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The truth as I see it™

Idaho Common Sense™



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". . . equal protection of the laws"

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New Haven, Connecticut, discarded a fire department promotion exam when white firefighters outscored minority firefighters. The city did so because it feared lawsuits, not because the exam was unfair. The United States Supreme Court ruled against the city, with Chief Justice John Roberts suggesting that had the scores been reversed the city would not have discarded the exam.

Frank Ricci, one of the white firefighters denied promotion, scored sixth highest of the 118 who took the exam. According to the New York Times, he quit a second job, made flashcards, took practice exams, worked with a study group, took mock interviews and spent \$1,000 to have textbooks read onto audio tapes because he was dyslexic.

Although the Supreme Court ruled in favor of Ricci and the other white firefighters, it was a 5-4 decision. Why wasn't the vote 9-0? Why would four Justices support discrimination in violation of the Constitution?

In 1868 the 14th amendment to the Constitution was ratified, saying in part that all citizens would have "equal protection of the laws." In 1964, Congress, recognizing that discrimination was still prevalent, passed the Civil Rights Act which said that an employer could not discriminate based on an individual's "race, color, religion, sex or national origin."

Though intending to add support to the 14th Amendment, lawmakers set the stage to take the amendment beyond constitutional authority. President Johnson ordered federal contractors to "take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex or national origin."

President Nixon's Labor Department expanded this with requirements that federal contractors identify their employees' gender and race so they could set "goals" to increase the numbers of women and minorities.

But, as the government pushed harder and harder for proof of reaching these goals, it forced companies to go beyond goals to quotas. And the Supreme Court essentially supported quotas in 1978 when it ruled in favor of the Transportation Agency in Santa Clara County, California. The agency started an affirmative action plan with the goal to increase the number of women and minorities, expecting the goals to influence decisions about hiring and promoting workers.

A male and a female worker were the top two candidates vying for a promotion, the man scoring slightly higher on the job interview. But to advance its goals, the Transportation Agency promoted the woman.

The Supreme Court ruling? The Transportation Agency did not violate the law because it technically set goals rather than quotas and the agency said its discrimination was only a temporary way to fix past discrimination. By supporting the Transportation Agency, didn't the 1978 Supreme Court affirm using quotas, violating the 14th amendment?

Should the government condone or support any type of discrimination, defending what it claims to be so intent on ending? Should the government support discrimination as a method to end discrimination?

Even though the Supreme Court's ruling in favor of the New Haven firefighters is refreshing because it supports the equality demanded by the

14th Amendment, it is still worrisome because of the 5-4 vote.

The majority said, "No individual should face workplace discrimination based on race." The minority said refusing the white firefighters promotions was fair because past bias in this fire department gave the city the right to discriminate to correct those past biases.

Atonement for past sins? Is that what the 14th Amendment said? Is that what the Civil Rights Act said? Or are four justices ignoring the Constitution and supporting discrimination?

According to USA Today, Justice Ruth Bader Ginsburg issued an "impassioned dissent," pointing out that because of the history of bias in fire departments throughout the country, the white firefighters had "no vested right to promotion." This is the same justice who publicly advocated that President Obama appoint a female to replace Justice David Souter, in essence advocating quotas on the court itself.

Perhaps discrimination is not the way to end discrimination. Perhaps advocating the Supreme Court or any other entity maintain a certain race and gender mix is propagating discrimination, not ending it. Perhaps the justices should just stick to the Constitution and support the 14th Amendment, guaranteeing all people "equal protection of the laws."