Ricci v. DeStefano

Ricci v. DeStefano	
Supreme Court of the United States	
Argued April 22, 2009 **Decided June 29, 2009**	
Full case name	*Frank Ricci, et al. v. Johny Destefano, et al.*
Docket nos.	07-1428 [1] 08-328 [2]
Citations	557 U.S. ___ (*more*) 129 S. Ct. 2658
Prior history	Summary judgment for defendants, 554 F.Supp.2d 142 (D. Conn. 2006), *aff'd*, 264 Fed. Appx. 106 (2d Cir. 2008), *summary order withdrawn, aff'd*, 530 F.3d 87 (2d Cir. 2008), *reh'g en banc denied*, 530 F.3d 88(2d Cir. 2008), *cert. granted*, 555 U.S. ___ (2009).
Holding	
Before an employer can engage in intentional discrimination for the asserted purpose of avoiding or remedying an unintentional, disparate impact, the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action. Because New Haven failed to demonstrate such strong basis in evidence, the City's action in discarding the tests violated Title VII.	
Court membership	
Chief Justice John G. Roberts **Associate Justices** John P. Stevens · Antonin Scalia Anthony Kennedy · David Souter Clarence Thomas · Ruth Bader Ginsburg Stephen Breyer · Samuel Alito	
Case opinions	
Majority	Kennedy, joined by Roberts, Scalia, Thomas, Alito
Concurrence	Scalia
Concurrence	Alito, joined by Scalia, Thomas
Dissent	Ginsburg, joined by Stevens, Souter, Breyer
Laws applied	
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e [3] et seq.	

Ricci v. DeStefano, 557 U.S. ___ (2009), was a contentious decision by the United States Supreme Court concerning racially discriminatory employment practices by New Haven, Connecticut's fire department.[4] Eighteen city

firefighters, seventeen who were white and one who was Hispanic, brought suit under Title VII of the Civil Rights Act of 1964 after they had passed the test for promotions to management and the city had nevertheless declined to promote them. New Haven officials invalidated the test results because none of the black firefighters who passed the exam had scored high enough to be considered for the positions. They stated that they feared a lawsuit over the test's adverse impact on a protected minority.

The Supreme Court heard the case on April 22, 2009, and issued its decision on June 29, 2009. The Court held 5–4 that New Haven's decision to ignore the test results violated Title VII 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.

Background

In late 2003, the New Haven Fire Department had seven openings for Captain and eight openings for Lieutenant. As such, it needed to administer civil service examinations to fill the open positions. The examinations consisted of two parts: a written examination and an oral examination.

The examinations were governed in part by the City of New Haven's contract with the firefighters' union (which stated that the written exam result counted for 60% of an applicant's score and the oral exam for 40%, and that a total score above 70% on the exam would constitute a passing score). The final selection would be governed by a provision in the City Charter referred to as the "Rule of Three", which mandated that a civil service position be filled from among the three individuals with the highest scores on the exam.

Examinations

The New Haven Department of Human Resources issued an RFP for these examinations, as a result of which I/O Solutions ("IOS") designed the examinations.[5] The examinations themselves were administered in November and December 2003;[6] 118 firefighters took the examinations (77 took the Lieutenant exam and 41 took the Captain exam).

When the results came back, the pass rate for black candidates was approximately half that of the corresponding rate for white candidates:[7]

- The passage rate for the Captain exam was: 16 (64%) of the 25 whites; 3 (38%) of the 8 blacks; and 3 (38%) of the 8 Hispanics.[8] Under the City Charter's "Rule of Three" the top 9 scorers would be eligible for promotion to the 7 open Captain positions; the top 9 scorers consisted of 7 whites, 2 Hispanics, and no blacks.
- The passage rate for the Lieutenant exam was: 25 (58%) of the 43 whites; 6 (32%) of the 19 blacks; 3 (20%) of the 15 Hispanics. Under the City Charter's "Rule of Three" the top 10 scorers would be eligible for promotion to the 8 open Lieutenant positions; the top 10 scorers were all white.

Procedural history

Parties

Ricci and sixteen other white test takers, plus one Hispanic, all of whom would have qualified for consideration for the promotions, sued the city including Mayor John DeStefano, Jr. The lead plaintiff was Frank Ricci, who has been a firefighter at the New Haven station for 11 years. Ricci gave up a second job to have time to study for the test. Because he has dyslexia, he paid an acquaintance $1,000 to read his textbooks onto audiotapes. Ricci also made flashcards, took practice tests, worked with a study group, and participated in mock interviews. He placed 6th among 77 people who took the lieutenant's test.[9]

Lt. Ben Vargas, the lone Hispanic petitioner, was allegedly attacked by unknown black assailants in Humphrey's East Restaurant in 2004 and had to be hospitalized afterwards. He has since stated that he believes the attack was

orchestrated by the black firefighters in retribution for bringing in the legal case; his account is vigorously disputed by some critics. Vargas quit the Hispanic firefighters' association, which includes Vargas's brother, after the group declined to support his legal case.

In addition to Ricci and Vargas the other firefighters were equally involved and were named plaintiffs: Steven Durand, Greg Boivin, Mark Vendetto, John Vendetto, Kevin Roxbee, James Kottage, Matthew Marcarelli, Edward Riordan, Sean Patten, Brian Jooss, Michael Christoforo, Timothy Scanlon, Ryan DiVito, Christopher Parker, Michael Blatchley, William Gambardella, Thomas Michaels, and Gary Carbone. The press dubbed the group the New Haven 20.

Claims

Among other things, the suit alleged that, by discarding the test results, the City and the named officials discriminated against the plaintiffs based on their race, in violation of both Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e et seq., and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The City and the officials defended their actions, arguing that if they had certified the results, they could have faced liability under Title VII for adopting a practice that had a disparate impact on the minority firefighters.

District court grants motion for summary judgment

Judge Janet Bond Arterton in the federal district court ruled for the city, granting its motion for summary judgment.[10]

Second Circuit panel and per curiam opinion

On appeal, a three-judge panel of the Second Circuit Court of Appeals (Pooler, Sack and Sotomayor, C.JJ.) heard arguments in this case of discrimination.[11] Judge Sotomayor (who was subsequently elevated to Associate Justice to the U.S. Supreme Court) vigorously questioned the attorneys in the case, and repeatedly discussed whether the city had a right to attempt to reformulate its test if it was afraid that the original test was discriminatory or that it would result in litigation. The three-judge panel then affirmed the district court's ruling in a summary order, without opinion, on February 15, 2008.[12]

However, after a judge of the Second Circuit requested that the court hear the case *en banc*, the panel withdrew its summary order and on June 9, 2008 issued instead a unanimous per curiam opinion.[13] The panel's June 9, 2008 per curiam opinion was eight sentences long. It characterized the trial court's decision as "thorough, thoughtful and well-reasoned" while also lamenting that there were "no good alternatives" in the case. The panel expressed sympathy to the plaintiffs' situation, particularly Ricci's, but ultimately concluded that the Civil Service Board was acting to "fulfill its obligations under Title VII [of the Civil Rights Act]." The panel concluded by adopting the trial court's opinion in its entirety.

En banc hearing denied

Regarding a rehearing *en banc*, that was denied on June 12, 2008 by a vote of 7-6.[14] Judge José Cabranes and Chief Judge Dennis Jacobs wrote opinions in dissent from the denial of rehearing, urging review by the Supreme Court.[15][16]

Certiorari and oral arguments

The Supreme Court granted certiorari and heard oral arguments on April 22, 2009.[17]

Opinion of the court

Justice Kennedy, writing for a 5-4 majority (Kennedy, Roberts, Scalia, Thomas, and Alito), concluded that the City's action in discarding the tests was a violation of Title VII:[18]

1. In these circumstances, the standard for permissible race-based action under Title VII is that the employer must "demonstrate a strong basis in evidence that, had it not taken the action, it would have been liable under the disparate-impact statute."
2. The respondents cannot meet that threshold standard.

Synopsis

History of examination's design, criteria, and process (Section I-A)

The Supreme Court upheld the fairness and validity of the examinations that Industrial/Organizational Solutions Inc, or I/O Solutions, Inc., referred to as IOS in the case, developed and administered. IOS is an Illinois company that specializes in designing entry-level examinations and promotional examinations for fire and police departments; and other public safety and corporate organizations. The Court cited examples of how the IOS test design, criteria, and methodology included: interviews, observations, education, test format compliance, and independent assessors. With that information IOS produced a test that reduced adverse impact to the protected class.

Supreme Court Justice Anthony McLeod Kennedy wrote, "In order to fit the examinations to the New Haven Department, IOS began the test-design process by performing job analyses to identify the tasks, knowledge, skills, and abilities that are essential for the lieutenant and captain positions."[19]

The process that IOS used to design their test for the job analyses portion included interviews of incumbent captains and lieutenants and their supervisors, and ride-along observations of other on-duty officers. Using that information, IOS wrote job-analysis questionnaires and administered them to most of the incumbent battalion chiefs, captains, and lieutenants in the Department. "[20]

In its majority opinion, the U.S. Supreme Court praised the I/O Solutions` job analysis process by writing, "At every stage of the job analysis, IOS, by deliberate choice, over-sampled minority firefighters to ensure that the results which IOS would use to develop the examinations—would not intentionally favor white candidates."[21]

Justice Kennedy included in the Opinion the following procedures IOS used to develop the written examinations to measure the candidates' job-related knowledge. "IOS compiled a list of training manuals, Department procedures, and other materials to use as sources for the test questions and received approval from the New Haven fire chief and assistant fire chief. Then, using the approved sources, IOS drafted a 100 question multiple-choice test written below a 10th-grade reading level. The City then opened a 3-month study period in which it gave candidates a list that identified the source material (or references list) for the questions, including the specific chapters from which the questions were taken."[22]

IOS also developed the oral examinations that concentrated on job skills and abilities. Using the job-analysis information, IOS wrote hypothetical situations to test incident-command skills, firefighting tactics, interpersonal skills, leadership, and management ability, among other things. Candidates were then asked these hypotheticals and

had to respond to a panel of three assessors.

The Court agreed that IOS demonstrated due diligence by, “assembling a pool of 30 assessors who were superior in rank to the positions being tested. At the City's insistence (because of controversy surrounding previous examinations), all the assessors came from outside Connecticut. ”IOS submitted the assessors' resumes to City officials for approval. They were battalion chiefs, assistant chiefs, and fire chiefs from departments of similar sizes to New Haven's throughout the country. Sixty-six percent of the panelists were minorities, and each of the nine three-member assessment panels contained two minority members. They received training on how to score the candidates' responses consistently using checklists of desired criteria.

Section II-A reiterated the doctrines underlying a disparate-treatment claim.

The city engaged in disparate treatment discrimination (Section II-B)

First, Kennedy rejected arguments that the City did not discriminate. It engaged in "express, race-based decisionmaking" (i.e., disparate treatment/intentional discrimination) when it declined to certify the examination results because of the statistical disparity based on race — "i.e., how minority candidates had performed when compared to white candidates". The District Court was wrong to argue that respondents' "motivation to avoid making promotions based on a test with a racially disparate impact ... does not, as a matter of law, constitute discriminatory intent."[23] "That argument turns upon the City's objective — avoiding disparate-impact liability — while ignoring the City's conduct in the name of reaching that objective."

Disparate treatment can be justified by strong basis in evidence of disparate impact (Section II-B cont'd)

Second, Kennedy examined the statutory framework of Title VII, to determine whether Title VII's proscription of disparate treatment[24] is afforded any lawful justifications in the disparate impact provision that it seems to conflict with. Looking to analogous Equal Protection cases,[25] he reached the statutory construction that, in instances of conflict between the disparate-treatment and disparate-impact provisions, permissible justifications for disparate treatment must be grounded in the strong-basis-in-evidence standard. He concluded that "once [a] process has been established and employers have made clear their selection criteria, they may not then invalidate the test results, thus upsetting an employee's legitimate expectation not to be judged on the basis of race. Doing so, absent a strong basis in evidence of an impermissible disparate impact, amounts to the sort of racial preference that Congress has disclaimed, §2000e–2(j), and is antithetical to the notion of a workplace where individuals are guaranteed equal opportunity regardless of race."[26]

- He rejected petitioners' "strict approach," that under Title VII, "avoiding unintentional discrimination cannot justify intentional discrimination." That assertion ignores the fact that, by codifying the disparate-impact provision in 1991, Congress has expressly prohibited both types of discrimination, and would render a statutory provision "a dead letter".[27]
- He rejected petitioners' suggestion that an employer "must be in violation of the disparate-impact provision before it can use compliance as a defense in a disparate-treatment suit." This rule would run counter to what we have recognized as Congress's intent that "voluntary compliance" be "the preferred means of achieving the objectives of Title VII."[28] Forbidding employers to act unless they know, with certainty, that a practice violates the disparate-impact provision would bring compliance efforts to a near standstill. Even in the limited situations when this restricted standard could be met, employers likely would hesitate before taking voluntary action for fear of later being proven wrong in the course of litigation and then held to account for disparate treatment.
- He rejected the respondents' position that "an employer's good-faith belief that its actions are necessary to comply with Title VII's disparate-impact provision should be enough to justify race-conscious conduct." This position would ignore "the original, foundational prohibition of Title VII," which bars employers from taking adverse action "because of ... race." §2000e–2(a)(1); and when Congress codified the disparate-impact provision in 1991, it made no exception to disparate-treatment liability for actions taken in a good-faith effort to comply with the new, disparate-impact provision in subsection (k). Respondents' policy would encourage race-based action at the

slightest hint of disparate impact — e.g. causing employers to discard the results of lawful and beneficial promotional examinations even where there is little if any evidence of disparate-impact discrimination — which would amount to a de facto quota system, in which a "focus on statistics ... could put undue pressure on employers to adopt inappropriate prophylactic measures."[29] "That operational principle could not be justified, for Title VII is express in disclaiming any interpretation of its requirements as calling for outright racial balancing." §2000e–2(j). The purpose of Title VII "is to promote hiring on the basis of job qualifications, rather than on the basis of race or color."[30]

- He cited Justice Powell who, announcing the strong-basis-in-evidence standard for the plurality in *Wygant v. Jackson Board of Education*, recognized the tension between eliminating segregation and discrimination on the one hand and doing away with all governmentally imposed discrimination based on race on the other,[31] stating that those "related constitutional duties are not always harmonious," and that "reconciling them requires ... employers to act with extraordinary care." The plurality required a strong basis in evidence because "[e]videntiary support for the conclusion that remedial action is warranted becomes crucial when the remedial program is challenged in court by nonminority employees." The Court applied the same standard in *Richmond v. J. A. Croson Co.*, observing that "an amorphous claim that there has been past discrimination ... cannot justify the use of an unyielding racial quota."[32]
- The same interests are at work in the interplay between the disparate-treatment and disparate-impact provisions of Title VII: Congress imposes liability on employers for unintentional discrimination, in order to rid the work-place of "practices that are fair in form, but discriminatory in operation."[33] But Congress also prohibits employers from taking adverse employment actions "because of" race.[34] Applying the strong-basis-in-evidence standard to Title VII gives effect to both provisions, allowing violations of one in the name of compliance with the other only in certain, narrow circumstances.
- The standard leaves ample room for employers' voluntary compliance efforts, which are essential to the statutory scheme and to Congress's efforts to eradicate workplace discrimination. See Firefighters, supra, at 515.
- And the standard appropriately constrains employers' discretion in making race-based decisions: It limits that discretion to cases in which there is a strong basis in evidence of disparate-impact liability, but it is not so restrictive that it allows employers to act only when there is a provable, actual violation.
- Resolving the statutory conflict in this way allows the disparate-impact prohibition to work in a manner that is consistent with other provisions of Title VII, including the prohibition on adjusting employment-related test scores on the basis of race. See §2000e–2(l). Examinations like those administered by the City create legitimate expectations on the part of those who took the tests. As is the case with any promotion exam, some of the firefighters here invested substantial time, money, and personal commitment in preparing for the tests. Employment tests can be an important part of a neutral selection system that safeguards against the very racial animosities Title VII was intended to prevent. Here, however, the firefighters saw their efforts invalidated by the City in sole reliance upon race-based statistics. If an employer cannot rescore a test based on the candidates' race, §2000e–2(l), then it follows a fortiori that it may not take the greater step of discarding the test altogether to achieve a more desirable racial distribution of promotion-eligible candidates — absent a strong basis in evidence that the test was deficient and that discarding the results is necessary to avoid violating the disparate-impact provision. Restricting an employer's ability to discard test results (and thereby discriminate against qualified candidates on the basis of their race) also is in keeping with Title VII's express protection of bona fide promotional examinations.[35]

City showed no strong basis in evidence of disparate impact (Section II-C)

Next, Kennedy inquired whether the city's justifications for its disparate-treatment discrimination met this strong basis in evidence standard. He concluded that they did not: "Even if respondents were motivated as a subjective matter by a desire to avoid committing disparate-impact discrimination ... [t]here is no evidence — let alone the required strong basis in evidence — that the tests were flawed because they were not job-related or because other, equally valid and less discriminatory tests were available to the City. Fear of litigation alone cannot justify an employer's reliance on race to the detriment of individuals who passed the examinations and qualified for promotions."

The test results produced significant racial adverse impact, and confronted the City with a prima facie case of disparate-impact liability. That compelled them to "take a hard look at the examinations" to determine whether certifying the results would have had an impermissible disparate impact. The problem for respondents is that a prima facie case of disparate-impact liability — essentially, a threshold showing of a significant statistical disparity,[36] and nothing more — is far from a strong basis in evidence that the City would have been liable under Title VII had it certified the results. That is because the City could be liable for disparate-impact discrimination only if the examinations were not job related and consistent with business necessity, or if there existed an equally valid, less-discriminatory alternative that served the City's needs but that the City refused to adopt. §2000e–2(k)(1)(A), (C). Neither condition holds:

1. He found no genuine dispute that the examinations were job-related and consistent with business necessity. The City's assertions to the contrary are "blatantly contradicted by the record."[37] (**Section II-C-1**)
2. He found that respondents also lacked a strong basis in evidence of an equally valid, less-discriminatory testing alternative that the City, by certifying the examination results, would necessarily have refused to adopt. (**Section II-C-2**.)

Respondents raise three arguments to the contrary, but each argument fails.

- First, respondents refer to testimony before the CSB that a different composite-score calculation — weighting the written and oral examination scores 30/70 — would have allowed the City to consider two black candidates for then-open lieutenant positions and one black candidate for then-open captain positions. (The City used a 60/40 weighting as required by its contract with the New Haven firefighters' union.) But respondents have produced no evidence to show that the 60/40 weighting was indeed arbitrary. In fact, because that formula was the result of a union-negotiated collective bargaining agreement, we presume the parties negotiated that weighting for a rational reason.
- Second, respondents argue that the City could have adopted a different interpretation of the "rule of three" that would have produced less discriminatory results. Respondents claim that employing "banding" here would have made four black and one Hispanic candidates eligible for then-open lieutenant and captain positions. But banding was not a valid alternative for this reason: Had the City reviewed the exam results and then adopted banding to make the minority test scores appear higher, it would have violated Title VII's prohibition of adjusting test results on the basis of race.[38]
- Third, and finally, respondents refer to statements by Hornick in his telephone interview with the CSB regarding alternatives to the written examinations. But when the strong-basis-in-evidence standard applies, respondents cannot create a genuine issue of fact based on a few stray (and contradictory) statements in the record. And there is no doubt respondents fall short of the mark by relying entirely on isolated statements by Hornick.

Conclusion (Section II-C-3)

He concluded: The record in this litigation documents a process that, at the outset, had the potential to produce a testing procedure that was true to the promise of Title VII: No individual should face workplace discrimination based on race. Respondents thought about promotion qualifications and relevant experience in neutral ways. They were careful to ensure broad racial participation in the design of the test itself and its administration. As we have discussed at length, the process was open and fair. The problem, of course, is that after the tests were completed, the raw racial results became the predominant rationale for the City's refusal to certify the results. The injury arises in part from the high, and justified, expectations of the candidates who had participated in the testing process on the terms the City had established for the promotional process. Many of the candidates had studied for months, at considerable personal and financial expense, and thus the injury caused by the City's reliance on raw racial statistics at the end of the process was all the more severe. Confronted with arguments both for and against certifying the test results — and threats of a lawsuit either way — the City was required to make a difficult inquiry. But its hearings produced no strong evidence of a disparate-impact violation, and the City was not entitled to disregard the tests based solely on the racial disparity in the results.

Our holding today clarifies how Title VII applies to resolve competing expectations under the disparate-treatment and disparate-impact provisions. If, after it certifies the test results, the City faces a disparate-impact suit, then in light of our holding today it should be clear that the City would avoid disparate-impact liability based on the strong basis in evidence that, had it not certified the results, it would have been subject to disparate-treatment liability.

Concurrence

Scalia, though concurring in full, regretted that the Court declined to clarify the conflict between Title VII's disparate-impact provisions and the Constitution's guarantee of equal protection. Specifically: although the Court clarified that the disparate-treatment provisions forbid "remedial" race-based actions when a disparate-impact violation would not otherwise result, "it is clear that Title VII not only permits but affirmatively requires such [remedial race-based] actions" when such a violation *would* result. In the latter situations, Title VII's disparate-impact provisions "place a racial thumb on the scales, often requiring employers to evaluate the racial outcomes of their policies, and to make decisions based on (because of) those racial outcomes." "That type of racial decision making is, as the Court explains, discriminatory."

Dissent

Ginsburg's opinion stated that the Court holds that New Haven has not demonstrated "a strong basis in evidence" for its plea. In so holding the Court pretends that "[t]he City rejected the test results solely because the higher scoring candidates were white." That pretension, essential to the Court's disposition, ignores substantial evidence of multiple flaws in the tests New Havens used. The Court similarly fails to acknowledge the better tests used in other cities, which have yielded less racially skewed outcomes.

Aftermath

New Haven reinstated the examination results and promoted 14 of the 20 firefighters within months of the decision. The city settled the lawsuit by paying $2 million to the firefighter plaintiffs; enhancing their pension benefits by millions of dollars; and paying their attorney, Karen Lee Torre, $3 million in fees and costs.

Criticism

This case has been criticized by some, who say that the decision did not account for other potential remedies' ineffectiveness, or was not called for based on the history of the case. One hypothesis is that the court was looking for a case that raised an issue having to do with racial discrimination, as it has before in Parents Involved in Community Schools v. Seattle School District No. 1 and Northwest Austin Municipal Utility District No. 1 v. Holder.[39]

References

[1] http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/07-1428.htm

[2] http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/08-328.htm

[3] http://www.law.cornell.edu/uscode/42/2000e.html

[4] *Ricci v. DeStefano* (http://laws.findlaw.com/us/000/07-1428.html) (June 29, 2009). This is the full text of the U.S. Supreme Court decision, via Findlaw.

[5] District court cites to Pl. Ex. IV(C) at 8.

[6] See Brief for Respondent, John DeStefano et al. at 2.

[7] See Brief for Respondent at 5.

[8] District court cites Pl. Ex. Vol. I, at 43.

[9] Liptak, Adam. "Justices to Hear White Firefighters' Bias Claims" (http://www.nytimes.com/2009/04/10/us/10scotus.html), *The New York Times* (April 9, 2009).

[10] *Ricci v. DeStefano* (http://www.ctemploymentlawblog.com/uploads/file/ricciusdc.pdf), 554 F.Supp.2d 142 (US District Court for Connecticut; September 28, 2006). This decision can also be found as Appendix B to the later "Order Denying Rehearing En Banc".

[11] "Sotomayor Tape Reveals Views on Ricci v. DeStefano Discrimination Case" (http://blogs.wsj.com/washwire/2009/05/29/sotomayor-tape-reveals-views-on-ricci-v-destefano-discrimination-case/), Washington Wire, *Wall Street Journal* (May 29, 2009).

[12] The summary order is available as Appendix A of the later "Order Denying Rehearing En Banc".

[13] *Ricci v. DeStefano* (http://www.ca2.uscourts.gov/decisions/isysquery/ca4649bf-2360-4eb9-a227-79fccae85535/4/doc/06-4996-cv_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/ca4649bf-2360-4eb9-a227-79fccae85535/4/hilite/), 530 F.3d 87 (Second Circuit; June 9, 2008; per curiam).

[14] Order Denying Rehearing En Banc (http://ct.findacase.com/research/wfrmDocViewer.aspx/xq/fac.\C02\2008\20080612_0001355.C02.htm/qx) (Second Circuit; June 12, 2008). Courtesy copy here (http://www.ca2.uscourts.gov/decisions/isysquery/5e33bc42-8177-41c2-bd13-816df560e8b1/3/doc/06-4996-cv_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/5e33bc42-8177-41c2-bd13-816df560e8b1/3/hilite/). The "Order Denying Rehearing En Banc" includes the Summary Order of February 15, 2008 as Appendix A, and also includes the district court decision of September 28, 2006 as Appendix B.

[15] Judge Cabranes wrote the principal dissent from the Second Circuit's denial of rehearing en banc, and his dissent is available in the "Order Denying Rehearing En Banc".

[16] Jacobs Opinion (http://www.ca2.uscourts.gov/decisions/isysquery/ca4649bf-2360-4eb9-a227-79fccae85535/2/doc/06-4996-cv_opn4.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/ca4649bf-2360-4eb9-a227-79fccae85535/2/hilite/), dissenting from the Second Circuit's denial of rehearing en banc; this dissent accompanies some published versions of the "Order Denying Rehearing En Banc".

[17] [Transcript of Oral Argument at U.S. Supreme Court] (April 22, 2009).

[18] [Supreme Court Slip Opinion] (June 29, 2009).

[19] Ricci v DeStefano (http://www.law.cornell.edu/supct/html/07-1428.ZO.html)" (June 29, 2009). This is the full text of the U.S. Supreme Court Justice Kennedy's Opinion of the Court, via Cornell University Law School.

[20] Supreme Court Opinion: Ricci v. DeStefano (http://documents.nytimes.com/supreme-court-opinion-ricci-v-destefano)" (June 29, 2009). This is the full text of the U.S. Supreme Court Justice Kennedy's Opinion of the Court, via The New York Times.

[21] *Ricci v. DeStefano* (http://www.aclu.org/files/pdfs/scotus/ricci_v_destefano.pdf) (June 29, 2009). This is the full text of the U.S. Supreme Court Justice Kennedy's Opinion of the Court, via American Civil Liberties Union.

[22] (http://www.supremecourt.gov/opinions/08pdf/07-1428.pdf)" (June 29, 2009). This is the full text of the U.S. Supreme Court Justice Kennedy's Opinion of the Court, via Supreme Court of the United States.

[23] 554 F. Supp. 2d, at 160.

[24] See §2000e–2(a)(1)

[25] "Cases discussing constitutional principles can provide helpful guidance in this statutory context." See Watson, supra, at 993 (plurality opinion)

[26] Our statutory holding does not address the constitutionality of the measures taken here in purported compliance with Title VII. We also do not hold that meeting the strong-basis-in-evidence standard would satisfy the Equal Protection Clause in a future case. As we explain below,because respondents have not met their burden under Title VII, we need not decide whether a legitimate fear of disparate impact is ever sufficient to justify discriminatory treatment under the Constitution.

Nor do we question an employer's affirmative efforts to ensure that all groups have a fair opportunity to apply for promotions and to participate in the process by which promotions will be made. ... Title VII does not prohibit an employer from considering, before administering a test or practice, how to design that test or practice in order to provide a fair opportunity for all individuals, regardless of their race. And when, during the test-design stage, an employer invites comments to ensure the test is fair, that process can provide a common ground for open discussions toward that end.

[27] See, e.g., *United States v. Atlantic Research Corp.*, 551 U.S. 128, 137 (2007)

[28] *Firefighters v. Cleveland*, 478 U.S. 501, 515 (1986); see also *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 290 (1986) (O'Connor, J.,concurring in part and concurring in judgment).

[29] Watson, 487 U. S., at 992 (plurality opinion).

[30] *Griggs*, 401 U.S., at 434.

[31] 476 U.S. at 277.

[32] 488 U.S., at 499.

[33] Griggs, supra, at 431.

[34] §2000e–2(a)(1).

[35] See §2000e–2(h) ("[N]or shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, in-tended or used to discriminate because of race"); cf. *AT&T Corp. v. Hulteen*, 556 U. S. ___, ___ (2009) (slip op., at 8).

[36] *Connecticut v. Teal*, 457 U. S. 440, 446 (1982),

[37] Scott, supra, at 380.

[38] §2000e–2(l); see also *Chicago Firefighters Local 2 v. Chicago*, 249 F. 3d 649, 656 (CA7 2001) (Posner, J.) ("We have no doubt that if banding were adopted in order to make lower black scores seem higher, it would indeed be ... forbidden"). As a matter of law, banding was not an alternative available to the City when it was considering whether to certify the examination results.

[39] Days, Drew S. III, "Employment Discrimination Decisions from the October 2008 Term" (2010). Faculty Scholarship Series. Paper 1463, page 496. http://digitalcommons.law.yale.edu/fss_papers/1463

External links

- Associated Press (April 22, 2009). "Reverse discrimination? Justices weigh case" (http://www.msnbc.msn.com/id/30346519//) (Newspaper article). *MSNBC*. Retrieved April 27, 2009.
- Mahoney, Edmund (April 22, 2009). "U.S. Supreme Court Hears New Haven Reverse Discrimination Case" (http://www.courant.com/news/local/hcu-new-haven-discrimination-case-0422,0,4158957.story) (Newspaper article). *Hartford Courant*. Retrieved April 27, 2009.
- Muraskin, David (April 28, 2009). "Ricci, et al. v. DeStefano, et al." (http://www.scotuswiki.com/index.php?title=Ricci,_et_al._v._DeStefano,_et_al.) (Case summary plus links to all of the briefs). *Scotus Wiki*. Retrieved April 27, 2009.
- Washington, Jesse (April 18, 2009). "Reverse discrimination case could transform hiring" (http://news.yahoo.com/s/ap/20090418/ap_on_re_us/scotus_firefighters_lawsuit) (Newspaper article). *Associated Press/Yahoo! News*. Retrieved April 27, 2009. Wikipedia:Link rot
- Will, George (April 26, 2009). "The Wreck of a Spoils System" (http://www.washingtonpost.com/wp-dyn/content/article/2009/04/24/AR2009042402305.html) (Editorial). *Washington Post*. Retrieved April 27, 2009.
- Standler, Ronald (May 30, 2009). "Full Text of Judicial Opinions in *Ricci v. DeStefano*" (http://www.rbs0.com/ricci.pdf) (PDF). *personal website*. Retrieved June 6, 2009.
- Scotus wiki (http://www.scotuswiki.com/index.php?title=Ricci,_et_al._v._DeStefano,_et_al.) - briefs, documents, and analysis
- Supreme Court Opinion (http://www.docstoc.com/docs/7918320/Ricci_v_DeStefano) 29Jun2009
- The website of the plaintiffs (http://www.newhaven20.com)

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