

Re-Defining Racial Discrimination in America

❑ Suppose you own a business and put out an ad for people who want a job. Many apply. You run background checks, including criminal checks, which are perfectly legal. You learn that some of the prospective employees have criminal records. And you decide you'd rather not have a convicted thief working the cash register at your business or you think it's better that you don't hire someone with a violent past, fearing he might hit a customer or fellow worker who looks at him the wrong way. Or maybe you figure, you just don't want convicted criminals in your company.

Question: If you choose not to hire ex-cons are you a bigot? Before you answer, consider a case you probably have heard nothing about – the case of the Equal Employment Opportunity Commission, a federal agency, against BMW (USA) and Dollar General.

The EEOC is suing those companies for allegedly violating the 1964 Civil Rights Act. The EEOC has employed a strange new legal theory essentially arguing that criminal background checks are racist – or at least may be.

There is nothing in the 1964 Civil Rights Act that covers ex-cons. But it does, of course, cover matters involving racial discrimination. Here's where the strange legal theory comes in: Since blacks are convicted of crimes at much higher rates than whites, and since BMW and Dollar General rejected more blacks than whites for jobs because of their criminal convictions, the companies are, in the strange logic of the EEOC, guilty of racial discrimination.

Let's be clear: The EEOC found no memos showing racial bias by the companies. It found no incriminating e-mails. No

voicemails. No current employee came forward and said he heard conversations among the managers indicating they didn't want to hire black people.

None of this mattered to the liberals at the EEOC. They were too busy playing a numbers game, a game that is part of the Obama administration's efforts to re-define the meaning of racism in America.

They even have a name for what they are doing: It's a theory called "disparate impact." Here's an example of how it works: If 20 whites and 20 blacks apply for a promotion in the police or fire department and none or "too few" of the blacks get high enough grades for the promotion, that, according to the theory, shows a disparate impact – and is proof of racial discrimination. That's the same thinking behind the lawsuits against BMW and Dollar General.

It is true that BMW and Dollar General did discriminate. But anyone with an ounce of common sense would figure out that they discriminated *against convicted criminals*, regardless of race or anything else. Yes, some white workers with criminal records were also turned down.

This is not what Martin Luther King fought for. This is not why so many good Americans, black and white, marched from Selma, Alabama and were beaten – simply for demanding the same rights for black Americans that white Americans already had. None of them fought, and in some cases died, so that the federal government could force employers to hire convicted criminals – who happen to be black. This is not a lawsuit for civil rights. It's a perversion of the real meaning of civil rights.

In fairness, the EEOC makes a reasonable argument when it says employers need to treat all these cases individually. Not all convicted criminals are alike, after all. The ex-con should have the right to make his case to the boss, the EEOC says,

and explain why, despite his criminal conviction, he'd be a good worker.

That sounds fair enough. We all deserve second and even third chances. And in some cases the companies probably did reject good people who paid their debt to society and have turned their lives around. But does this really constitute racial discrimination – especially when whites who may have also turned their lives around were also rejected? And what about the rights of the companies? Shouldn't BMW and Dollar General be the ones to decide if they want to take the risk and hire a convicted criminal – instead of the decision coming from a bunch of political appointees in Washington?

If the EEOC wins its case the new rules would apply to other companies in America. So what would happen then if an ex-con hits a customer – after the company hired him knowing full well that he had a violent past? I'm not at all sure that "the EEOC made me do it" defense would spare that business massive damages.

While millions of Americans are focusing on the news about how the federal government is "data-mining" our phone and e-mail records, this case is flying below the radar. But this one is also about a massive federal government intruding into our lives.

Racial discrimination is already against the law, and that's how it should be. But this is not what they had in mind when they passed the 1964 Civil Rights Act. Not even close.