

Patrick to appeal ruling on police, firefighter exams Fights suit saying tests are biased

By Jonathan Saltzman, Globe Staff | May 7, 2009

Governor Deval Patrick, who once headed the Civil Rights Division of the US Justice Department, plans to appeal a federal court ruling that allows minority police officers to pursue a civil rights lawsuit challenging the state's promotional exam.

The Patrick administration filed notice Monday that it will appeal an April 7 ruling by US District Court Judge Joseph L. Tauro to the US Court of Appeals for the First Circuit. Tauro rejected the Patrick administration's motion to dismiss the suit by 44 black and Hispanic patrol officers from seven departments who contend that the written civil service exam for sergeant is discriminatory.

"We are shocked that Deval Patrick is continuing to defend these exams and opposing our efforts to reform this discriminatory promotional system," said Shannon Liss-Riordan of Boston, the lawyer for the officers. "With Deval Patrick as the governor, you'd think he'd be trying to fix this problem, rather than throw away the state's money litigating it."

Kyle Sullivan, a spokesman for Patrick, said in a statement that the governor "believes that all citizens in the Commonwealth should be afforded the same opportunities for employment." Nonetheless, the administration, represented by Attorney General Martha Coakley, is seeking dismissal of the claims because the officers are employees of cities and towns, not the state, Sullivan said. Tauro rejected that position.

The lawsuit, which the officers unsuccessfully asked the judge to certify as a class action claim, is scheduled to go to trial next month.

At issue is a multiple-choice promotional exam prepared by the state Human Resources Division and used by about 200 police departments across the state, said Liss-Riordan. The 44 plaintiffs are patrol officers who took the exam since 2005 but have not received promotions. They work in police departments in Boston, Lawrence, Lowell, Methuen, Springfield, Worcester, and the MBTA Transit Police.

The officers say that the exam, which relies heavily on rote memorization of facts about law enforcement, discriminates against members of minority groups and has prevented advancement within the ranks. As a result, they said, supervisors in departments do not reflect the diversity of their communities.

In Lawrence, where minority groups make up three-quarters of the population, only two of the 39 police supervisors were members of minority groups, the officers said when filing the suit in September 2007. Methuen, which is more than 10 percent minority, had no minority members among its 25 supervisors, the suit said.

Since the 1970s, the federal courts have repeatedly ruled that such exams discriminate against members of minority groups who are seeking appointments to or promotions in police and fire departments, said Liss-Riordan. The tests do a poor job of predicting job performance, she said.

Frank Landy, a specialist from New York on civil service tests who plans to testify for the plaintiffs in the upcoming trial, said in an interview yesterday that no one knows for sure why minorities do not perform as well as whites on such multiple-choice exams. But other states have developed exams that are not discriminatory and better gauge the best candidates for promotion, he said. Those exams feature multiple-choice personality tests, oral boards, and role playing, among other components.

"I've often been just amazed when an employer spends an enormous amount of money fighting something when that money could be used instead to have this new and better and modern system," Landy said.

As recently as August 2006, US District Court Judge Patti B. Saris ruled after a bench trial that the state discriminated against blacks and Hispanics seeking jobs as firefighters and police officers by relying on a multiple-choice exam.

She found that the state continued to rank applicants based on how well they score on exams that test cognitive ability, even though such tests were found discriminatory in the early 1970s and led to decades of court-ordered affirmative action policies in Boston, Lynn, and other cities across the state.

She said the state had had 30 years to "fine-tune a better approach" but had failed to create a more equitable exam, despite being ordered to do so as part of a 1974 federal consent decree.

After her ruling, Saris approved an agreement that required departments to hire more than 60 minority firefighters and police officers and provide back pay and expenses totaling more than \$2.15 million, said Liss-Riordan, who represented those plaintiffs, as well.

In the lawsuit over the promotional exam, the Patrick administration urged Tauro to dismiss the complaint on several grounds, including that the plaintiffs were suing the wrong entity. The administration said the state Human Resources Department prepares, administers, and scores the promotional exams but that cities and towns can use other tests.