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# Supreme Court rules for white firefighters in promotions

By Joan Biskupic, USA TODAY

WASHINGTON — The city of New Haven wrongly discarded the results of a firefighter promotion test after whites outscored blacks and Hispanics, a bitterly divided Supreme Court ruled Monday in a decision likely to impact job practices nationwide.

The 5-4 decision controlled by the court's conservative bloc raises the bar for employers that try to change job tests or other seemingly neutral criteria after they discover the tests disproportionately screen out racial minorities.

The decision, which reverses a lower court decision that had been joined by current Supreme Court nominee [Sonia Sotomayor](#), elicited an impassioned dissent from the bench from Justice [Ruth Bader Ginsburg](#).

**SCOTUS:** [Firefighter ruling draws cheers, jeers](#)

In the majority opinion written by Justice [Anthony Kennedy](#), the court said New Haven violated a provision of Title VII of the Civil Rights Act of 1964 that bars discriminatory treatment in hiring and promotion.

New Haven officials had said they were trying to meet the demands of a separate Title VII provision that prohibits tests and others standards that cause a discriminatory impact. The officials said they tossed the results because they believed the test was flawed and they feared lawsuits from the blacks and Hispanics who failed to qualify for promotion.

"The city ... turned a blind eye to evidence that supported the exams' validity," Kennedy said, as he declared that the city lacked a "strong basis in evidence" that it had to discard the exam results.

Rejecting the city's assertions about problems with whether the tests truly measured leadership skills, Kennedy added, "Fear of litigation alone cannot justify an employer's reliance on race to the detriment of individuals who passed the examinations and qualified for promotions."

In her dissent, Ginsburg emphasized the "two pillars" of civil rights law and said the majority had minimized the provision adopted by Congress to ensure that individuals are promoted based on qualifications necessary to do the job.

She said the court majority ignored a history of race discrimination in New Haven firehouses and nationwide. "Firefighting is a profession in which the legacy of racial discrimination casts an especially long shadow," she said and asserted that the written test that counted for 60% of the promotional exams did not truly measure who would be good candidates for promotion to lieutenant or captain.

"As a result of today's decision," she wrote, "an employer who discards a dubious selection process can anticipate costly disparate-treatment litigation in which its chances for success — even for surviving a summary-judgment motion — are highly problematic."

Kennedy was joined by Chief Justice [John Roberts](#) and Justices [Antonin Scalia](#), [Clarence Thomas](#) and [Samuel Alito](#).

Ginsburg was joined in dissent by Justices John Paul Stevens, [David Souter](#) and [Stephen Breyer](#).

Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law, said she agreed with [Justice Ginsburg](#) that the decision "will not have staying power."

"We are shocked by the decision and we will continue our work to preserve the vital protections of Title VII of the Civil Rights Act of 1964," she said.

[Roger Pilon](#), vice president for legal affairs at the [Cato Institute](#), cheered the ruling and said, "The city engaged in outright intentional discrimination."

Monday's dispute traced to a decision by New Haven officials to cancel the results of a 2003 exam after no blacks and only two Hispanic applicants qualified for promotions based on their scores. (Of the 118 applicants for promotion to captain or lieutenant who took the test, a total 50 were racial minorities.)

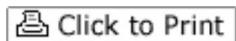
White firefighters sued, contending the city's action constituted "overt racial balancing" that violated Title VII and the Constitution's equality guarantee. They argued that the city lacked the grounds to believe it would be liable for indirect discrimination claims. They claimed the decision was political.

The lead plaintiff in the case, Frank Ricci, is dyslexic. He said he spent \$1,000 on materials to prepare for the exam.

Sotomayor was part of a three-judge panel of the U.S. Court of Appeals for the Second Circuit that endorsed New Haven's action. She joined a short opinion that said, "The (New Haven) Civil Service Board found itself in the unfortunate position of having no good alternatives. We are not unsympathetic to the plaintiff's expression of frustration. Mr. Ricci, for example, who is dyslexic, made intensive efforts that appear to have resulted in his scoring highly on one of the exams, only to have it invalidated."

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