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Cities Yearn for Clarity on Bias in Hiring

By SUZANNE SATALINE and STEPHANIE SIMON

Civil-service exams were supposed to be the fairest way for cities to hire the best firefighters and police officers, while opening the doors to more minorities on their forces.

Yet, test takers nationwide have filed scores of lawsuits over the years, accusing cities of bias, racism and undue politicking -- the very problems the tests were supposed to solve.

In addition to a well-publicized case involving New Haven, Conn., a number of cities, including Chicago, New York and Bridgeport, Conn., are fighting lawsuits filed by applicants alleging the cities crafted tests to screen out minorities -- or manipulated results to boost minority scores. Many firefighters also question whether a written exam is really the optimal way to predict how someone would react at a four-alarm fire.

Both sides are eagerly awaiting a U.S. Supreme Court ruling in the New Haven case. Filed by 18 white and Hispanic firefighters, the suit accuses the city of discrimination in its decision to throw out test scores from a 2003 exam that would have resulted in no black applicants being promoted. The case has attracted widespread attention because the city's decision was upheld by a three-judge panel including Judge Sonia Sotomayor, President Barack Obama's first Supreme Court nominee.

Cities hope the Supreme Court ruling, expected soon, will clarify hiring procedures and leave them less exposed to lawsuits. But if the justices decide to send the case back to the original U.S. district court, cities and test takers may have to wait even longer to discern what is legal and what isn't when cities hire and promote.

"Personnel directors [and] municipal attorneys are really caught between a rock and a hard place. We need some guidance," said John Mitola, an assistant city attorney for Bridgeport, where a dozen white firefighters sued in April after the city changed the scoring on a fire-lieutenants exam.

Firefighting exams, often a grueling series of written and oral questions, were designed to address the long history of racism that has plagued many municipal departments. Congressional investigators, who began examining complaints by minority groups in the late 1960s, found that many fire departments had refused to hire African-Americans until at least the late 1950s, and then sometimes segregated the new hires. Congress found that because firefighters were required to share living space while working, firefighting had been particularly resistant to integration.

Exams, it was thought, provided a color-blind way to measure performance and promote blacks and Hispanics into leadership roles. The problem, some experts say, is that for reasons not understood, minorities have typically not performed as well as whites on tests -- be it for city jobs or college entry. Some have speculated their performances were a legacy of poor schools in minority neighborhoods.

Regardless, some firefighters have questioned whether exams adequately measure the snap judgments and supreme calm needed to manage people in an emergency. "It's a paper and pencil test -- heavily weighted toward...traditional academic skills, which we say has very little to do with the job of firefighter," said Darius Charney, attorney with the Center for Constitutional Rights. The center is representing an association of black firefighters that, along with the

federal government, is suing New York for tests and a ranking system that have kept black and Hispanic firefighters off the force.

Georgia Pestana, an attorney for New York, says it would be impractical for the city to administer oral exams on one day to the typical applicant pool of 30,000 people. "The fact is that no one has yet designed a multiple-choice test that does not have an adverse impact on blacks," she said.

Cities complain that even when they try to find ways to hire and promote more minorities, they become the subject of litigation. Such is the case in New Haven, where city officials said they decided to scratch the results of the promotions test rather than face civil-rights lawsuits.

Bridgeport offered an exam for fire lieutenant in 2006. City officials decided the test unfairly harmed black and Hispanic candidates, who were far less likely than whites to score in the top tier. To correct for that, the city decided to give the oral exam more weight. In doing so, several white candidates fell out of the top tier and the group of white firefighters sued.

Richard Albrecht, the attorney for the white firefighters, says it's unfair -- and devastating to morale -- to fiddle with the scoring system after the fact just so more minorities clear the bar.

Mr. Mitola, the city attorney, says that in altering the scoring, the city followed U.S. guidelines, and still was sued. "We're anxiously awaiting guidance from the Supreme Court, I'll tell you that."

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