of Texas.

5. Lubbock 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).
6. Lubbock maintains the Lubbock Police Department (“LPD”) and, through the LPD, employs police officers who are responsible for protecting individuals and property in Lubbock.
7. Subject to Texas Local Government Code Chapter 143, Lubbock is responsible for establishing the terms, conditions, and other practices for the selection and employment of LPD’s probationary police officers.

STATEMENT OF FACTS

A. WRITTEN EXAMINATIONS FOR LPD PROBATIONARY POLICER OFFICER POSITIONS

8. Since at least 2009, Lubbock has used a written examination in the selection of applicants for probationary police officer with the LPD.
9. The 65-question written examination Lubbock has used since at least 2009 includes reading comprehension (25 questions), grammar (20 questions), and math (20 questions) components.
10. In scoring the written examinations since at least 2009, Lubbock has assigned each question equal weight.
11. Since at least 2009, Lubbock has used the written examination on a pass/fail basis with a 70% pass point.
12. Only those applicants who score 70% or higher on the written examination are eligible to continue in Lubbock’s selection process for probationary police officers.
13. The City treats applicants who score below a 70% on the written exam as having failed and thus ineligible to continue in the selection process.

14. Between January 1, 2010, and June 6, 2015, Lubbock administered its written examination fourteen times.
15. Approximately 12% of white applicants failed the written examination the first time they took it between January 1, 2010, and June 6, 2015.
16. Approximately 32% of Hispanic applicants failed the written examination the first time they took it between January 1, 2010, and June 6, 2015.
17. The rate at which Hispanic applicants failed the written examination the first time they took it between January 1, 2010, and June 6, 2015 is statistically significantly higher than the rate at which white applicants failed the written examination the first time they took it during the same time period.
18. When considering examination administrations individually, the failure rate of Hispanic applicants was statistically significantly higher than the failure rate of white applicants in thirteen of the fourteen administrations.
19. Lubbock's use of the written examination in the manner described in paragraphs 8 through 18, *supra*, has had an adverse impact on Hispanic applicants for probationary police officer and is not job related and consistent with business necessity.

**B. PHYSICAL FITNESS TESTS FOR
LPD PROBATIONARY POLICER OFFICER POSITIONS**

20. Since at least 2009, Lubbock has used a physical fitness test ("PFT") in screening applicants for probationary police officer with the LPD.
21. The PFT is comprised of five events: (1) push-ups; (2) sit-ups; (3) a 300-meter run; (4) a 1.5-mile run; and (5) a vertical jump.
22. Lubbock has set a passing standard for each event of the PFT that applicants must meet to remain eligible for hire as probationary police officers.

23. Only those applicants who achieve the passing standard for each and every event of the PFT are eligible to continue in Lubbock's selection process for probationary police officers.

24. The City treats applicants who do not achieve the passing standard on each and every event of the PFT as having failed and thus ineligible to continue in the selection process.

25. Between January 1, 2010, and June 6, 2015, Lubbock administered its PFT fourteen times.

26. Approximately 19% of male applicants failed the PFT the first time they took it between January 1, 2010, and June 6, 2015.

27. Approximately 62% of female applicants failed the PFT the first they took it between January 1, 2010, and June 6, 2015.

28. The rate at which female applicants failed the PFT the first time they took it between January 1, 2010, and June 6, 2015 is statistically significantly higher than the rate at which male applicants failed the PFT the first time they took it during the same time period.

29. When considering PFT administrations individually, the failure rate of female applicants was statistically significantly higher than the failure rate of male applicants for all fourteen administrations.

30. Lubbock's use of the PFT in the manner described in paragraphs 20 through 29, *supra*, has had an adverse impact on female applicants for probationary police officer and is not job related and consistent with business necessity.

C. ADDITIONAL FACTS COMMON TO ALL CLAIMS FOR RELIEF

31. Lubbock has pursued and continues to pursue policies and practices that discriminate against Hispanics and women, and that deprive or tend to deprive Hispanics and women of employment opportunities because of their national origin or sex, in violation of Section 707 of

Title VII, 42 U.S.C. § 2000e-6. Lubbock has implemented these policies and practices, among other ways, by:

- a. using, in the selection of applicants for probationary police officer, a written examination as a pass/fail screening device, where such use results in a disparate impact on Hispanic candidates, is not job related for the position in question or 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. using, in the selection of applicants for probationary police officer, a physical fitness test as a pass/fail screening device, where such use results in a disparate impact on female 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 take appropriate action to correct the present effects of its discriminatory policies and practices; and
- d. failing or refusing to “make whole” those Hispanic and female applicants for probationary police officer positions who have been harmed by Lubbock’s unlawful use of its written examination and/or physical fitness test.

32. In accordance with Section 707 of Title VII, 42 U.S.C. § 2000e-6, the United States, through the Department of Justice, has investigated Lubbock’s policies and practices in selecting probationary police officers as they affect Hispanic and female applicants. The United States has notified Lubbock of that investigation and of its determination that the policies and practices described in Paragraphs 8 through 30, *supra*, are unlawful.

33. The policies and practices of Lubbock described in paragraphs 8 through 30, *supra*, constitute a pattern or practice of resistance to the full enjoyment by Hispanics and women of their right to equal employment opportunities without discrimination based upon national origin and/or sex, 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, Lubbock will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

34. All conditions precedent to the filing of suit have been performed or have occurred.

**THE UNITED STATES' PATTERN OR PRACTICE
CLAIMS PURSUANT TO SECTION 707 OF TITLE VII, 42 U.S.C. § 2000e-6**

COUNT 1

**LUBBOCK'S USE OF ITS WRITTEN EXAMINATION IN SELECTING
PROBATIONARY POLICE OFFICERS HAS AN UNLAWFUL DISPARATE IMPACT
ON HISPANIC APPLICANTS**

35. Plaintiff United States realleges Paragraphs 1-19 and 31-34, *supra*, as if fully set forth herein.

36. Lubbock's use of the written examinations it administered from January 1, 2010, to June 6, 2015, and any continuing use thereof, has resulted in a disparate impact on Hispanic applicants for probationary police officer, is not job related for the position in question or consistent with business necessity, and otherwise does not meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k).

COUNT 2

**LUBBOCK'S USE OF ITS PHYSICAL FITNESS TEST IN SELECTING
PROBATIONARY POLICE OFFICERS HAS AN UNLAWFUL DISPARATE IMPACT
ON FEMALE APPLICANTS**

37. Plaintiff United States realleges Paragraphs 1-7 and 20-34, *supra*, as if fully set forth herein.

38. Lubbock's use of the physical fitness tests it administered from January 1, 2010, to June 6, 2015, and any continuing use thereof, has resulted in a disparate impact on female applicants for probationary police officer, is not job related for the position in question and consistent with business necessity, and otherwise does not meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k).

WHEREFORE, the United States prays for an order enjoining Lubbock, its officers, agents, employees, successors and all persons in active concert or participation with them, from engaging in discriminatory employment practices against Hispanics and women on the basis of national origin and sex, and specifically from:

- a. using, in the selection of applicants for probationary police officer, a written examination as a pass/fail screening device, where such use results in disparate impact on 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);
- b. using, in the selection of applicants for probationary police officer, a physical fitness test as a pass/fail screening device, where such use results in disparate impact on female 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 take appropriate action to correct the present effects of its discriminatory policies and practices;
- d. failing or refusing to provide “make whole” relief, including backpay with interest, offers of employment, retroactive seniority, and other benefits to those Hispanic and female applicants for appointment to probationary police officer positions who have been harmed or will be harmed by its unlawful use of its written examination and/or physical fitness test.
- e. failing or refusing to take other appropriate non-discriminatory measures to overcome the effects of their discriminatory policies and practices.

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

Respectfully submitted,

Date: December 2, 2015

JOHN R. PARKER
United States Attorney
Northern District of Texas

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

BY: */s Ann E. Cruce-Haag*

/s Delora L. Kennebrew

ANN E. CRUCE-HAAG (TX Bar 24032102)
Assistant United States Attorney
1205 Texas Avenue, Suite 700
Lubbock, TX 79401
Telephone: (806) 472-7351
Facsimile: (806) 472-7324
Email: Ann.Haag@usdoj.gov

DELORA L. KENNEBREW (GA Bar 414320)
Chief
JOHN P. BUCHKO (DC Bar 452745)
Deputy Chief
HECTOR RUIZ (TX Bar 24029814)
KAREN RUCKERT (KS Bar 20384)
CHRISTINA CHEUNG (CA Bar 280148)
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
Patrick Henry Building, Room 4026
Washington, D.C. 20530
Telephone: (202) 514-9694
Facsimile: (202) 514-1005
Email: Hector.Ruiz@usdoj.gov
Email: Karen.Ruckert@usdoj.gov
Email: Christina.Cheung@usdoj.gov

Attorneys for Plaintiff United States of America