

# New Haven Register

## Supreme Court to hear firefighters' bias case

Saturday January 10, 2009

By William Kaempffer, Register Staff

NEW HAVEN — In a case with potential ramifications for civil service practices across the country, the U.S. Supreme Court Friday agreed to hear a reverse discrimination lawsuit filed by 20 New Haven firefighters who claim they were wrongfully denied promotions because of their race.

Later, the 19 white and one Hispanic firefighters stood on the steps of New Haven's U.S. District Court, the same building where a judge threw out their lawsuit in 2006 before it got to trial. Their attorney, Karen Torre, discussed the "disguised system of racial quotas" she said persists in civil service.

While "we cannot predict what the outcome of the Supreme Court review will be, we hope that this case will restore the civil service to what it should be — a public work force of the very best chosen on the basis of individual merit, free from the divisive politics of race," Torre said in a prepared statement.

The city issued a short statement indicating it remained confident in its position. While the city was "not surprised" that the Supreme Court accepted the case, "it remains confident that the 2nd Circuit U.S. Court of Appeals correctly decided the issue."

In 2008, the 2nd Circuit Court of Appeals upheld the district court's dismissal, leading to the petition to the high court.

It was about 1:40 p.m. when Torre got word from Washington, and by 2:30 p.m. many of her firefighter clients had gathered in her Church Street law offices ready to toast the day with a \$150 bottle of Dom Perignon champagne. She told her clients not to comment to the media.

Oral arguments before the Justices are scheduled for April.

"I'm so happy for these men," Torre said in her office as her clients celebrated outside. "They felt kicked in the stomach so many times, and none of them had any faith at all in the federal court system and they made this decision to embark on a very long journey against all odds."

The Supreme Court receives nearly 10,000 petitions each year, and accepts about 70.

Some heavyweight law firms have gotten involved. Boston-based Wilmerhale has agreed to handle the city's case pro bono. Lawyers from Yetter, Warden & Coleman, an Austin, Texas-based law firm, have come on board to assist Torre. She has not said whether they agreed to work pro bono, but has said in the past that "they have not asked for any money, and they don't expect any, and we can't give them any. Firefighters don't make much."

It was a very different mood Friday than last month, when they gathered in the same offices only to learn that theirs was not among granted cases. A reprieve came the following Monday when Ricci v. DeStefano was not listed among the rejected cases either, meaning it was put off to the next Supreme Court conference.

Firefighter Frank Ricci is the lead defendant in the case.

The key question to be answered in the case is this: Can a municipality disregard results of a civil service exam, crafted to be race-neutral, on grounds that the exam yielded too many qualified applicants of one race and not enough of the other? Legal observers have said the answer would be a landmark decision that could have far-reaching workplace ramifications, since the case argues a set of complicated issues that have not been answered yet by any settled body of existing legal precedent.

The controversy dates back to 2003 when the city administered two promotional exams for fire lieutenant and fire captain. When the results came back, however, those at the top of the lists were virtually all white, prompting a series of contentious public hearings in early 2004 to determine whether the lists should be certified.

The city asserted the exams made a disparate impact on minority firefighters, and if the city were to proceed with promotions it would open itself to potential employment discrimination lawsuits from minorities. The Civil Service Commission did not certify the exam.

The lawsuit, filed in 2004, asserted that it was race-based politics, and not altruistic motives, that scuttled the exams, and that in doing so, the city instead violated the civil rights of the white firefighters who would have otherwise been promoted.

A U.S. District Court judge threw out the lawsuit in 2006, and a three-judge panel for the U.S. Court of Appeals for the Second Circuit upheld the decision in February. The firefighters then petitioned to the U.S. Supreme Court.

The firefighters' cause received unexpected support from dissenting judges on the 2nd Circuit bench, who suggested the three-judge panel hadn't done justice to "questions of exceptional importance raised in this appeal."

Six of the 13 appellate court judges, while not taking a position on the merits of the claims, signed an opinion strongly urging the Supreme Court to grant the petition.

In addition to the Ricci, the other plaintiffs are Benjamin Vargas, Brian Jooss, Christopher Parker, Edward Riordon, Gary Carbone, Greg Boivin, James Kottage, John Vendetto, Kevin Roxbee, Mark Vendetto, Matthew Marcarelli, Michael Blatchley, Michael Christoforo, Ryan Divito, Sean Patton, Steven Durand, Thomas J. Michaels, Timothy Scanlon and William Gambardella.

The plaintiffs filed suit before they knew where they fell on the scuttled lists.

“This is all for principal,” said Ricci. “All these 20 guys stood up not even knowing if they stood in line for promotion, and there’s still 20 guys (in the suit) and that’s principal.”