

# Human Resources Bulletin



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## Supreme Court Rules In Favor of White Firefighters in Closely Watched Reverse Discrimination Case

On June 29 a divided United States Supreme Court ruled that the city of New Haven, Conn., committed unlawful race discrimination when it invalidated the results of firefighter exams in which white test-takers outperformed minority test-takers. In this closely-watched case, the Supreme Court ruled that the City's fear of a discrimination lawsuit by the black firefighters was not a viable justification for discarding the test scores.

The case was about the City of New Haven's use of examinations to identify firefighters best qualified for promotion to lieutenant and captain within the ranks of the city's fire department. At the time of the lieutenant examination at issue in the case, the top 10 candidates would be eligible for immediate promotion to lieutenant. When the test results were tabulated, 34 of the 77 candidates passed. A further statistical breakdown showed that 58 percent of the white candidates (25 of 43) passed the lieutenant exam while only 32 percent of black candidates (6 of 19) and 20 percent of the Hispanic candidates (3 of 15) were successful. The top 10 candidates who were eligible for promotion were white.

As for the captain examination, 22 of the 41 candidates passed. As with the lieutenant exam, the white firefighters generally scored better than the

minority candidates: 64 percent of the white candidates (16 of 25) were successful on the exam, as compared with 38 percent of the black candidates (3 of 8) and 38 percent of the Hispanic candidates (3 of 8). Of the successful test takers, nine candidates were eligible for an immediate promotion to captain—seven whites and two Hispanics.

After a "rancorous public debate," the City discarded the results of the exams amid threats of lawsuits either way (i.e., whether the results were discarded or not). A group of white and Hispanic firefighters sued the City, alleging that discarding the test results constituted intentional race discrimination under Title VII of the Civil Rights Act of 1964. The City defended its decision by arguing that it could have faced Title VII liability for adopting a practice that had a disparate impact upon minority firefighters. The trial court and the court of appeals sided with the City, and the firefighters took the case to the Supreme Court.

The Supreme Court, by a 5-4 vote, sided with the firefighters. Even though Title VII prohibits policies or practices that have a disparate impact upon minorities, the Court's five-justice majority rejected the view that the City's fear of litigation by racial minorities could justify

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intentional discrimination against white employees. Without a “strong basis in evidence” for believing racial minorities could prevail in a “disparate impact” lawsuit, the City committed unlawful discrimination against the white firefighters by discarding the exam results. Even though the black firefighters were admittedly outperformed by whites on the promotional exams at issue, the statistical disparity was not enough to find a “strong basis” for liability on a disparate impact theory. This was true in light of the evidence in the case showing “detailed steps” that the City took to develop and administer tests that were relevant to the captain and lieutenant positions and therefore valid under a Title VII disparate impact analysis.

Due to the Supreme Court’s decision, employers who use test results to evaluate candidates for hiring or promotion commit unlawful race discrimination when they reject those results, solely on the basis that they showed a significant statistical disparity against minorities. “Fear of litigation alone” cannot justify tossing out the results on the basis of race to the detriment of the successful candidates.

**The case is *Ricci v. DeStefano*, decided on June 29, 2009.**

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