

**STATEMENT OF FRANK RICCI, DIRECTOR OF FIRE SERVICES,
CONNECTICOSH (CONNECTICUT COUNSEL ON OCCUPA-
TIONAL SAFETY AND HEALTH)**

Mr. RICCI. Thank you, Senator. Thank you for the opportunity to appear before this distinguished Committee. I accepted, with honor, the invitation to tell my story. Many others have a similar story and I feel I'm speaking for them as well.

The New Haven firefighters were not alone in their struggle. Firefighters across the country have had to resort to the Federal courts to vindicate their civil rights. Technology and modern threats have challenged our profession. We have become more effective and efficient, but not safer. The structures we respond to today are more dangerous, constructed with lightweight components that are prone to early collapse, and we face fires that can double in size every 30 to 60 seconds.

Too many think that firefighters just fight fires. Officers are also responsible for mitigating vehicle accidents, hazardous material incidents, and handling complicated rescues. Rescue work can be very technical. All of these things require a great deal of knowledge and skill.

Lieutenants and Captains must understand the dynamic fire environment and the critical boundaries we operate in. They are forced to make stressful decisions based on imperfect information and coordinate tactics that support our operational objectives. Almost all our tasks are time-sensitive. When your house is on fire or your life is in jeopardy, there are no time for do-overs.

The lieutenant's test that I took was, without a doubt, a job-related exam that was based on skills, knowledge, and abilities needed to ensure public and the firefighters' safety. We all had an equal opportunity to succeed as individuals and we were all provided a road map to prepare for the exam. Achievement is neither limited nor determined by one's race, but by one's skills, dedication, commitment, and character. Ours is not a job that can be handed out without regard to merit and qualifications.

For this reason, I, and many others, prepared for these positions throughout our careers. I studied harder than I ever had before, reading, making flash cards, highlighting, reading again, all while listening to prepared tapes. I went before numerous panels to prepare for the oral assessment. I was a virtual absentee father and husband for months because of it.

In 2004, the city of New Haven felt not enough minorities would be promoted and that the political price for complying with Title 7, the city's civil service rules, and the charter would be too high, therefore they chose not to fill the vacancies. Such action deprived all of us the process set forth by the rule of law. Firefighters who earn promotions were denied them.

Despite the important civil rights and constitutional claims we raised, the Court of Appeals panel disposed of our case in an unsigned, unpublished summary order that consisted of a single paragraph that made mention of my dyslexia, and thus led many to think that this was a case about me and a disability. This case had nothing to do with that. It had everything to do with ensuring our command officers were competent to answer the call and our right to advance in our profession based on merit, regardless of race.

Americans have the right to go into our Federal courts and have their cases judged based on the Constitution and our laws, not on politics or personal feelings. The lower court's belief that citizens should be reduced to racial statistics is flawed. It only divides people who don't wish to be divided along racial lines. The very reason we have civil service rules is to root out politics, discrimination, and nepotism. Our case demonstrates that these ills will exist if the rules of merit and the law are not followed.

Our courts are the last resorts for Americans whose rights are violated. Making decisions on who should have command positions solely based on statistics and politics, where the outcome of the decision could result in injury or death, is contrary to sound public policy.

The more attention our case got, the more some people tried to distort it. It bothered us greatly that some perceived this case as involving a testing process that resulted in minorities being completely excluded from promotions. That was entirely false, as minority firefighters were victimized by the city's decision as well. As a result of our case, they should now enjoy the career advancement that they've earned and deserve.

Enduring over 5 years of court proceedings took its toll on us and our families. The case was longer—was no longer just about us, but about so many Americans who had lost faith in the court system. When we finally won our case and saw the messages we received from every corner of the country, we understood that we did something important together: we sought basic fairness and even-handed enforcement of the laws, something all Americans believe in.

Again, thank you for the honor and privilege of speaking to you today.

Senator CARDIN. Mr. Ricci, thank you very much for your testimony.

We'll now hear from Lieutenant Ben Vargas. Benjamin Vargas is a lieutenant in the New Haven Fire Department and was a plaintiff in the case of *Ricci v. DeStefano*. He also worked part-time as a consultant for a company that sells equipment to firefighters.

Mr. Vargas.

STATEMENT OF LIEUTENANT BEN VARGAS, NEW HAVEN FIRE DEPARTMENT

Mr. VARGAS. Thank you. Members of this Committee, it is truly an honor to be invited here today.

Notably, since our case was summarily dismissed by both the District Court and the Court of Appeals panel, this is the first time I'm being given the opportunity to sit and testify before a body and tell my story. I thank you for this—Committee for the opportunity.

Senators of both parties have noted the importance of this proceeding because decisions of the United States Supreme Court can greatly impact the everyday lives of ordinary Americans. I suppose that I and my fellow plaintiffs have shown how true that is. I never envisioned being a plaintiff in a Supreme Court case, much less one that generated so much media and public interest. I am Hispanic and proud of the heritage and background that Judge Sotomayor and I share, and I congratulate Judge Sotomayor on her nomination.