

SUPREME COURT OF THE UNITED STATES

129 S. Ct. 2658

April 22, 2009, Argued

June 29, 2009, Decided

Justice Kennedy delivered the opinion of the Court.

In the fire department of New Haven, Connecticut--as in emergency-service agencies throughout the Nation--firefighters prize their promotion to and within the officer ranks. An agency's officers command respect within the department and in the whole community; and, of course, added responsibilities command increased salary and benefits. Aware of the intense competition for promotions, New Haven, like many cities, relies on objective examinations to identify the best qualified candidates.

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.

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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](#).

I

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A

When the City of New Haven undertook to fill vacant lieutenant and captain positions in its fire department (Department), the promotion and hiring process was governed by the city charter, in addition to federal and state law. . . . After each examination, the New Haven Civil Service Board (CSB) certifies a ranked list of applicants who passed the test. Under the charter's "rule of three," the relevant hiring authority must fill each vacancy by choosing one candidate from the top three scorers on the list. Certified promotional lists remain valid for two years.

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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.

B

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C

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. . . .

The parties filed cross-motions for summary judgment. . . .

The District Court granted summary judgment for respondents. . . .

After full briefing and argument by the parties, the Court of Appeals affirmed in a one-paragraph, unpublished summary order; it later withdrew that order, issuing in its place a nearly identical, one-paragraph per curiam opinion adopting the District Court's reasoning. [530 F.3d 87 \(CA2 2008\)](#). Three days later, the Court of Appeals voted 7 to 6 to deny rehearing en banc, . . .

. . . We found it prudent and appropriate to grant certiorari. [555 U.S. ____](#), 129 S. Ct. 893, 172 L. Ed. 2d 768 (2009). We now reverse.

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. . . .

A

Title VII of the Civil Rights Act of 1964, [42 U.S.C. § 2000e et seq.](#), as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. VII prohibits both intentional discrimination (known as "disparate treatment") as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact").

As enacted in 1964, Title VII's principal nondiscrimination provision held employers liable only for disparate treatment. . . .

The Civil Rights Act of 1964 did not include an express prohibition on policies or practices that produce a disparate impact. But in [Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849, 28 L. Ed. 2d 158 \(1971\)](#), the Court interpreted the Act to prohibit, in some cases, employers' facially neutral practices that, in fact, are "discriminatory in operation." . . . Under those precedents, if an employer met its burden by showing that its practice was job-related, the plaintiff was required to show a legitimate alternative that would have resulted in less discrimination. . . .

Twenty years after Griggs, the Civil Rights Act of 1991, 105 Stat. 1071, was enacted. The Act included a provision codifying the prohibition on disparate-impact discrimination. That provision is now in force along with the disparate-treatment section already noted. Under the disparate-impact statute, a plaintiff establishes a prima facie violation by showing that an employer uses "a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin." [42 U.S.C. § 2000e-2\(k\)\(1\)\(A\)\(i\)](#). An employer may defend against liability by demonstrating that the practice is "job related for the position in question and consistent with business necessity." Ibid. Even if the employer meets that burden, however, a plaintiff may still succeed by showing that the employer refuses to adopt an available alternative employment practice that has less disparate impact and serves the employer's legitimate needs. [§§ 2000e-2\(k\)\(1\)\(A\)\(ii\)](#) and [\(C\)](#).

B

Petitioners allege that when the CSB refused to certify the captain and lieutenant exam results based on the race of the successful candidates, it discriminated against them in violation of Title VII's disparate-treatment provision. The City counters that its decision was permissible because the tests "appear[ed] to violate Title VII's disparate-impact provisions." . . .

. . . Allowing employers to violate the disparate-treatment prohibition based on a mere good-faith fear of disparate-impact liability would encourage race-based action at the slightest hint of disparate impact. A minimal standard could cause employers to discard the results of lawful and

beneficial promotional examinations even where there is little if any evidence of disparate-impact discrimination. That would amount to a de facto quota system. . .

In searching for a standard that strikes a more appropriate balance, we note that this Court has considered cases similar to this one, albeit in the context of the [Equal Protection Clause of the Fourteenth Amendment](#). The Court has held that certain government actions to remedy past racial discrimination--actions that are themselves based on race--are constitutional only where there is a "strong basis in evidence" that the remedial actions were necessary. . . .

The same interests are at work in the interplay between the disparate-treatment and disparate-impact provisions of Title VII. Congress has imposed liability on employers for unintentional discrimination in order to rid the workplace of "practices that are fair in form, but discriminatory in operation." [Griggs, supra, at 431, 91 S. Ct. 849, 28 L. Ed. 2d 158](#). But it has also prohibited employers from taking adverse employment actions "because of" race. [§ 2000e-2\(a\)\(1\)](#). Applying the strong-basis-in-evidence standard to Title VII gives effect to both the disparate-treatment and disparate-impact 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. . . .

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.

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.

. . .

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. We hold only that, under Title VII, 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.

C

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On this basis, we conclude that petitioners have met their obligation to demonstrate that there is "no genuine issue as to any material fact" and that they are "entitled to judgment as a matter of law." . . .

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. . . .

1

There is no genuine dispute that the examinations were job-related and consistent with business necessity. . . .

2

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. . . .

3

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.

. . .

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.

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.