

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FRANK RICCI, MICHAEL BLATCHLEY, :  
GREG BOIVIN, GARY CARBONE, :  
MICHAEL CHRISTOFORO, RYAN DIVITO: CIVIL ACTION NO.  
STEVEN DURAND, WILLIAM : 304CV01109(MRK)  
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, :

v. :

JOHN DESTEFANO, KAREN DUBOIS- :  
WALTON, THOMAS UDE, JR., TINA :  
BURGETT, BOISE KIMBER, MALCOLM :  
WEBER, ZELMA TIRADO AND THE CITY: September 29, 2004  
OF NEW HAVEN :

Defendants. :

ANSWER AND AFFIRMATIVE DEFENSES

1. Admit that this is a civil action and admit that the action alleges a deprivation by defendants of certain rights but deny that any such deprivation occurred. Admit that the plaintiffs are all firefighters employed by the City of New Haven but deny all other allegations of paragraph 1.

2. Admit.

3. Admit.

4. Admit, except deny the characterization as a “political operative.”

5. Admit.

6. Admit the first sentence. Admit that in his position as Corporation Counsel, defendant Ude has general overall responsibility for management of the City’s legal office and has such further responsibilities as are set forth and described in Section 18 of the City Charter and otherwise deny the remaining allegations to the extent they are inconsistent with those duties.

7. Admit the first sentence. Admit that defendant Burgett as Personnel Director has the powers and duties as set forth and described in Section 166 of the City Charter and otherwise deny the remaining allegations to the extent they are inconsistent with those duties.

8. Admit.

9. Admit the first sentence, admit that defendant DeStefano appointed defendant Kimber to the Board of Fire Commissioners and that defendant Kimber served as that Board’s Chair and deny the remaining allegations of the paragraph.

10. Admit the first sentence and admit that the City was and is the employer of the plaintiffs, and deny the remaining allegations of the paragraph as alleged.

11. Deny.

12. Admit the first sentence. Admit, upon information and belief, the plaintiffs' self-described ethnicity and that the majority of plaintiffs live outside the boundaries of the City. The remaining allegations are vague in that the terms "political constituency" and "source of political support" are not clear and thus defendants neither admit nor deny the remaining allegations but leave the plaintiffs to their proof.

13. Admit, except note that the Charter is not the only law that governs the City of New Haven and that the Charter states which officials are required to carry out its provisions.

14. Admit and refer to the actual charter for its scope.

15. Admit that the charter provides for a merit based system for promotion of municipal employees in the classified service and refer to the actual Charter for the scope and limits of such system.

16. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

17. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

18. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

19. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

20. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

21. Deny.

22. Admit that there were civil actions challenging the City's interpretation of the Rule of Three but deny the remaining allegations of the paragraph.

23. Admit.

24. Admit.

25. The defendants have insufficient direct knowledge to either admit or deny the allegations of this paragraph and thus leave the plaintiffs to their proof.

26. Admit the first four sentences. Deny the fifth and sixth sentences.

27. Deny.

28. Deny.

29. Deny as stated, but admit that two lists with preliminary scores from the tests that identified race and ethnicity for purposes of evaluating adverse impact circulated among some City officials, and admit that those preliminary lists showed that the top scorers in both examinations were white.

30. Deny.

31. Deny.

32. Deny.

33. Admit the first sentence. Admit the second sentence except deny the term “operative”. Admit the third sentence except deny that defendant Kimber can control how anyone other than he himself votes. Deny the fourth sentence.

34. Admit the first sentence. Deny the second sentence. Deny the third sentence.

35. Deny.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

40. Admit that several experts were solicited for their opinions concerning certain aspects of the examinations but deny the remaining allegations of the paragraph.

41. Admit that on or about March 18, 2004 a motion before the Civil Service Board to certify promotional lists to be generated through the tests did not pass. Deny the remaining allegations of the paragraph.

42. With regard to the first sentence, admit that some of the plaintiffs sought disclosure of their individual scores but deny the remaining allegations.

With regard to the second sentence defendants can neither admit nor deny the state of mind of the plaintiffs and leave them to their proof.

43. Deny.

44. Deny.

45. Deny.

46. Admit.

47. Deny as stated. State that the provisions of the Charter speak for themselves and therefore neither admit nor deny the plaintiffs' paraphrasing of the Charter.

48. Deny.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

54. Deny.

55. Deny.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

FIRST AFFIRMATIVE DEFENSE

The plaintiffs have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The actions and inactions of the defendants were mandated by federal law and thus any state law claims of the plaintiff are preempted.

THIRD AFFIRMATIVE DEFENSE

The matter is not yet ripe.

FOURTH AFFIRMATIVE DEFENSE

The individual defendants are absolutely immune from suit for the actions alleged in the complaint.

FIFTH AFFIRMATIVE DEFENSE

The individual defendants are qualifiedly immune from suit for the actions and inactions alleged in the complaint.

DEFENDANTS – JOHN DESTEFANO,  
ET AL

By /s/ Hugh F. Murray, III  
Hugh F. Murray, III – ct11418

Murtha Cullina LLP  
CityPlace I - 185 Asylum Street  
Hartford, Connecticut 06103-3469  
Telephone: (860) 240-6000  
Facsimile: (860) 240-6150  
Email: [hmurray@murthalaw.com](mailto:hmurray@murthalaw.com)



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed first-class, postage prepaid, on this 29<sup>th</sup> day of September 2004, to:

Karen Lee Torre  
Law Offices of Karen Lee Torre  
51 Elm Street, Suite 307  
New Haven, CT 06510

/s/ Hugh F. Murray, III  
Hugh F. Murray, III – ct11418

739679