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Even after Ricci, FDNY is on the hook for discrimination

In 2004, the City of New Haven decided not to use the results of a promotional test for firefighters because it was concerned that the test may have discriminated against minority applicants. White firefighters who scored well on the test — including Frank Ricci, who is set to testify to Congress today — sued the city, and the rest is now history: The U.S. Supreme Court ultimately ruled that a city cannot set aside the results of an employment test unless there is a “strong basis in evidence” that a test is discriminatory.

But the Ricci decision has no bearing on the diversity debate going on in New York, where the results of discriminatory firefighter exams are being challenged by the Vulcan Society — a decades-old organization of black firefighters — and the Justice Department.

Here, the question is not whether the city may set aside an entry-level firefighter exam but whether it *must* do so because the exam has been shown to have an adverse impact on black and Latino applicants, and because it is not sufficiently related to the firefighter job.

No one denies that diversity in the FDNY is a major problem. The FDNY is the least diverse big-city fire department in the nation by a mile. The number of black firefighters in New York has hovered around a paltry 3% for decades, nowhere near the 30% minority employment in the New Haven Fire Department. As of 2001, 23% of Chicago’s firefighters were black, as were 26% of Philadelphia’s, 16%

of Los Angeles’ and 31% of Baltimore’s.

Out of all of New York City’s dozens of departments and agencies, the FDNY is the least diverse, bar none.

Experts who have studied this issue say that the FDNY uses firefighter selection tests that are biased against African-American and Latino applicants. What is more, the exams don’t even measure the most important abilities

needed to be a good firefighter.

Fire Commissioner Nicholas Scoppetta says the way to boost diversity is to recruit more job applicants from minority areas. But we’ve seen that no matter how many minority candidates sign up to take the FDNY’s firefighter exam, the test tends to either screen them out or ranks them too low to be hired.

While Scoppetta says that on the most recent exam, 33% of the top 4,000 test-passers were minorities, black and Latino candidates tend to be bunched at the bottom of that list. Since the FDNY is currently doing no hiring at all, it is very likely that these candidates will never be hired, or that they will wait on the list for three or four years, unlike their white counterparts.

In 2003, the city’s Equal Employment Practices Commission issued a report expressing concern that the FDNY’s firefighter test was screening out minorities — and asking Scoppetta to perform an “adverse impact study” to see if the test was unnecessarily biased. Scoppetta refused.

The commis-

sion then asked Mayor Bloomberg to order the FDNY to do the study. Bloomberg also refused.

Test professionals and firefighters agree that oral comprehension and communication skills are far more important for fighting fires than written comprehension skills. Yet the FDNY uses only a written exam, while other fire departments across the nation use less biased oral tests.

Moreover, qualities such as dependability, good judgment, attention to detail and concern for others have been found to be among the best predictors of who will be a good firefighter. Yet the city does not test for these attributes, even though such tests have been available — even in written form — for more than a decade.

Despite the very strong evidence that the FDNY’s exams are unlawful, the city has refused to take the steps necessary to end discrimination against qualified black and Latino applicants. Until it does so, its appalling hiring statistics will not change.

Coombs is president of the Vulcan Society. Levy and Lossia, attorneys at Levy Ratner P.C., are co-counsel to the Vulcan Society, along with the Center for Constitutional Rights and Scott+Scott LLP, in a lawsuit challenging the FDNY’s entry-level firefighter exams.

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