

# United States Supreme Court Decides Reverse Race Discrimination Case

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The United States Supreme Court recently issued a decision holding that white firefighters were unfairly denied promotions because of their race. In *Ricci v. DeStefano*, No. 07-142, the majority said that the city was wrong to disregard a promotion exam because no blacks and only two Hispanic firefighters were likely to be made lieutenants or captains based on the results. The city said that it had acted to avoid a lawsuit from minorities. The decision arose from the city's need to fill vacancies for lieutenants and captains in its fire department. It hired an outside firm to design a test that 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 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. Writing for the majority, Justice 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. 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 al-



ternative. We conclude that there is no strong basis in evidence to establish that the test was deficient in either of these respects." In her dissent, Justice Ginsberg, stated "Until this decision the civil rights law's prohibitions on intentional discrimination and disparate impact were complementary, both aimed at ending workplace discrimination." Ginsburg stated, "Today's decision sets these paired directives at odds" and she predicted that the court's ruling "will not have staying power."

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