



Written by [R. Cort Kirkwood](#) on August 22, 2011

## Chicago Must Pay Nearly \$30M, Hire 111 Blacks, in Firefighters' Case

The decision could mean a pile of cash for some 6,000 applicants who took the test but didn't make the fire department's standard, which was to hire only "well qualified" applicants.



According to [NBC Chicago](#),

A court order, finalized on Wednesday, instructs the Chicago Fire Department to add 111 black firefighters by March 2012.

The order, presented by U.S. District Court Judge Joan Gotschall, stems from a civil rights case that has made its way through trial and federal court. The lawsuit alleged that the Chicago Fire Department used discriminatory practices in its evaluation of scores for a 1995 entrance exam.

This May, a federal appeals court ruled that CFD must hire 111 African Americans who passed the exam in 1995.

The employments serve as part of the overall plan to pay at least \$30 million in damages to some 6,000 plaintiffs in the case.

[Lewis v. Chicago](#) is something of [the obverse](#) of [Ricci v. Stefano](#), which the Supreme Court [decided differently](#) (see end of article).

### The Test

At issue in this case was how the fire department used the results of its test to weed out candidates. The plaintiffs' claim, at bottom, was this: Tests don't mean anything.

As [Business Insurance.com explains](#) the suit, "Based on their scores, the applicants were placed in three categories — well-qualified, qualified and not qualified."

Applicants were told that those in the qualified category were unlikely to be hired because of the large number who scored as well-qualified, but that they would stay on the eligibility list as long as it was used.

Black applicants who scored in the qualified category brought the suit, which alleged that the test disproportionately classified blacks as qualified rather than well-qualified and was not a valid test of their firefighting aptitude.

Anyone who scored 64 or below on the test was deemed not qualified. Anyone who scored 89 or better was deemed well qualified. That left the middle group, as [Insurance Journal.com notes](#), "Because only



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11 percent of the [blacks] scored 89 or better, the overwhelming number of applicants hired from that test were white.”

Attorneys for the plaintiffs say the test was discriminatory because there was no evidence that the applicant who scored 89 or better would be a better firefighter than another who scored a 64. In 2005, a federal judge agreed, saying in her ruling that the city knew the cutoff point was meaningless and would disproportionately exclude African Americans from the pool of candidates most likely to be hired.

[According to](#) the *Chicago Sun-Times*, 78 percent of the applicants hired after the test were white.

Chicago claimed that it did not discriminate and that the plaintiffs let too much time pass before filing suit. The plaintiffs were successful in one federal court, but on appeal, the [Seventh U.S. Circuit Court of Appeals](#) sided with the city. Last year, the U.S. Supreme Court [unanimously ruled](#) for the aggrieved prospective firefighters, saying the city did discriminate against blacks each time it used the test.

## **The Real Problem**

Now, because the courts have essentially ruled that tests to work for vital public service departments do not matter, taxpayers will shoulder an enormous bill, and the fire department must restructure its hiring practices and retest some of the applicants who did not make it first time around.

[Reported the Sun-Times](#), Chicago will begin reordering its priority from firefighting to bundling cash and public benefits by mailing postcards to the 6,000 aggrieved plaintiffs. “Those who indicate they are still interested in becoming Chicago firefighters will be entered into a ‘jobs lottery’ to identify 750 candidates who will take a physical abilities test in October and undergo background checks, drug tests and medical exams,” [the paper reported](#).

Then the city will pick 111 candidates to enter the fire academy, while others who no longer wish to work for the fire department will collect at least \$5,000 a piece, [the paper reported](#).

Chicago taxpayers will also be on the hook for \$10 million to \$20 million in back pension contributions for those who get jobs. That means the total cost could approach \$50 million.

The city will also waive the age limit of 38 for the 111 candidates. The plaintiffs’ attorney, Joshua Karsh, [told the paper](#) plenty of candidates are available. “I don’t think we’ll have a problem coming up with 111 who still want the job and are fully qualified to have it,” he said. “Some of these people are older than 38. But, better than half the department is older than 38.”

## **Obverse Case**

In the case of [Ricci v. Stefano](#), white firefighters in New Haven, Conn. alleged discrimination when the city tossed the results of a firefighting test because not enough blacks passed it. The city claimed it feared a discrimination lawsuit.

The plaintiffs in that case failed in two federal courts until they landed before the [nine solons](#) in Washington, who reversed their lower counterparts.

The Supreme Court [ruled 5-4](#), with the usual leftists dissenting, that New Haven did not prove that failing to discard the test would have subjected it to liability.



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