

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NEW HAVEN FIREFIGHTERS	:	
LOCAL 825,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:04cv1169 (MRK)
	:	
CITY OF NEW HAVEN, CIVIL	:	
SERVICE COMMISSION, JOHN	:	
DESTEFANO, JR. and TINA	:	
BURGETT,	:	
	:	
Defendants.	:	

ORDER

Plaintiff began this action in the Connecticut Superior Court seeking a writ of mandamus to compel Defendants to certify the results of a promotional examination to the Civil Service Commission, as allegedly required by the Charter of the City of New Haven and New Haven’s Civil Service Rules and Regulations. Defendants removed this action to this Court on July 15, 2004. Defendants did so pursuant to 28 U.S.C. § 1443(2), on the ground that their refusal to certify the examination results would violate federal laws providing equal employment rights and prohibiting disparate impact race discrimination, specifically, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII").¹ *See* Defs.’ Notice of Removal [doc. #1] at 3.

¹ Section 1443 provides as follows: "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: . . . (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law." 28 U.S.C. 1443(2).

Plaintiff now seeks to remand the case back to state court. For the following reasons, the Plaintiff's Motion to Remand [doc. #14] is DENIED.

Plaintiff argues that only federal officials are entitled to remove an action under § 1443(2). While Plaintiff is correct that only federal officials may remove an action under the first clause of § 1443(2), Defendants rely solely on the second clause of § 1443(2). It is well settled that the second clause of §1443(2) – known as the "refusal clause" – is available to state officials, *see Greenwood v. Peacock*, 384 U.S. 808, 824 n. 22 (1966), and to local and municipal officials acting under color of state law, *see Bridgeport Ed. Ass'n v. Zinner*, 415 F. Supp. 715, 721 (D. Conn. 1976) (cited in *White v. Wellington*, 627 F.2d 582, 585 (2d Cir. 1980)). In *White*, a case with strikingly similar facts, the Second Circuit held that several officials of the City of New Haven, including members of the Civil Service Commission and the Mayor, had an absolute right to remove a case to federal court under the refusal clause of § 1443(2). *Id.* at 586-87. Like the dispute in the present case, the dispute in *White* was over the City's alleged refusal to comply with its charter and civil service rules, all having the force of state law, in connection with promotional exams. *Id.* at 585. Also like the defendants in this case, the defendants in *White* refused to comply with state law on the grounds that it would be inconsistent with Title VII. After the Second Circuit's decision in *White*, it is clear that Defendants are entitled to remove the case to federal court under the circumstances of this case.

Plaintiff also argues that removal under §1443(2) is improper because there has not yet been an "independent determination" that certifying the examination results would have the adverse impact to minorities claimed by Defendants. The Court disagrees. Resolving a jurisdictional issue such as whether removal is appropriate does not require a prior decision on

the merits of the underlying dispute. See *Bridgeport Ed. Ass'n*, 415 F. Supp. at 722 (cited in *White*, 627 F.2d at 587) ("To decide at this point whether the local civil service requirements are really inconsistent with Title VII or s1981 in the circumstances of this case would be to make entitlement to removal depend on whether defendants will prevail on the merits of their claim."). Defendants need only make a "colorable claim" evidenced by a "good faith belief" that their refusal to act "was justified by federal statutory duty to avoid racial discrimination." *White*, 627 F.2d at 586-87. Defendants amply satisfied their burden in their Notice of Removal, in which they defend their refusal to certify the examination results on the basis of Title VII.

Accordingly, the Plaintiff's Motion for Remand [doc. #14] is hereby DENIED.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: September 28, 2004.