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on issues affecting African Americans  
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**Cover Story**  
**Conservative Justice and the Ricci Firefighter's Case**  
**African American Leadership**  
**By Dr. Ron Walters, PhD**  
**BlackCommentator.com Editorial Board**

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In the developing fight over the nomination of Judge Sonia Sotomayor, some conservative Republicans such as Newt Gingrich, Rush Limbaugh and Tom Delay are raising the charge that she is "racist" and would be an "activist" judge because of her ruling in the Ricci v. DeStefano case. Better known as the New Haven Firefighters' case, its opponents apparently believe that activism only applies to Democrats or liberal judges. Moreover, the recent preliminary arguments before the Supreme Court suggest that the Conservatives on the court are poised to attack Title VII of the 1964 Civil Rights Act which protects those excluded by testing devices. This has been settled law for over 35 years.

The role of political Conservatives in the modern era, as it has been historically, is to protect white interests, not to ensure that the law is fair to all groups in society. In fact, some whites of this persuasion appear to live in a bubble of majority power, where the legitimate interests of other groups are perceived as a threat and where decisions defending their narrow group self interests are perceived to be objective.

The 1964 Civil Rights Act (Title VII, section 7h) prohibited the use of tests that would be used intentionally to discriminate, or tests that would be used without the intention to discriminate but would nevertheless, have an exclusionary (disparate) impact. The continuing importance of this is that the Equal Employment Opportunity Commission (EEOC) has found that in 2007 discrimination charges involving test screening of job applicants have significantly increased due in part to security concerns raised by 9/11 and the economy.

Now all of the protected groups under Title VII, such as the Age Discrimination Act and Americans with Disabilities Act, are protected from biased testing in addition to African Americans. So, any change in the law that seeks to invalidate Title VII for blacks would also affect others in these categories. Yet, activist conservatives on the Court seem

poised to do so.

My suspicion however, is that the Supreme Court conservatives see red meat in the charge that white firefighter Ricci makes – that the City of New Haven’s attempt to comply with Title VII is, in itself, race discrimination against whites who are protected by the principle of “equal protection of the laws” under the 14th Amendment to the Constitution. This charge has been the great battle ground over Affirmative Action that has had the Conservative movement proposing the ridiculous concept of “reverse racism.” Since when has limitations on the powerful from exercise of absolute power over employment, seats in college, contracts and etc, actually proven to be racist against whites? The original aim of the law was to attempt to strike a balance by opening the doors of inclusion of blacks who had been excluded from such institutions and practices of American society, but Conservatives believe that any impingement on the power of the majority in an attempt to create an equalitarian and democratic society is oppressive to whites.

You would think that the attempt to change settled law in the ‘64 Act would get a push-back from other whites to believe in social justice. But the media has all but created a platform where Right wing opinion is promoted. In doing so, they are protecting their fallacious and undemocratic position. In one of my most recent books, *White Nationalism, Black Interests*, I have written that the reinterpretation of the 14th Amendment to the Constitution, as Ricci and his colleagues are attempting to do, amounts to the reconfirmation of “white rights.” Powerful conservative politicians and judges began this project with the case, *Shaw v. Reno* which narrowed the basis for the inclusion of African Americans in college enrollment to the point that we now have an ill-defined standard of something called “diversity.” This move against employment in an atmosphere of economic decline and rampant black unemployment could not come at a worse time. Blacks should not have to confront biased testing if they are to get back to work and to be promoted after this Depression is over.


But, we will eventually need two Sonia Sotomayors to have a Court that represents the interests of all the Americans.


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