

White firefighters win Supreme Court appeal

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WASHINGTON – The Supreme Court ruled Monday that white firefighters in New Haven, Conn., were unfairly denied promotions because of their race, reversing a decision that high court nominee Sonia Sotomayor endorsed as an appeals court judge.

The ruling could alter employment practices nationwide and make it harder to prove discrimination when there is no evidence it was intentional.

New Haven was wrong to scrap a promotion exam because no African-Americans and only two Hispanic firefighters were likely to be made lieutenants or captains based on the results, the court said Monday in a 5-4 decision. The city said that it had acted to avoid a lawsuit from minorities.

The ruling could give Sotomayor's critics fresh ammunition two weeks before her Senate confirmation hearing. Conservatives say it shows she is a judicial activist who lets her own feelings color her decisions. On the other hand, liberal allies say her stance in the case demonstrates her restraint and unwillingness to go beyond established precedents.

Coincidentally, the court may have given a boost to calls for quick action on her nomination.

The court said it will return Sept. 9 to hear a second round of arguments in a campaign finance case, and with Justice David Souter retiring there would be only eight justices unless Sotomayor has been confirmed by then.

In Monday's ruling, Justice Anthony Kennedy said, "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." He was joined in the majority by Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia and Clarence Thomas.

In dissent, Justice Ruth Bader Ginsburg said the white firefighters "understandably attract this court's sympathy. But they had no vested right to promotion. Nor have other persons received promotions in preference to them."

Justices Souter, Stephen Breyer and John Paul Stevens signed onto Ginsburg's dissent, which she read aloud in court Monday. Speaking dismissively of the majority opinion, she predicted the court's ruling "will not have staying power."

Kennedy's opinion made only passing reference to the work of Sotomayor and the other two judges on the 2nd U.S. Circuit Court of Appeals who upheld a lower court ruling in favor of New Haven.

But the appellate judges have been criticized for producing a cursory opinion that failed to deal with "indisputably complex and far from well-settled" questions, in the words of another appeals court judge, Sotomayor mentor Jose Cabranes.

"This perfunctory disposition rests uneasily with the weighty issues presented by this appeal," Cabranes said, in a dissent from the full 2nd Circuit's decision not to hear the case.

Sen. Patrick Leahy, chairman of the Judiciary Committee, said Sotomayor should not be criticized for the unsigned appeals court decision, which he asserted she did not write. "Judge Sotomayor and the lower court panel did what judges are supposed to do, they followed precedent," said the Vermont Democrat who will preside over Sotomayor's confirmation hearings next month.

Leahy also called the high court decision "cramped" and wrong.

In New Haven, Nancy Ricci, whose son, Frank, was the lead plaintiff on the lawsuit, carried a large cake decorated with red, white and blue frosting into the law office where the firefighters were celebrating their victory.

Ricci's father, Jim Ricci said the ruling is a victory for firefighters across the country. "Now we're going to get the best managers as far as firefighters go. That's really important," Ricci said.

Monday's decision has its origins in New Haven's need to fill vacancies for lieutenants and captains in its fire department. It hired an outside firm to design a test, which was given to 77 candidates for lieutenant and 41 candidates for captain.

Fifty-six firefighters passed the exams, including 41 whites, 22 blacks and 18 Hispanics. But of those, only 17 whites and two Hispanics could expect promotion.

The city eventually decided not to use the exam to determine promotions. It said it acted because it might have been vulnerable to claims that the exam had a "disparate impact" on minorities in violation of the Civil Rights Act of 1964.

The white firefighters said the decision violated the same law's prohibition on intentional discrimination. The lawsuit was filed by 20 white plaintiffs, including one man who is both white and Hispanic.

Kennedy said an employer needs a "strong basis in evidence" to believe it will be held liable in a disparate impact lawsuit. New Haven had no such evidence, he said.

The city declined to validate the test after it was given, a step that could have identified flaws or determined that there were no serious problems with it. In addition, city officials could not say what was wrong with the test, other than the racially skewed results.

"The city could be liable for disparate-impact discrimination only if the examinations were not job related" or the city failed to use a less discriminatory alternative, Kennedy said. "We conclude that there is no strong basis in evidence to establish that the test was deficient in either of these respects."

But Ginsburg said the court should have assessed "the starkly disparate results" of the exams against the backdrop of historical and ongoing inequality in the New Haven fire department. As of 2003, she said, only one of the city's 21 fire captains was African-American.

Until this decision, Ginsburg said, the civil rights law's prohibitions on intentional discrimination and disparate impact were complementary, both aimed at ending workplace discrimination.

"Today's decision sets these paired directives at odds," she said.

Associated Press writer Katie Nelson in New Haven, Conn., contributed to this report.

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