

## [Is the U.S. Justice Department Supporting Discrimination by the New York Fire Department?](#)

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Everyone who knows me or has read my articles and blogs, know that I'm a little over the top about the almost unheard of racial discrimination at New York City Fire Department. With fewer than 3 percent of nearly 11,000 uniformed firefighters African-American (CY 2011), it stands alone as having the worst diversity record among major cities in the nation.

The current fight has been going on for more than a decade with the city consistently either refusing to cooperate with the Equal Employment Opportunity Commission (EEOC) or making promises to change and then utterly failing to implement them. Finally, after 10 years of waiting, U.S. District Judge Nicholas Garaufis has called the city to account, finding that the FDNY's hiring practices were broadly discriminatory on the basis of race. He went further and found that the firefighter exams and selection process had a discriminatory impact and that the FDNY knew this, yet allowed the exam to be used for years. Because of this, he ruled that the discrimination was intentional. The judge ordered major reforms to be overseen by a court appointed monitor (*United States of America and Vulcan Society, Inc. v. City of New York*, S.D.N.Y., October 4, 2011).

After losing one fight after another, the FDNY, backed by the Bloomberg administration, reached the desperate point of [accusing](#) Judge Garaufis of being unfair and having a "one-sided assessment of the evidence." It [asked](#) the U.S. Circuit Court of Appeals to have the judge removed from the case.

Recently, the case -- now called *United States v. Bloomberg* -- moved to the U.S. Second Circuit Court of Appeals on appeal by the city. The city is not challenging the disparate impact finding by Judge Garaufis -- only the disparate treatment finding, that the city knowingly discriminated against minorities in FDNY hiring practices.

At the appeals argument, things got strange. Despite repeated questioning, the Justice Department, the original plaintiff in the case, [offered no argument](#) either on the legality of Judge Garaufis's remedial order as it concerned disparate treatment -- intentional discrimination -- or on the issue of disparate treatment itself. It refused to take a position on these points. This refusal brought this comment from Circuit Judge Jon Newman: "This is your lawsuit. In your lawsuit, a judge has made a ruling which is subject to major dispute, and you don't take a position?"

What is going on here? All of a sudden the feds have nothing to say about the FDNY's long-term intentional discrimination in hiring. Is this a sop to the Bloomberg administration -- arguing only unintended discrimination by the city and not taking a position on knowing discrimination? The Obama administration appears to be retreating from a legal case out of fear of reprisal from a powerful mayor.

After years of legal wrangling while discrimination in hiring went on, the Circuit Court may be on the verge of sending the lawsuit back to District Court for yet another hearing. Maybe the Bloomberg administration believes that it can run out the clock and leave office with the issue still unresolved. It wouldn't have to admit that it had been wrong all along.

It is past time for the city to end this quixotic struggle and open fire department jobs to all New Yorkers, regardless of race or ethnicity. The fire department's hiring practices are a blot on New York City's reputation as a progressive, forward-looking place to work and live. This case is not a legacy that Mayor Bloomberg wants New Yorkers to remember after he leaves office and it's certainly not something the U.S. Justice Department should aid and abet.