

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiffs,)
)
 v.)
)
 JEFFERSON COUNTY, et al.,)
)
 Defendants.)
)

**CIVIL ACTION NO.
CV-75-S-0666-S**

**JOINT STIPULATION REGARDING CITY SELECTIONS IN
SEVEN JOB CLASSIFICATIONS**

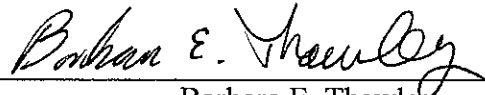
The City of Birmingham (“the City”), the United States, the Martin Plaintiffs together with the Bryant Intervenors (the “Martin-Bryant Plaintiffs”), and the Wilks Class have reviewed the City’s appointments to the following seven job classifications: Engineering Aide, Firefighter (post-JTS procedure), Fire Apparatus Operator, Fire Captain, Fire Battalion Chief, Gardener, and Heavy Equipment Operator. For purposes of the City’s pending motion to terminate the City Decree and the Wilks Class’ cross-motion to extend portions of the City Decree, the parties stipulate to the City’s selections as reflected in the attached Exhibits 1-9. The parties have agreed to the applicant pools and numbers of selections for five of the seven classifications (Engineering Aide, Firefighter (post-JTS procedure), Fire Apparatus Operator, Fire Captain, and Heavy Equipment Operator). (Exhibits 1, 2, 3, 6, and 9). The parties agreed on the numbers of selections but could not reach agreement regarding the applicant pools for two classifications (Gardener and Fire Battalion Chief) and have stipulated to two alternatives, depending on resolution of the issue of the inclusion of certain candidates in the applicant pools. Below is a brief explanation of the disagreements for these two classifications.

Fire Battalion Chief. The December 6, 2002 and December 20, 2002 certifications (which were used in conjunction as one selection occasion) contained the names of two candidates who were not in the BFRS rank of Fire Captain. The data for Fire Battalion Chief has been submitted with two alternatives. The United States and the Martin/Bryant parties join the City's proposed Fire Battalion Chief stipulation, alternative one. (Exhibit 4). Fire Battalion Chief alternative one excludes two non-BFRS Fire Captain candidates from the applicant pool, because it is the City's practice to restrict promotion in the uniformed BFRS positions to BFRS employees. The Wilks Class advocates the use of Fire Battalion Chief stipulation alternative two. (Exhibit 5). The Wilks Class contends that all candidates who appear on a certificate of eligibles, including these two non-BFRS candidates, who do not self-select out of the selection process, are eligible for selection and are therefore part of the applicant pool.

Gardener.¹ The April 5, 2002 and May 3, 2002 certifications (which were used in conjunction as one selection occasion) included the names of two candidates the City proposed to exclude from the applicant pool. The 5/3/02 certification has a note that one of the applicants was already a Gardener. The attached explanation states that this candidate was not interviewed because the Directors of Park & Recreation and Street & Sanitation had agreed that there would be no transfers of Gardeners allowed from the Botanical Gardens to Horticulture & Urban Forestry at that time. The 4/5/02 certification has a note that the other candidate was already a Gardener. The attached explanation also said that this candidate was not interviewed because of prior knowledge of substance abuse at a previous employer. The parties could not reach

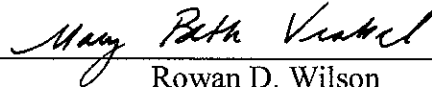
¹ The City had proposed the exclusion of another Gardener candidate on the grounds that he was a former employee who was not eligible for rehire. The Martin/Bryant parties agree with this position. However, given the extremely limited affect the inclusion of this candidate was likely to have on the analysis of the Gardener selections, the City agreed to include the candidate for the limited purposes of this stipulation to the Gardener applicant pool.

agreement on the treatment of these candidates. The City, along with the United States and the Martin/Bryant parties, propose Gardener stipulation alternative one, which excludes these candidates. (Exhibit 7). The Wilks Class proposes Gardener stipulation alternative two, which includes these two candidates. (Exhibit 8).



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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on:

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via email or facsimile on this 2nd day of December, 2004.



OF COUNSEL

STIPULATION

11/24/2004

City of Birmingham
Engineering Aide Selection Procedure
Register 2000001XX3411

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
2/20/2001	4	2	3	1
5/04/2001	5	4	2	0
8/09/2002	3	8	0	1
12/27/2002	4	6	1	0

Unique Person Analysis by Register

Engineering Aide Register 2000001XX3411

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
18	9	9	8	6	2

**Joint Stipulation
Exhibit 1**

STIPULATION

11/24/2004

City of Birmingham
Fire Fighter Selection Procedure Since 2001
Register 99SYB5021
Register 2003001XX5031

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
2/15/2002	20	40	13	17
8/22/2002	9	18	7	12
9/30/2003 and 11/19/2003	131	89	37	19

Unique Person Analysis by Register

Fire Fighter Register 99SYB5021

<u>Applicants</u>		<u>Selections</u>	
<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
26	48	20	29

Fire Fighter Register 2003001XX5031

<u>Applicants</u>		<u>Selections</u>	
<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
131	89	37	19

STIPULATION

11/24/2004

City of Birmingham
 Fire Apparatus Operator Selection Procedure
 Register 2000002XX5026

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
8/11/2000	13	2	5	1
5/03/2001	19	10	9	8
11/08/2001	13	5	7	3
11/26/2002	9	9	4	6
6/06/2003	5	11	1	6
9/10/2003 and 2/02/2004	7	8	2	3
2/27/2004	6	8	1	4

Unique Person Analysis by Register

Fire Apparatus Operator Register 2000002XX5026

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
73	38	35	60	29	31

STIPULATION

11/24/2004

City of Birmingham
 Battalion Chief Selection Procedure
 Register 2000002XX5035 (Aug. 2000 through Dec. 2002)
 Register 2004002XX5035 (August 2004)

Alternative One: Two Certified Candidates Who Were Not Employed by the Birmingham Fire and Rescue Service and Not Processed Not Included in Applicant Pool

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
8/23/2000	4	5	0	1
3/09/2001	5	5	1	0
12/06/2002 and 12/20/2002	4	4	1	2
8/12/2004	7	6	3	1

Unique Person Analysis by Register

Battalion Chief Register 2000002XX5035

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
11	5	6	5	2	3

Battalion Chief Register 2004002XX5035

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
13	7	6	4	3	1

Note: Persons on certification lists who withdrew, declined consideration or appointment, did not show for any part of the selection process, and two candidates on 12/06/2002 and 12/20/02 certifications who were not interviewed by the City because they were not BFRS employees are not included in applicant pool. Unique person analysis counts each individual once for each register no matter how many times that individual was certified. Candidates are included in the unique person analysis if they were eligible applicants for any certification for that register. The two non BFRS employees were not included in the unique person analysis.

**Joint Stipulation
 Exhibit 4**

STIPULATION

11/24/2004

City of Birmingham
 Battalion Chief Selection Procedure
 Register 2000002XX5035 (Aug. 2000 through Dec. 2002)
 Register 2004002XX5035 (August 2004)

Alternative Two: Two Certified Candidates Who Were Not Employed by the Birmingham Fire and Rescue Service and Not Processed Are Included in Applicant Pool

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
8/23/2000	4	5	0	1
3/09/2001	5	5	1	0
12/06/2002 and 12/20/2002	6	4	1	2
8/12/2004	7	6	3	1

Unique Person Analysis by Register

Battalion Chief Register 2000002XX5035

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
13	7	6	5	2	3

Battalion Chief Register 2004002XX5035

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
13	7	6	4	3	1

Note: Persons on certification lists who withdrew, declined consideration or appointment, did not show for any part of the selection process. In this analysis, the two candidates on the 12/06/2002 and 12/20/02 certifications who were not interviewed by the City because they were not BFRS employees, both of whom were white males, are included in applicant pool for both the certification analysis and the unique person analysis. Unique Person analysis counts each individual once for each register no matter how many times that individual was certified. Candidates are included in the unique person analysis if they were eligible applicants for any certification for that register.

**Joint Stipulation
 Exhibit 5**

STIPULATION

11/24/2004

City of Birmingham
 Fire Captain Selection Procedure
 Register 2000002XX5034
 Nov. 2000 through April 2003

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
11/13/2000	11	5	3	4
7/11/2001	9	2	3	0
2/13/2002	6	3	1	1
7/09/2002 and 8/23/2002	6	6	2	1
2/18/2003	4	7	2	1
4/04/2003	1	5	0	1

Unique Person Analysis by Register

Fire Captain Register 2000002XX5034

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
27	14	13	19	11	8

Note: Persons on certification lists who withdrew, declined consideration or appointment, or did not show for any part of the selection process are not included in applicant pool. Unique person analysis counts each individual once for each register no matter how many times that individual was certified. Candidates are included in the unique person analysis if they were eligible applicants for any certification for that register

STIPULATION

11/24/2004

City of Birmingham
 Gardener Selection Procedure
 Register 2000041XX8282 (Oct. 2000 through Feb. 2001)
 Register 2001001XX8282 (April 2002 through May 2002)
 Register 2003001XX8282 (April 2003 through Sept. 2003)

Alternative One: Two Certified Candidates Who Were Employed As Gardeners In Another City Department Are Not Included in the Applicant Pool

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
10/25/2000	4	1	1	0
1/12/2001	8	2	0	1
2/02/2001	4	1	2	0
4/05/2002 and 5/06/2002	0	2	0	1
4/22/2003 and 9/19/2003	7	6	1	3

Unique Person Analysis by Register

Gardener Register 2000041XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
11	9	2	4	3	1

Gardener Register 2001001XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
2	0	2	1	0	1

Gardener Register 2003001XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
13	7	6	4	1	3

**Joint Stipulation
 Exhibit 7**

Note: Persons on certification lists who withdrew, declined consideration or appointment, did not show for any part of the selection process, and two candidates on 4/05/2002 and 5/06/2002 certifications who were not interviewed by the City because they were gardeners in another City Department, were not included in the applicant pool. According to the City, in 2002, the Department heads had decided not to allow gardener transfers from Botanical Gardens to Horticulture and Urban Forestry. Unique person analysis counts each individual once for each register no matter how many times that individual was certified. Candidates are included in the unique person analysis if they were eligible applicants for any certification for that register.

STIPULATION

11/24/2004

City of Birmingham
 Gardener Selection Procedure
 Register 2000041XX8282 (Oct. 2000 through Feb. 2001)
 Register 2001001XX8282 (April 2002 through May 2002)
 Register 2003001XX8282 (April 2003 through Sept. 2003)

Alternative Two: Two Certified Candidates Who Were Employed As Gardeners In Another City Department Are Included in the Applicant Pool

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>White</u>	<u>Black</u>	<u>White</u>	<u>Black</u>
10/25/2000	4	1	1	0
1/12/2001	8	2	0	1
2/02/2001	4	1	2	0
4/05/2002 and 5/06/2002	2	2	0	1
4/22/2003 and 9/19/2003	7	6	1	3

Unique Person Analysis by Register

Gardener Register 2000041XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
11	9	2	4	3	1

Gardener Register 2001001XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
4	2	2	1	0	1

Gardener Register 2003001XX8282

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Total</u>	<u>White</u>	<u>Black</u>
13	7	6	4	1	3

**Joint Stipulation
 Exhibit 8**

Note: Persons on certification lists who withdrew, declined consideration or appointment, did not show for any part of the selection process, and two candidates on 4/05/2002 and 5/06/2002 certifications who were not interviewed by the City because they were gardeners in another City Department, were not included in the applicant pool. According to the City, in 2002, the Department heads had decided not to allow gardener transfers from Botanical Gardens to Horticulture and Urban Forestry. Unique person analysis counts each individual once for each register no matter how many times that individual was certified. Candidates are included in the unique person analysis if they were eligible applicants for any certification for that register.

STIPULATION

11/24/2004

City of Birmingham
 Heavy Equipment Operator
 Register 2000012XX8032

<u>Certification Date</u>	<u>Applicants</u>		<u>Selections</u>	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
8/31/2000	24	1	12	1
11/13/2000	18	1	4	1
12/27/2000	10	1	2	0
5/01/2002	19	2	6	1
8/09/2002	12	1	2	0
1/24/2003	9	1	2	0
4/04/2003	8	2	1	0

Unique Person Analysis by Register

Heavy Equipment Operator Register 2000012XX8032

<u>Applicants</u>	<u>Applicants</u>		<u>Selections</u>	<u>Selections</u>	
<u>Total</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>Male</u>	<u>Female</u>
54	48	6	32	29	3