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## The Ricci Case: reaction

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June 29, 2009

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**Roger Pilon**, Vice President for Legal Affairs, Cato Institute:

On the Ricci case: ***In its opinion today in Ricci v. DeStefano, the Supreme Court came down solidly for upholding the equal protection of the law.*** It reversed the decision of the Second Circuit panel on which Judge Sonya Sotomayor sat, which had upheld, summarily, the lower court's decision to allow the city of New Haven to throw out the results of a racially neutral promotion exam for city firefighters after whites did better than blacks on the exam.

As the Court said, all the evidence suggests that the city rejected the test results because the higher scoring candidates were white. The city's rationale for engaging in this intentional discrimination was to avoid a suit by black firefighters. But the city could take the position it did only if there were strong evidence that its test was racially biased or not job related or that there was some other equally valid non-discriminatory test that the city refused to administer. There was no such evidence, the Court concluded. Had the city been sued by the black firefighters, it would have won. Thus, it's rationale for throwing out the test results will not withstand scrutiny. The city engaged in outright intentional discrimination.

The political implications of this decision for the Sotomayor nomination are several, but her refusal to wrestle with the important issues at stake and to side summarily with the city, together with her many statements off the bench about "identity politics," should make for very interesting confirmation hearings just two weeks ahead.

Posted at 11:12 EDT

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