



Sotomayor's Firefighter Case May Not Be Over Yet

by **Rowan Scarborough** ([more by this author](#))

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Police and firefighter groups are lambasting a decision by Supreme Court-nominee Sonia Sotomayor in a potential landmark racial discrimination suit, saying her opinion will damage public safety, morale and recruiting.

The stinging rebuke comes in legal briefs filed with the Supreme Court in support of an appeal filed by New Haven, Conn., firemen, who were denied a chance at promotion because they are white.

Sotomayor and two other Second Circuit federal appeals court judges in 2008 backed a district court ruling which said the city was correct to throw out the results of a competitive civil service test because no black firefighter scored high enough to be considered for promotion.

The three did not write an opinion, but instead incorporated the district court ruling in their decision. Sotomayor's role in *Frank Ricci v. DeStefano* is already being hotly debated in Washington as the Senate Judiciary Committee prepares for confirmation hearings.

"No police or fire department of modest or greater size is immune from the corrosive impact of racial politics," said a legal argument from the National Association of Police Organizations. "That camaraderie is undermined when officers are made to feel like members of a race, rather than members of a team."

Calling the legal ruling "misguided," the group said, "The facts of this case provide a cautionary tale for the potential of racial politics to inflict a deleterious impact on a department's recruitment and retention."

The Bridgeport Firefighters for Merit Employment is fighting a similar battle and filed a brief in support of Ricci. It, like other public safety groups, sees a creeping government movement away from performance-based promotions and towards racial

quotas. The problem is, when your life is on the line in a burning building, it is the most capable firemen who have the best chance to get out alive.

"Although merit considerations are important for any government position, they are even more essential in positions where public safety is implicated, as well as the safety of firefighters," the group said. "In these situations, commanding officers must make life and death decisions. Consequently, the second circuit has set a dangerous precedent for the city of New Haven by affirming the District Court ruling."

Said Philadelphia members of the Concerned American Firefighters Association, "The use of race in the promotion of firefighters is irresponsible in its sacrifice of professional competence to the political preoccupation with racial diversity. And it is irrelevant in the firefighting context. Indeed, much more than a party to a lawsuit will be put in jeopardy by such a cavalier approach."

Attorneys for Ricci and 19 other New Haven firemen are making the same point to the Supreme Court, which heard oral arguments in April and may issue an opinion this fall.

"Forcing merit and ability to take a backseat to racial considerations would disserve public safety and efficiency by depriving the public of its most qualified servants," Ricci's attorneys said. "Fires and disasters, unlike governments, do not discriminate based on race."

A number of conservative public interest groups and think tanks have filed arguments with the Supreme Court to back the New Haven fire fighters.

One is the Center for Individual Rights, a law center that bills itself as a counter to liberal advocates such as the American Civil Liberties Union.

Michael Rosman, CIR's general counsel, told HUMAN EVENTS that if New Haven's testing methods catch on nationwide it could be bad news for public safety.

"If people started to imitate New Haven, people spend time and money and effort to get ahead and then to have that effort undermined by a change in procedure like that, I think it hurts morale and over the course of time it could cause a deterioration of the morale of the organization," Rosman said, "And ultimately it's effectiveness. "

New Haven may already be feeling the harmful effects.

"The problem is, not only did they not promote anyone, they haven't promoted any one in the five years since and it has an effect on people's morale within the department," he said. "You can't get ahead. There's always a danger when you do something like that that good people will leave the department and that units won't be as effective as they could be in doing their job."

Also weighing in is the CATO Institute, Washington's premiere libertarian think tank.

"This case, as the Sotomayor panel handled it, suggest that identity politics is allowed to trump merit selection," said Roger Pilon, CATO's vice president for legal studies.

If the Sotomayor position stands, he said, "It would mean states and cities have almost carte blanche to ignore the results of otherwise racially neutral exams whenever they are threatened with a law suit."

Pilon added, "The decision creates a set of perverse incentives, namely that every time a neutral exam produces desperate results and there is at least possibility of a suit, then the municipality or state will be entitled to throw the results out."

Mr. Scarborough is a national security writer who has written books on Donald Rumsfeld and the CIA, including the New York Times bestseller [Rumsfeld's War](#).

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