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

JOHN W. MARTIN,  
MAJOR FLORENCE,  
IDA McGRUDER,  
SAM COAR,  
WANDA THOMAS,  
EUGENE THOMAS, and  
CHARLES HOWARD

individually and on  
behalf of all others  
similarly situated,

PLAINTIFFS,

v.

CITY OF BIRMINGHAM  
GEORGE G. SEIBELS, JR., Mayor, City of  
Birmingham; JEFFERSON COUNTY PERSONNEL  
BOARD; JOSEPH L. CURTIN, Director of  
the Jefferson County Personnel Board;  
JEFFERSON COUNTY; TOM PINSON, W. COOPER  
GREEN, TOM GLOOR, County Commissioners,  
Jefferson County, Alabama

individually and as  
officers of the City  
of Birmingham or of  
Jefferson County, and  
their agents, assigns  
or successors in  
office,

DEFENDANTS.

CIVIL ACTION NO. \_\_\_\_\_

CA 74H17

FILED IN CLERK'S OFFICE  
NORTHERN DISTRICT OF ALABAMA

JAN 7 1974

WILLIAM E. DAVIS  
CLERK, U. S. DISTRICT COURT.  
BY: *[Signature]*  
DEPUTY CLERK

COMPLAINT—CLASS ACTION

PRELIMINARY STATEMENT

(Class action: Racially Discriminatory Employment Practices)

1. This is a class action brought by Martin, Florence, McGruder, Eugene Thomas, Coar, Wanda Thomas, and Howard on behalf of themselves and all others similarly situated, seeking preliminary and permanent relief from racially discriminatory employment practices of the Defendants which practices violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261, March 24, 1972); 42 U.S.C. §1981, providing for equal rights for all persons within the United States to make contracts; and 42 U.S.C §1983, to redress deprivation under color of law of rights, privileges and immunities secured by the Equal Protection Clause of the Fourteen Amendment to the United States Constitution. Preliminary and permanent injunctive relief is sought.

## JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343 (3), 1343 (4), 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000e-5(f). The racially discriminatory practices alleged below were and are being committed in the Northern District of Alabama against the Plaintiffs and the class they represent.

## CLASS ACTION ALLEGATIONS

3. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all past, present and future black applicants for employment or black employees of the City of Birmingham or of Jefferson County, Alabama and on behalf of those persons in the past, present, or future who would have applied for employment with the City of Birmingham or Jefferson County but for the defendants' racially discriminatory recruitment and employment practices and reputation therefor. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the members of the class, including whether the defendants' employment practices discriminate unlawfully against the members of the class on the basis of their race, and, if so, what relief is appropriate to prevent future discrimination and remedy the effects of past discrimination. Plaintiffs' claims are typical of the claims of the class. Plaintiffs will adequately and fairly protect the interest of the class, because their interest and that of the class in not being discriminated against on account of their race are coextensive, and their counsel is qualified and able to conduct this litigation. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

## DEFENDANT PARTIES

4. Defendant City of Birmingham is a municipality incorporated pursuant to the laws of the State of Alabama, and is a political subdivision of the State of Alabama. Defendant City of Birmingham is an employer within the meaning of 42 U.S.C. 2000e(b), as amended.

5. Defendant George G. Seibels, Jr., is the Mayor of the City of Birmingham. In his capacity as Mayor, he is vested with authority over the administration, including employment practices, of the various governmental departments, boards, and agencies of the City of Birmingham. He is sued in his official and individual capacity.

6. Defendant Jefferson County Personnel Board is an agency established pursuant to the laws of the State of Alabama and is a political subdivision thereof. This defendant is an employment agency within the meaning of 42 U.S.C. 2000e(b), as amended, and recruits, procures, and screens employees for the City of Birmingham, for other municipalities in Jefferson County and for Jefferson County under the jurisdiction of the Jefferson County Personnel Board pursuant to the laws of the State of Alabama.

7. Defendant Joseph L. Curtin is Director of the Jefferson County Personnel Board and is responsible for the administration and operation of the Civil Service system, including the examination and certification of persons seeking employment in classified jobs with the City of Birmingham and with Jefferson County. He is sued in his official and individual capacity.

8. Defendant Jefferson County is a political subdivision of the State of Alabama and is an employer within the meaning of 42 U.S.C. 2000e(b), as amended.

9. Defendants Tom Pinson, W. Cooper Green, and Tom Gloor are County Commissioners for Jefferson County, Alabama and in their capacity as County Commissioners are responsible for administration and operation of the employment practices of Jefferson County. Each is sued in his official and individual capacity.

PLAINTIFF PARTIES

10. Plaintiffs Martin, Florence, McGruder, Eugene Thomas, Coar, Wanda Thomas, and Howard are all black citizens of the United States and of Alabama.

11. Plaintiff Martin applied for employment with the City of Birmingham as a security guard at the Botanical Gardens and was certified by the Jefferson County Personnel Board, and was rejected for the position on account of his race. Mr. Martin was not selected for the position and a white was selected despite the fact that Martin was qualified and was higher on the certification list than the white selected. Plaintiff Martin subsequently was offered another job with the Streets and Sanitation Department by the City of Birmingham under terms and conditions of employment less favorable than terms and conditions offered whites.

12. Plaintiff Major Florence is currently employed by the City of Birmingham as a truck driver in the Streets and Sanitation Department. He has been unable to promote to more desirable, higher paying positions because of the discriminatory tests administered by the Jefferson County Personnel Board and because of discriminatory policies and practices of the City of Birmingham.

13. Plaintiff McGruder is a trained, experienced key punch operator and was certified by the Jefferson County Personnel Board for that job. Ms. McGruder was referred for oral interviews for employment at City Hall, the Birmingham Police Department and Mercy Hospital, a Jefferson County facility, in accordance with civil service procedures, but was not selected on account of her race.

14. Plaintiff Eugene Thomas, a black applicant for employment with the Birmingham Police Department, was rejected by the Birmingham Police Department on account of his race.

15. Plaintiff Eugene Thomas has applied for a position as deputy sheriff with Jefferson County and has been rejected for racially discriminatory reasons. Plaintiff Thomas has been allowed to serve as an auxiliary sheriff for Jefferson County and in that position has performed work similar to that performed by the regularly employed deputy sheriffs. Despite plaintiff Eugene Thomas' experience working as an auxiliary deputy sheriff on a volunteer qualified basis, Jefferson County refuses to employ him and other blacks as regular sheriffs on account of their race.

16. Plaintiff Coar was employed by the City of Birmingham as a laborer assigned to the Streets and Sanitation Department. Coar was fired in 1972 on account of his race and was not afforded an opportunity for a hearing or other administrative procedures that are available to employees in jobs classified under the civil service system administered by the Jefferson County Personnel Board. Plaintiff Coar during his employment as a laborer for the City of Birmingham suffered racial discrimination in assignment, benefits and terms and conditions of employment.

17. Plaintiff Charles Howard is a black applicant for employment with the Birmingham Fire Department. Plaintiff Howard took a written examination in 1972 for the position of fireman and was subsequently refused further consideration for appointment because of his failure to achieve a passing score on the examination. Plaintiff Howard has been discouraged from further applying to become a fireman for the City of Birmingham because of the continuing existence of the discriminatory screening tests of the Jefferson County Personnel Board.

18. Plaintiff Wanda Thomas applied for a position with Jefferson County at Mercy Hospital in 1973 and was rejected on account of her race.

19. Plaintiffs Martin, Coar, and Wanda Thomas have fulfilled all conditions precedent to the institution of this action under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.) on behalf of themselves, individually and the class which they and Florence, McGruder, Eugene Thomas and Charles Howard represent. Plaintiffs Martin, Coar, and Wanda Thomas filed timely complaints of racial discrimination with the Director of the Equal Employment Opportunity Commission (EEOC). Their complaints have been filed with EEOC for more than 180 days. Plaintiffs have received notice of their right to institute civil action in the United States District Court within 90 days of receipt of notice from EEOC. This action is filed within 90 days of such notice by EEOC to Martin, Coar, and Wanda Thomas.

STATEMENT OF FACTS

20. The defendants and their agents and employees have discriminated against blacks with respect to employment on account of their race. According to the Alabama State Employment Service, Department of Industrial Relations, in 1973, the total population for the City of Birmingham is 300,910 persons of whom 126,388 (42%) are black. The population of Jefferson County (including Birmingham) is 644,991 persons of whom 206,464 (32.1%) are minority.

21. The defendants Jefferson County Personnel Board and its director Joseph Curtin, administer a civil service testing, rating and interview system which system has a racially discriminatory impact on blacks and which does not conform to "Guidelines on Employment Testing Procedures" issued by the Equal Employment Opportunity Commission (29 C.F.R. 1607).

22. Defendants, Commissioners of Jefferson County, Alabama are responsible for the employment practices of Jefferson County. Jefferson County has failed and refused to hire blacks because of their race for higher paying, more desirable jobs and has concentrated blacks in low paying, low opportunity jobs such as service worker, laborer and other semi-skilled jobs.

23. Defendants, Jefferson County, Gloor, Pinson, and Green and the Jefferson County Personnel Board and Curtin obtain applicants for county government jobs through means which perpetuate the effects of past discrimination in that no continuing and substantial efforts are made to recruit and hire blacks. To the limited extent that blacks have been hired, they have been subjected to discriminatory acts and conditions of employment.

24. Defendants, City of Birmingham and Seibels, Curtin and Jefferson County Personnel Board obtain applicants for the Police and Fire Departments and other departments of the City of Birmingham through means which perpetuate the effects of past discrimination in that no continuing and substantial efforts are made to recruit and hire blacks. To the small extent that blacks have been hired, they have been subjected to racially discriminatory acts and conditions during their employment.

25. Of approximately 624 firemen employed by the Birmingham Fire Department, no more than 2 (0.3%) are black. On information and belief, no black firemen had ever been employed by the Fire Department prior to 1966.

26. Of approximately 849 persons employed by the Birmingham Police Department, 41 (4.8%) are black. Of the 41 blacks employed 13 are clerical personnel. On information and belief, no black policeman had ever been employed by the Birmingham Police Department prior to 1966.

27. The City of Birmingham maintains a Department of Streets and Sanitation (previously under the Department of Public Works) which employs approximately 1050 persons. The Streets and Sanitation Department among other functions collects garbage, trash and dead animals. As of July 27, 1973, 553 laborers assigned to this department were in unclassified jobs and virtually all were black. Unclassified laborer jobs are low paying, dirty jobs with little, if any, opportunity for advancement. Blacks in the Streets and Sanitation Department have been denied employment in civil service classified jobs such as truck driver, public works foreman. On information and belief, no blacks had ever been assigned as truck drivers prior to 1967.

28. The City of Birmingham maintains and operates an Aviation Department. The Aviation Department employs approximately twenty (20) persons. All persons in white collar, skilled or supervisory jobs are white whereas blacks are employed only as maids, janitors or laborers. All of the black persons in the Aviation Department are in low paying, low opportunity, "unclassified" positions (positions not classified by the Civil Service System administered by the Jefferson County Personnel Board).

29. The City of Birmingham generally reserves better paying, high opportunity jobs with the various departments for whites while assigning blacks to general laborer, maid, janitor or other unskilled laborer jobs.

#### STATEMENT OF CLAIM

30. The defendants, City of Birmingham, Seibels, Jefferson County Personnel Board and Curtin, have pursued and continue to pursue policies and practices that discriminate against blacks, with respect to employment opportunities and all terms, conditions, and privileges of employment with the City of Birmingham. The discriminatory acts, practices and policies include, but are not limited to, the following:

- a. The defendants discriminate on the basis of race against blacks in recruitment, assignment, hiring, transfer, promotion and pension practices and procedures.
- b. The defendants have maintained a racially segregated employment structure assigning virtually all whites and few blacks to positions considered to be "classified" under Act No. 248, as amended, of the State of Alabama, and assigning a disproportionate number of blacks and few whites to the unclassified common laborer position.
- c. Defendants' present recruitment, hiring, assignment, transfers, promotion, and pension policies and procedures operate to perpetuate a virtually segregated employment structure and to continue its racially discriminatory effects.
- d. Black employees are employed as unclassified laborers, although they may perform work identical to, similar to, or as difficult as that performed by white employees who have classified status, and other blacks employed in the classified service are paid lower wage rates than whites with less experience performing the same or similar jobs.
- e. Employment tests and education standards which have a detrimental impact upon blacks as compared to whites are utilized by defendants in making hiring and promotion decisions, despite the fact that these tests and standards have not been shown to be related to job performance.
- f. Black applicants for classified jobs have been required to meet higher employment standards than white applicants.
- g. Defendants' recruitment policies and practices which utilize the referral of friends and relatives of incumbent employees, have a racially discriminatory impact and tend to perpetuate the employment patterns of the past.



- h. Defendants' pension policies perpetuate the effects of past discrimination by their failure to allow pension benefits to laborers in unclassified positions on the same basis as classified workers are allowed pension benefits, and by their failure to compensate blacks in unclassified laborer jobs for discriminatory loss of pension benefits in the past.
- i. Defendants' transfer and promotion policies perpetuate the effects of past discrimination by their failure to consider years of service in unclassified positions in making transfer and promotion decisions into classified positions.
- j. Incumbent black employees in certain departments are subjected to disparate and less advantageous work rules and working conditions.
- k. Defendants have failed and refused to take appropriate action to correct the present effects of past racially discriminatory policies and practices.
- l. The acts, policies, and practices described above have resulted in monetary losses to black employees and applicants for employment.

31. Defendants Jefferson County, Gloor, Pinson and Green, and Jefferson County Personnel Board and Curtin, have pursued and continue to pursue policies and practices that discriminate against blacks with respect to employment opportunities and other terms, conditions, and privileges of employment with Jefferson County. The discriminatory acts, practices and policies include, but are not limited to, the following:

- a. Defendants discriminate on the basis of race against blacks in recruitment, assignment, hiring, promotion, and transfer practices and procedures as well as other terms, conditions, and privileges of employment.
- b. Defendants utilize a testing, screening and certification system for selection of new employees and for selection of transferring or promoting incumbent employees into

more desirable positions which testing, screening and certification system adversely affects blacks and is racially discriminatory.

c. Defendants have failed and refused to take appropriate action to correct the present effects of past racially discriminatory policies and practices.

d. The acts, policies, and practices described above have resulted in monetary losses to blacks seeking to be hired, transferred and promoted.

32. The acts, conditions, and practices alleged in paragraphs 30 and 31 deprive plaintiffs and the class of blacks they represent of rights secured by Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. §§1981 and 1983, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Unless restrained by order of this Court, the defendants will continue to engage in these or similar racially discriminatory acts and practices.

PRAYER

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a declaratory judgment that the employment practices and conditions of the City of Birmingham and of Jefferson County, Alabama set forth above are violative of the rights of the plaintiffs and the class they represent as secured by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §1981 and §1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States;
2. Enter preliminary and permanent injunctions restraining the defendants, their agents, employees, assigns, successors in office, and all persons in active concert or participation with them or any of them from engaging in any racially discriminatory employment practice or in any practice which operates to continue the effects of the past racially discriminatory employment practices, and specifically from:

- a. Engaging in any of the racially discriminatory employment practices described in paragraphs 30 and 31 above;
- b. failing to adopt and implement qualification standards and procedures for recruitment, hiring, assignment, transfer and promotion which make employment opportunities in City of Birmingham and Jefferson County government jobs available to black employees and applicants for employment on the same basis as those opportunities have been available to white employees and applicants, and which do not impose testing, education, or other requirements which have a racially discriminatory impact or effect; and
- c. (i) conducting a recruiting program designed to inform the black community of employment opportunities available with the City of Birmingham or Jefferson County.
  - (ii) hiring and promoting sufficient numbers of blacks to overcome the effects of past discrimination.
  - (iii) offering to named plaintiffs and other members of their class who applied for employment and were discriminatorily rejected the next available positions in the Department(s) to which they applied, with seniority and other benefits from the dates they would have been hired in the absence of discrimination.
  - (iv) offering to incumbent black employees an opportunity to qualify and transfer into positions and/or departments from which they have been excluded, with carry-over seniority and other benefits, and establishing a transfer system designed to remedy the effects of past discrimination.
  - (v) altering fringe benefit programs so that unclassified laborers are entitled to pension benefits on the same basis as employees classified under the Civil Service system.
  - (vi) providing monetary and pension credit compensation to the named plaintiffs and other members of their class

for the loss they suffered as a result of the discriminatory employment practices and pension or other fringe benefit programs.

(vii) providing for punitive damages to all members of the class.

Plaintiffs further pray for such additional relief as the cause of justice may require, including their costs, disbursements and reasonable attorneys' fees.

Respectfully submitted,

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