

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15<sup>th</sup> day of February, two thousand and eight.

Present: ROSEMARY S. POOLER,  
ROBERT D. SACK,  
SONIA SOTOMAYOR,  
Circuit Judges,

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FRANK RICCI, MICHAEL BLATCHLEY, GREG BOIVIN, GARY CARBONE, MICHAEL CRISTOFORO, RYAN DIVITO, STEVEN DURAND, WILLIAM GAMBARDELLA, BRIAN JOOSS, JAMES KOTTAGE, MATTHEW MARCARELLI, THOMAS J. MICHAELS, SEAN PATTON, CHRISTOPHER PARKER, EDWARD RIORDAN, KEVIN ROXBEE, TIMOTHY SCANLON, BENJAMIN VARGAS, JOHN VENDETTO AND MARK VENDETTO,

Plaintiffs-Appellants,

-v-

(06-4996-cv)

JOHN DESTEFANO, KAREN DUBOIS-WALTON, THOMAS UDE JR., TINA BURGETT, BOISE KIMBER, MALCOM WEBER, ZELMA TIRADO AND CITY OF NEW HAVEN,

Defendants-Appellees.

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1 Appearing for Plaintiffs-Appellants: Karen Lee Torre, New Haven, CT.

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3 Appearing for Defendants-Appellants: Richard A. Roberts (Nicole C. Chomiak,  
4 Stacey L. Pitcher, and Todd J. Richardson  
5 on the brief), Cheshire, CT.  
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8 **UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,**  
9 **AND DECREED** that the judgment of the district court is **AFFIRMED.**

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11 Plaintiffs appeal from a judgment of the United States District Court for the District of  
12 Connecticut (Arterton, J.) granting the defendants’ motion for summary judgment on all counts.

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14 We affirm, substantially for the reasons stated in the thorough, thoughtful, and well-reasoned  
15 opinion of the court below. In this case, the Civil Service Board found itself in the unfortunate  
16 position of having no good alternatives. We are not unsympathetic to the plaintiffs’ expression  
17 of frustration. Mr. Ricci, for example, who is dyslexic, made intensive efforts that appear to  
18 have resulted in his scoring highly on one of the exams, only to have it invalidated. But it  
19 simply does not follow that he has a viable Title VII claim. To the contrary, because the Board,  
20 in refusing to validate the exams, was simply trying to fulfill its obligations under Title VII when  
21 confronted with test results that had a disproportionate racial impact, its actions were protected.

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23 The judgment of the district court is **AFFIRMED.**

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26 FOR THE COURT:  
27 Catherine O’Hagan Wolfe, Clerk

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29 By: \_\_\_\_\_