

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARYLAND DEPARTMENT OF STATE
POLICE,

Defendant.

Civil Action No.:

COMPLAINT

Plaintiff, the United States of America (“United States”), alleges as follows:

1. The United States brings this action 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”), with respect to race and sex discrimination.
2. As set forth more fully below, the United States alleges that the Maryland Department of State Police (“MDSP”) has used and continues to use a written test called the Police Officer Selection Test (“POST”) and a physical fitness test called the Functional Fitness Assessment Test (“FFAT”) and to screen and select applicants for employment in entry-level state police trooper positions (“troopers”). MDSP’s use of the POST has disproportionately excluded African-American applicants, and its use of the FFAT has disproportionately excluded female applicants, from employment as troopers. MDSP’s uses of the POST and the FFAT are not job related or consistent with business necessity. Through its uses of the POST and the FFAT, MDSP is engaged in a pattern or practice of employment discrimination against African-American and female applicants for troopers in violation of Title VII.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331, 1343(a)(3) & 1345.

4. Venue is proper in the United States District Court for the District of Maryland, pursuant to 28 U.S.C. § 1391, because Defendant MDSP is located within this judicial district, and a substantial part of the events giving rise to this action took place in this judicial district.

PARTIES

5. Plaintiff United States is expressly authorized to bring this action under Section 707(a) of Title VII, 42 U.S.C. § 2000e-6(a).

6. Defendant MDSP is a principal department of state government created pursuant to the laws of the State of Maryland, headquartered at 1201 Reisterstown Road, Pikesville, Maryland 21208.

7. MDSP 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. MDSP is a law enforcement agency that employs troopers who are responsible for issuing traffic citations and warnings; investigating traffic accidents; investigating and completing criminal investigations; interviewing witnesses, victims, and suspects; writing field reports; arresting and processing suspects; preparing cases for court and testifying in court; and providing basic medical attention to ill and injured persons; and enforcing the laws of the State of Maryland, among other tasks.

9. Subject to the Maryland Public Safety Article, MDSP is responsible for establishing the terms, conditions, and other practices for the selection and employment of troopers.

STATEMENT OF FACTS

A. MDSP's HIRING PROCESS FOR TROOPER POSITIONS

10. Since at least 2017, MDSP has used the same multi-step process for hiring troopers. The selection process includes the following steps: (1) initial online employment application; (2) applicant orientation; (3) physical fitness test; (4) written examination; (5) comprehensive online application; (6) oral interview; (7) polygraph examination; (8) background investigation; (9) medical and psychological examinations; and (10) Police Selection Committee file review.

B. THE WRITTEN EXAMINATION FOR MDSP TROOPER POSITIONS

11. Since at least 2017, MDSP has used a written examination called the Police Officer Selection Test ("POST") in screening applicants for trooper positions.

12. The POST includes four separate components, which purport to test: mathematics (20 questions); reading comprehension (25 questions); grammar (20 questions); and report writing skills (10 questions).

13. To pass the POST, a trooper applicant must achieve an aggregate score of 70% on all components combined, and also must score at least 70% on the reading comprehension component, 70% on the grammar component, and 70% on the report writing skills component. There is no minimum passing score on the mathematics component, but the score on the mathematics component is factored into the aggregate score.

14. Only those applicants who pass the POST are eligible to continue in MDSP's selection process for trooper positions. MDSP treats applicants who do not achieve the passing scores described in Paragraph 13 as having failed and thus ineligible to continue in the selection process.

15. Once a trooper applicant passes the POST, MDSP will accept that score indefinitely. If an applicant previously achieved these passing scores on the POST during the application process for another law enforcement agency, MDSP will accept those results.

16. Any applicant may take the POST up to four times within a 12-month period. Applicants who fail the POST four times within a 12-month period are disqualified from the application process for 12 months from the date of the final failure.

17. Since 2017, MDSP made trooper appointments to twelve academy classes: classes 147 through class 158.

18. Of the trooper applicants who were considered for the twelve academy classes that have been hired since 2017:

- a. approximately 91% of white applicants passed the POST at least once;
- b. approximately 71% of African-American applicants passed the POST at least once; and
- c. the rate at which African-American applicants passed the POST at least once is statistically significantly lower than the rate at which white applicants passed the POST at least once; and
- d. the African-American applicant pass rate is less than 80% of the white applicant pass rate.

19. MDSP's use of the POST in the manner described in Paragraphs 11 through 18, *supra*, has had an adverse impact on African-American applicants for the trooper position.

20. MDSP's use of the POST in the manner described in Paragraphs 11 through 18, *supra*, is not job related or consistent with business necessity.

C. THE PHYSICAL FITNESS TEST FOR MDSP TROOPER POSITIONS

21. Since at least 2017, MDSP has used a physical fitness test called the Functional Fitness Assessment Test (“FFAT”) in screening applicants for trooper positions.

22. The FFAT is comprised of four events that is required to be conducted in the following order: (i) push-ups; (ii) sit-ups; (iii) flexibility reach; and (iv) 1.5-mile run.

23. MDSP has set a separate passing standard for each event of the FFAT that applicants must meet to remain eligible for selection into the academy as a trooper.

24. To pass the FFAT, the applicant must complete: (i) 18 push-ups in one minute; (ii) 27 sit-ups in one minute; (iii) reach approximately 1.5 inches beyond the applicant’s toes while seated; and (iv) run 1.5 miles within 15 minutes and 20 seconds. If an applicant fails any event, the assessment is over, and the applicant is not permitted to continue the FFAT.

25. Only those applicants who achieve the passing standard for each event of the FFAT are eligible to continue in MDSP’s selection process for the trooper position. MDSP treats applicants who did not achieve the passing standard on each event of the FFAT as having failed and thus ineligible to continue in the selection process.

26. Trooper applicants may take the FFAT up to three times in a given year.

27. Of the applicants considered for the twelve academy classes that have been hired since 2017:

- a. approximately 81% of male applicants passed the FFAT at least once;
- b. approximately 51% of female applicants passed the FFAT at least once;
- c. the rate at which female applicants passed the FFAT at least once is statistically significantly lower than the rate at which male applicants passed the FFAT at least once; and

d. the female applicant pass rate is less than 80% of the male applicant pass rate.

28. MDSP's use of the FFAT in the manner described in Paragraphs 20 through 27, *supra*, has had an adverse impact on female applicants for trooper positions.

29. MDSP's use of the FFAT in the manner described in Paragraphs 20 through 27, *supra*, is not job related or consistent with business necessity.

D. ADDITIONAL FACTS

30. MDSP has used and continues to use policies and practices that discriminate against African-American and female applicants, and that deprive or tend to deprive African-American and female applicants of employment opportunities because of their race, color, or sex, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. MDSP has implemented these policies and practices, among other ways, by:

a. using the POST as a pass/fail screening device for its selection of entry-level troopers which (i) results in a disparate impact on African-American candidates, (ii) is not job related for the position in question or consistent with business necessity, and (iii) does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);

b. using the FFAT as a pass/fail screening device for its selection of entry-level troopers which (i) results in a disparate impact on female candidates, (ii) is not job related for the position in question or consistent with business necessity, and (iii) 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 African-American and female applicants for trooper positions who have been harmed by MDSP’s unlawful uses of the POST and the FFAT.

31. In accordance with Section 707 of Title VII, 42 U.S.C. § 2000e-6, the United States, through the Department of Justice, has investigated MDSP’s policies and practices in selecting troopers as they affect African-American and female applicants. The United States has notified MDSP of that investigation and of its determination that the policies and practices described in Paragraphs 11 through 30, *supra*, are unlawful.

32. The United States has reasonable cause to believe that the policies and practices of MDSP described in Paragraphs 11 through 30, *supra*, constitute a pattern or practice of resistance to the full enjoyment by African-American and female applicants of the right to equal employment opportunities without discrimination based upon race, color, and/or sex, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6.

33. 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

MDSP’S USE OF THE POST IN SELECTING TROOPER CANDIDATES HAS AN UNLAWFUL DISPARATE IMPACT ON AFRICAN-AMERICAN TROOPER APPLICANTS

34. Plaintiff United States realleges Paragraphs 1 through 20 and 30 through 33, *supra*, as if fully set forth herein.

35. MDSP’s use of the POST for the selection of trooper candidates since 2017, and any continuing use thereof, has resulted in a disparate impact on African-American applicants for

entry-level trooper candidate positions, 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

MDSP'S USE OF THE FFAT IN SELECTING TROOPER CANDIDATES HAS AN UNLAWFUL DISPARATE IMPACT ON FEMALE TROOPER APPLICANTS

36. Plaintiff United States realleges Paragraphs 1 through 10 and 21 through 33, *supra*, as if fully set forth herein.

37. MDSP's use of the FFAT for the selection of trooper candidates from since 2017, and any continuing use thereof, has resulted in a disparate impact on female applicants for entry-level trooper candidate positions, 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).

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court order MDSP, its officers, agents, employees, successors and all persons in active concert or participation with them, to refrain from engaging in discriminatory employment practices against African-American and female applicants based on race, color, and sex, and specifically to:

- a. refrain from using a written examination as a pass/fail screening device for its selection of entry-level troopers which (i) results in a disparate impact on African-American candidates, (ii) is not job related for the position in question or consistent with business necessity, and (iii) does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);

b. refrain from using a physical fitness test as a pass/fail screening device for its selection of entry-level troopers which (i) results in a disparate impact on female candidates, (ii) is not job related for the position in question or consistent with business necessity, and (iii) does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k);

c. “make whole” those African-American and female applicants for trooper candidate positions who have been harmed by MDSP’s unlawful use of the POST and/or the FFAT; and

d. take all appropriate actions to correct the present effects of its 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.

Date: October 2, 2024

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Assistant United States Attorney Kimberly S. Phillips 6500 Cherrywood Lane, Suite 200, Greenbelt, MD 20770 (410) 209-4800. Kimberlv.Phillips@usdoj.gov

DEFENDANTS

MARYLAND DEPARTMENT OF STATE POLICE

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Phillip Pickus, Principal Counsel Office of Attorney General, Maryland Dep't of State Police

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII") Brief description of cause: MDSP has used and continues to use written and fitness tests for hiring that disproportionately exclude African-American and female applicants.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Oct 2, 2024 SIGNATURE OF ATTORNEY OF RECORD Digitally signed by KIMBERLY PHILLIPS Date: 2024.10.02 10:02:55 -0400

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:24-cv-02862-ADC Document 1-1 Filed 10/02/24 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

UNITED STATES OF AMERICA

Plaintiff(s)

v.

MARYLAND DEPARTMENT OF STATE POLICE

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MARYLAND DEPARTMENT OF STATE POLICE
C/O PHILLIP PICKUS
1201 REISTERSTOWN ROAD
PIKESVILLE, MARYLAND 21208

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

KIMBERLY PHILLIPS (BAR NO. 811611)
ASSISTANT U.S. ATTORNEY
6500 CHERRYWOOD LANE, SUITE 200
GREENBELT, MD 20770
(410) 209-4800, KIMBERLY.PHILLIPS@USDOJ.GOV

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: