City of New Haven v. Briscoe

Brief Of Amicus Curiae CATO Institute In Support Of Petitioner

by Cato Institute on 3/20/2012

In the 2009 case of Ricci v. DeStefano (also known as the "New Haven firefighters case," in which Cato filed a brief), the Supreme Court declared that an employer that did not certify race-neutral promotion-exam results could be liable to the candidates who were not promoted as a result (because those candidates would have been discriminated against based on their race, or "disparate treatment" in violation of Title VII of the Civil Rights Act). A corollary to that holding is that an employer that did certify such results would be immune from liability for any resulting racial disparities in promotion (known as "disparate-impact" claims under Title VII). As Justice Anthony Kennedy wrote for the Court majority, "If, after it certifies the 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." Despite this clear guidance from the Supreme Court, one of the black New Haven firefighters who did not gain promotion as a result of the test certification sued the City, alleging disparate-impact discrimination. The district court dismissed his claim but the Second Circuit inexplicably reversed that ruling and reinstated the lawsuit - considering Ricci's corollary holding (quoted above) to be non-binding. Cato filed a brief supporting New Haven's request that the Supreme Court review that decision — and perhaps even reverse it summarily —arguing that Title VII's provisions are complex and onerous enough, such that employers should not be subject to liability for following court orders.

Please see full brief below for more information.

[Brief]