

## **Will Patrick stand tall?**

**By Adrian Walker, Globe Columnist | January 15, 2007**

The Commonwealth of Massachusetts has a decision to make soon. More accurately, Governor Deval Patrick has a decision to make.

Without a lot of public notice, the state lost a discrimination case last summer. A federal judge ruled that a civil service exam given to hire firefighters was racially discriminatory. Now, the state has until early next month to decide whether to appeal the decision.

This promises to be an interesting test for the former civil rights lawyer who now heads Massachusetts' government. While the attorney general's office has defended the Commonwealth, the governor is effectively the attorney general's client.

"It is our intense hope that with Deval Patrick in the governor's seat, this should be a no-brainer," said Shannon Liss-Riordan, the plaintiffs' lawyer. "This is what Patrick fought for when he was in the Civil Rights Division under [President] Clinton. This is what his career has been committed to."

The suit was filed by a group of aspiring black firefighters in Lynn. Despite passing scores on the civil service exam in 2002, which was overseen by the state, none of the four plaintiffs was offered a job with the Lynn Fire Department.

Their suit argued that the exams given in 2002 and 2004 discriminated against minorities, and US District Judge Patti B. Saris found in their favor last August. She ruled that the state had failed to show that the exams predicted how applicants would perform on the job. The ruling affects about 20 cities and towns that used the same exam.

These exams have long been fraught with racial tensions. In the 1970s, the NAACP won a landmark decision that mandated quotas to redress past discrimination in civil service, prompting howls of reverse discrimination. Lynn was among the communities that were originally subject to the decision in that case.

Discrimination isn't the only issue the current case raises. Critics have long argued that the tests can't measure many of the qualities that make for good firefighters and police officers.

"Basically, they don't find the best people for the job," Liss-Riordan said. "You want to have people who are strong, courageous, and committed, and who want to be firefighters. We have a test that finds people who do the best at multiple-choice exams."

One of the applicants who filed the suit has since been hired in Lynn, while the others are on the list. There are other applicants covered by the decision, but most of them have yet to be identified, and some of them may have decided to pursue other careers in the years since they took the test.

The governor's legal staff has just begun to review the case, and has not decided what to recommend to incoming Attorney General Martha Coakley. A spokesman for Patrick said the administration supports the gist of Saris's ruling, but is still reviewing the details, concerned that it

may have implications beyond civil service.

"Our office will be examining the court's decision closely before making any recommendation to the attorney general's office," Ben Clements, the governor's chief legal counsel, said Friday.

Saris's verdict has already prompted some changes. The test at the center of the suit was replaced last year. The state's Human Resources Division, the agency that oversees civil service, has been ordered to overhaul recruitment efforts, to ensure a more diverse pool for future exams. Clements stressed that the administration will push for greater outreach to communities of color, as it should.

But the administration has an opportunity to make a statement by declining to defend an outdated system whose effect is plainly discriminatory. To defend discrimination would go against everything Patrick campaigned on.

The civil service suits of the 1970s were supposed to produce a better, fairer system. They never did. For our new governor, so enamored of big challenges, finding a balance between civil service and civil rights would be a great start.

Adrian Walker is a Globe columnist. He can be reached at [walker@globe.com](mailto:walker@globe.com). ■

