

7.3: FRANK RICCI, et al., PETITIONERS v. JOHN DeSTEFANO et al

SUPREME COURT OF THE UNITED STATES

FRANK RICCI, et al., PETITIONERS v.

JOHN DeSTEFANO et al.

557 U.S. 557 (2009)

(Case Syllabus edited by the Author)

Justice Kennedy delivered the opinion of the Court.

...In 2003, 118 New Haven firefighters took examinations to qualify for promotion to the rank of lieutenant or captain. Promotion examinations in New Haven (or City) were infrequent, so the stakes were high. The results would determine which firefighters would be considered for promotions during the next two years, and the order in which they would be considered. Many firefighters studied for months, at considerable personal and financial cost.

When the examination results showed that white candidates had outperformed minority candidates, the mayor and other local politicians opened a public debate that turned rancorous. Some firefighters argued the tests should be discarded because the results showed the tests to be discriminatory. They threatened a discrimination lawsuit if the City made promotions based on the tests. Other firefighters said the exams were neutral and fair. And they, in turn, threatened a discrimination lawsuit if the City, relying on the statistical racial disparity, ignored the test results and denied promotions to the candidates who had performed well. In the end the City took the side of those who protested the test results. It threw out the examinations.

Certain white and Hispanic firefighters who likely would have been promoted based on their good test performance sued the City and some of its officials. Theirs is the suit now before us. The suit alleges 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 . 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. The District Court granted summary judgment for the defendants, and the Court of Appeals affirmed.

We conclude that race-based action like the City's in this case is impermissible under Title VII unless the employer can demonstrate a strong basis in evidence that, had it not taken the action, it would have been liable under the disparate-impact statute. The respondents, we further determine, cannot meet that threshold standard. As a result, the City's action in discarding the tests was a violation of Title VII. In light of our ruling under the statutes, we need not reach the question whether respondents' actions may have violated the Equal Protection Clause.

The City's contract with the New Haven firefighters' union specifies additional requirements for the promotion process. Under the contract, applicants for lieutenant and captain positions were to be screened using written and oral examinations, with the written exam accounting for 60 percent and the oral exam 40 percent of an applicant's total score. To sit for the examinations, candidates for lieutenant needed 30 months' experience in the Department, a high-school diploma, and certain vocational training courses. Candidates for captain needed one year's service as a lieutenant in the Department, a high-school diploma, and certain vocational training courses.

After reviewing bids from various consultants, the City hired Industrial/Organizational Solutions, Inc. (IOS) to develop and administer the examinations, at a cost to the City of \$100,000. IOS is an Illinois company that specializes in designing entry-level and promotional examinations for fire and police departments examinations...[which]...would not unintentionally favor white candidates.

Candidates took the examinations in November and December 2003. Seventy-seven candidates completed the lieutenant examination—43 whites, 19 blacks, and 15 Hispanics. Of those, 34 candidates passed—25 whites, 6 blacks, and 3 Hispanics. 554 F. Supp. 2d, at 145. Eight lieutenant positions were vacant at the time of the examination. As the rule of three operated, this meant that the top 10 candidates were eligible for an immediate promotion to lieutenant. All 10 were white. *Ibid.* Subsequent vacancies would have allowed at least 3 black candidates to be considered for promotion to lieutenant.

Forty-one candidates completed the captain examination—25 whites, 8 blacks, and 8 Hispanics. Of those, 22 candidates passed—16 whites, 3 blacks, and 3 Hispanics. *Ibid.* Seven captain positions were vacant at the time of the examination. Under the rule of three, 9 candidates were eligible for an immediate promotion to captain—7 whites and 2 Hispanics. *Ibid.*

At the final CSB meeting, on March 18, Ude (the City’s counsel) argued against certifying the examination results.....

Karen DuBois-Walton, the City’s chief administrative officer, spoke on behalf of Mayor John DeStefano and argued against certifying the results. DuBois-Walton stated that the results, when considered under the rule of three and applied to then-existing captain and lieutenant vacancies, created a situation in which black and Hispanic candidates were disproportionately excluded from opportunity. DuBois-Walton also relied on Hornick’s testimony, asserting that Hornick “made it extremely clear that ... there are more appropriate ways to assess one’s ability to serve” as a captain or lieutenant. *Id.*, at A1120.

Burgett (the human resources director) asked the CSB to discard the examination results. She, too, relied on Hornick’s statement to show the existence of alternative testing methods, describing Hornick as having “started to point out that alternative testing does exist” and as having “begun to suggest that there are some different ways of doing written examinations.” *Id.*, at A1125, A1128.

Other witnesses addressed the CSB. They included the president of the New Haven firefighters’ union, who supported certification. He reminded the CSB that Hornick “also concluded that the tests were reasonable and fair and under the current structure to certify them.” *Id.*, at A1137. Firefighter Frank Ricci again argued for certification; he stated that although “assessment centers in some cases show less adverse impact,” *id.*, at A1140, they were not available alternatives for the current round of promotions. It would take several years, Ricci explained, for the Department to develop an assessment-center protocol and the accompanying training materials. *Id.*, at A1141. Lieutenant Matthew Marcarelli, who had taken the captain’s exam, spoke in favor of certification.

The CSB’s decision not to certify the examination results led to this lawsuit. The plaintiffs—who are the petitioners here—are 17 white firefighters and 1 Hispanic firefighter who passed the examinations but were denied a chance at promotions when the CSB refused to certify the test results. They include the named plaintiff, Frank Ricci, who addressed the CSB at multiple meetings.

Petitioners sued the City, Mayor DeStefano, DuBois-Walton, Ude, Burgett, and the two CSB members who voted against certification. Petitioners also named as a defendant Boise Kimber, a New Haven resident who voiced strong opposition to certifying the results. Those individuals are respondents in this Court. Petitioners filed suit under Rev. Stat. §§ 1979 and 1980, [42 U. S. C. §§ 1983](#) and 1985, alleging that respondents, by arguing or voting against certifying the results, violated and conspired to violate the Equal Protection Clause of the [Fourteenth Amendment](#). Petitioners also filed timely charges of discrimination with the Equal Employment Opportunity Commission (EEOC); upon the EEOC’s issuing right-to-sue letters, petitioners amended their complaint to assert that the City violated the disparate-treatment prohibition contained in Title VII of the Civil Rights Act of 1964, as amended. See [42 U. S. C. §§ 2000e–2\(a\)](#).

II

Petitioners raise a statutory claim, under the disparate-treatment prohibition of Title VII, and a constitutional claim, under the Equal Protection Clause of the [Fourteenth Amendment](#). A decision for petitioners on their statutory claim would provide the relief sought, so we consider it first. See *Atkins v. Parker*, [472 U. S. 115](#), 123 (1985); *Escambia County v. McMillan*, [466 U. S. 48](#), 51 (1984) (*per curiam*) (“[N]ormally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case”).

Our analysis begins with this premise: The City’s actions would violate the disparate-treatment prohibition of Title VII absent some valid defense. All the evidence demonstrates that the City chose not 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. As the District Court put it, the City rejected the test results because “too many whites and not enough minorities would be promoted were the lists to be certified.” 554 F. Supp. 2d, at 152; see also *ibid.* (respondents’ “own arguments ... show that the City’s reasons for advocating non-certification were related to the racial distribution of the results”). Without some other justification, this express, race-based decision-making violates Title VII’s command that employers cannot take adverse employment actions because of an individual’s race. See [§2000e–2\(a\)\(1\)](#).

For the foregoing reasons, we adopt the strong-basis-in-evidence standard as a matter of statutory construction to resolve any conflict between the disparate-treatment and disparate-impact provisions of Title VII...

...The City argues that, even under the strong-basis-in-evidence standard, its decision to discard the examination results was permissible under Title VII. That is incorrect. Even if respondents were motivated as a subjective matter by a desire to avoid committing disparate-impact discrimination, the record makes clear there is no support for the conclusion that respondents had an

objective, strong basis in evidence to find the tests inadequate, with some consequent disparate-impact liability in violation of Title VII.

The racial adverse impact here was significant, and petitioners do not dispute that the City was faced with a prima facie case of disparate-impact liability. On the captain exam, the pass rate for white candidates was 64 percent but was 37.5 percent for both black and Hispanic candidates. On the lieutenant exam, the pass rate for white candidates was 58.1 percent; for black candidates, 31.6 percent; and for Hispanic candidates, 20 percent. The pass rates of minorities, which were approximately one-half the pass rates for white candidates, fall well below the 80-percent standard set by the EEOC to implement the disparate-impact provision of Title VII. See [29 CFR § 1607.4\(D\)](#) (2008) (selection rate that is less than 80 percent “of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact”); *Watson*, 487 U. S., at 995–996, n. 3 (plurality opinion) (EEOC’s 80-percent standard is “a rule of thumb for the courts”). Based on how the passing candidates ranked and an application of the “rule of three,” certifying the examinations would have meant that the City could not have considered black candidates for any of the then-vacant lieutenant or captain positions.

Based on the degree of adverse impact reflected in the results, respondents were compelled 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, *Connecticut v. Teal*, 457 U. S. 440, 446 (1982) , 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). We conclude there is no strong basis in evidence to establish that the test was deficient in either of these respects....

...On the record before us, there is no genuine dispute that the City lacked a strong basis in evidence to believe it would face disparate-impact liability if it certified the examination results. In other words, there 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 City’s discarding the test results was impermissible under Title VII, and summary judgment is appropriate for petitioners on their disparate-treatment claim.

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.....

Petitioners are entitled to summary judgment on their Title VII claim, and we therefore need not decide the underlying constitutional question. The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

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