

# New Haven Register

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## Lawyers line up in firefighters' reverse bias case

Monday, November 10, 2008 5:25 AM EST

By William Kaempffer, Register Staff

NEW HAVEN — The U.S. Supreme Court hasn't yet decided whether it will take the case of the so-called "New Haven 20," but national organizations already are lining up to weigh in, and the stable of attorneys involved in the case is expanding.

Lawyers from Yetter, Warden & Coleman, an Austin, Texas-based law firm with experience arguing before the nation's high court, are assisting New Haven attorney Karen Torre, lead lawyer for the 20 New Haven firefighters in the reverse discrimination lawsuit against the city. Two of the attorneys are former U.S. Supreme Court law clerks, and all came highly recommended as "brilliant litigators," Torre said.

She didn't say whether they agreed to work pro bono, but did say, "I can tell you this, 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."

This comes after the city retained, pro bono, Boston heavyweight law firm Wilmerhale to represent the administration and city's interests.

It is a case that has drawn national attention. The question at hand, whether a municipality can throw out an otherwise valid promotional test if it has a disparate impact on minorities, has generated national attention in civil rights and legal circles.

It's also a justification that is uncharted legal territory, according to Diane Schachterle, director of policy and planning for the California-based American Civil Rights Institute, one of the anti-affirmative action organizations that filed a brief.

"That particular argument has not been addressed by the court. I think it's new territory. Disparate impact is something that has come up in California recently. It's the new frontier."

In New Haven, at the city's urging, the Civil Service Commission threw out two promotional exams in 2004 for fire lieutenant and captain after results positioned few minority firefighters for advancement. The city argued certifying them could have opened

the city to lawsuits from minorities under the federal Civil Rights Act.

Instead, 19 white and one Hispanic firefighter sued, claiming they were wrongfully denied promotion.

In addition to ACRI, two other conservative organizations, the Washington D.C.,-based Center for Individual Rights and the Center for Equal Opportunity, in Virginia, filed briefs. All have a history of challenging affirmative action policies and urged the Supreme Court to accept the firefighter petition.

A decision on whether the high court will accept the case could come as soon as December. A city spokeswoman referred questions to Wilmerhale. The Wilmerhale lawyer assigned to the case was traveling and unavailable for comment, a law firm spokeswoman said Thursday.

The Center for Individual Rights is perhaps best known for a 1997 lawsuit, which ended up before the U.S. Supreme Court, challenging the University of Michigan's practice of considering race of applicants to ensure diversity in its undergraduate and law school programs, one of a number of similar cases the group has pursued. Meanwhile, the advocacy arm of the ACRI, backed by black California millionaire Ward Connerly, has successfully pushed referendums in California, Michigan, Washington, Florida and Nebraska to end preference programs for women and minorities.

The groups have encountered staunch opposition from organizations such as the American Civil Liberties Union and the National Association for the Advancement of Colored People. Messages left at the ACLU national and state offices were not returned.

Scot X. Esdaile, president of the state NAACP, likened Connerly to Supreme Court Justice Clarence Thomas, whom he described as a black man who personally benefited from affirmative action and then turned his back on other black men.

“The NAACP has been fighting Ward Connerly wherever he pops his ugly head up across the county and we will dig in our heels to fight him in the state of Connecticut also.”

In New Haven, the promotional controversy has been a divisive topic, with people lining up on both sides of the racially charged argument.

Torre said that's to be expected when race-based politics are infused into the civil service program, which was created to remove politics and cronyism from hiring and promotional practices.