

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

ENSLEY BRANCH OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE,
DONALD NIXON, WILLIAM MOSS, ALVIN
MAHAFFEY, JR., WALTER R. BALL,

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* CIVIL ACTION NUMBER

Plaintiffs,

CA 74-7M12 S

vs.

GEORGE SEIBELS, individually and
as Mayor of the City of Birmingham,
Alabama; CITY OF BIRMINGHAM, ALABAMA,
a municipal corporation; HIRAM Y. MCKINNEY,
HENRY P. JOHNSON, and JAMES B. JOHNSON,
individually and as members of the
Jefferson County Personnel Board;
JOSEPH CURTIN, individually and as
Personnel Director of the Jefferson
County Personnel Board; JEFFERSON COUNTY
PERSONNEL BOARD,

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* FILED IN CLERK'S OFFICE
NORTHERN DISTRICT OF ALABAMA

* JAN 4 1974

* WILLIAM E. DAVIS
CLERK, U.S. DISTRICT COURT

* DEPUTY CLERK

Defendants.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.

Plaintiffs bring this action under the provisions of
1) 42 U.S.C.A. § 1981, providing for the equal right of black
citizens of the United States to contract on the same basis as
that enjoyed by white citizens, 2) 42 U.S.C.A § 1983, prohibiting
deprivation under color of State law, statute, ordinance, regula-
tion, custom or usage of rights, privileges and immunities se-
cured by the Fourteenth Amendment to the United States Constitu-
tion, and 3) 42 U.S.C.A. § 2000e et seq., providing for non-
discrimination in employment against persons on account of their
race or color, inter alia.

II.

This is a proceeding for a preliminary and permanent
injunction enjoining the defendants from continuing to violate
the rights of plaintiffs and the class on whose behalf they sue
by maintaining unlawful employment practices. Such practices in-
clude, but are not limited to, the imposition of unvalidated pre-

employment and promotional tests, which said tests have the effect of disproportionately barring blacks from employment and promotions within the various departments of the City of Birmingham; racial discrimination in the selection of qualified applicants for various job openings in the City of Birmingham, and a continuing failure to remedy the present effects of past racial discrimination in employment by the City of Birmingham.

III.

A. This action is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The action is instituted on behalf of all black persons who (a) have applied for but were denied employment in the various departments of the City of Birmingham, (b) desire employment and are otherwise qualified for employment, but who have been discouraged or prevented from seeking employment by the discriminatory practices herein complained of, and (c) present black employees of the City of Birmingham who have been confined to certain departments, passed over for promotions, and/or otherwise discriminated against by the City of Birmingham in their current employment status.

B. The class represented by plaintiffs is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class and such common questions clearly predominate over any questions affecting only individual members of the class. Plaintiffs will fairly and adequately represent and protect the interests of the class. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

IV.

A. Plaintiff Ensley Branch of the National Association For The Advancement of Colored People (hereinafter "NAACP") is a membership organization consisting of black citizens of Birmingham Alabama. Its aim is to improve the political, educational, social and economic status of blacks; to eliminate racial prejudice; to

keep the public aware of the adverse effects of racial discrimination; and to take all lawful action to secure the elimination of racial discrimination. Its membership and revenues are directly and adversely affected by the denial of employment to blacks of their race or color.

B. Plaintiff William Moss is a black adult male citizen of Birmingham and a former patrolman on its Police Department. He was sworn in on March 7, 1968 fulfilling a lifelong ambition to become a police officer. He was discriminatorily assigned to the vice-squad and later to the patrol division. He was also subjected to harrassment and discipline because of his race while in the employ of the Birmingham Police Department. On January 5, 1972 he was discharged by the Birmingham Police Department. He has timely filed a charge of discrimination against the Birmingham Police Department with the Equal Employment Opportunity Commission.

C. Plaintiff Walter R. Ball is an adult black male citizen of the United States and of the State of Alabama. He has taken the pre-employment test administered by the Jefferson County Personnel Board to prospective applicants on two occasions; and he was informed that he failed each time.

D. Plaintiff Donald Nixon is an adult black male citizen of the United States and of the State of Alabama. He has completed two years of junior college. He has applied for a position as Housing Inspector for the City of Birmingham; upon taking the unvalidated test administered by the Jefferson County Personnel Board, he was informed that he had failed to make a passing score.

V.

A. Defendant GEORGE SEIBELS, JR., is the Mayor of the City of Birmingham, Alabama. He is the head of the administrative branch of the government of the City of Birmingham, Alabama. He is responsible for the proper administration of all affairs of the city and, subject to the provisions of the civil service law, he has the power and is required to appoint and in appropriate cases remove all officers and employees of the City of Birmingham. He exercises administrative supervision and control over all the departments of the City of Birmingham. Cf. 1940 Code of Alabama as recompiled and amended, Appendix, §1616(6). He is sued in his individual, as well as official, capacity.

B. The defendant CITY OF BIRMINGHAM, ALABAMA is a municipal corporation existing under the laws of the State of Alabama.

C. The defendants HIRAM Y. MCKINNEY, HENRY P. JOHNSTON, and JAMES B. JOHNSON are the members of the Jefferson County Personnel Board. They are responsible for the adoption of rules and regulations governing the operation of a civil service system in Jefferson County, Alabama, and the hearing and determination of cases involving the discipline of classified city employees.

D. The defendant JEFFERSON COUNTY PERSONNEL BOARD is a creature of Alabama State law, vested with the authority of administering the civil service law in Jefferson County, Alabama. It consists of three members.

E. The defendant JOSEPH CURTIN is the Personnel Director of the Jefferson County Personnel Board. He is charged, inter alia, with the duty of preparing and conducting examination to determine the merit, efficiency, and fitness of applicants for classified positions in the City of Birmingham. He prepares a list of minimum requirements which the applicants must possess before they are eligible to participate in any specific examinations. Further, he determines the relative weight which shall be allowed for written examinations, for oral examinations, and for training and experience. In addition, he prepares and submits to the Personnel Board for its consideration and approval, rules governing examinations, appointments, suspensions, resignations, promotions, demotions, and transfers of classified employees of the City.

F. All defendants have been, are presently, or will be acting under color of authority and law of the State of Alabama, Jefferson County and the City of Birmingham, Alabama. All of the defendants are engaged in and responsible for the administration, management, regulation, supervision and control of all or some parts of the employment in the City of Birmingham. Defendants are responsible for the creation, operation and enforcement of the regulations, policies, practices, customs and usages which discriminate because of race or color against plaintiffs in relation to employment by the City of Birmingham.

VI.

Plaintiffs allege that the defendants and their agents have maintained a policy, practice, custom, and usage of disproportionately excluding blacks from employment with the City of Birmingham.

VII.

A. The Jefferson County Personnel Board through its members and director imposes written tests as a condition of employment and promotion in every classified position in every department of the City of Birmingham. For all practical purposes, "classified positions" embrace all fulltime jobs in the City of Birmingham, other than common laborers, judicial officers, elected officials and a small number of executive positions. These written tests used as a prerequisite for employment exclude a disproportionately high number of black applicants for employment as compared to white applicants and have not been professionally developed nor validated to establish any predictive or reasonable predictive validity that the tests measure job performance or relation.

B. The defendants have long been aware of the racially disparate effect of the aforesaid unvalidated examination. For example, the most recent fireman's examination for the City of Birmingham was taken by 507 applicants, 120 of whom were blacks. Only 29 blacks (24.1%) passed the examination, while 339 whites (87%) passed the examination.

C. Despite their knowledge that their unvalidated, job unrelated tests have a disproportionate effect on the employment

of blacks, and despite the fact that workable standards have been developed by administrative agencies charged with enforcing laws against discrimination for insuring that tests are in fact job related and non-discriminatory, the Jefferson County Personnel Board, its members and director have utterly failed to take the generally recognized steps necessary to validate such tests or to suspend their use.

VIII

The civil service law requires the Personnel Director to certify to the appointing authority (i.e., the City of Birmingham) the names of three ranking eligibles for employment in a classified position and the appointing authority is then empowered to select one of the three names so certified. 1940 Code of Alabama as recompiled and amended, Appendix, §662. The Mayor of the City of Birmingham and his department heads exercise this discretion in a racially discriminatory manner. Illustrative evidence of the effect of this practice is reflected in the fact that in filling 473 vacancies in the various departments of the City during the first eleven months of 1973, only 70 (18.9%) of 369 blacks certified to the City of Birmingham were actually appointed by the Mayor and the department heads of the city.

IX

Based on the most recent federal decennial census, blacks constitute 42% of the population of the City of Birmingham. The racial composition of the work force of some of the departments of the City as of June 30, 1973 is reflected in the following:

<u>Department</u>	<u>% Whites</u>	<u>% Blacks</u>
Finance-Central Administration	92%	8%
Streets	93%	7%
Police	82%	8%
Fire	99%	1%

Approximately five percent of the City of Birmingham's classified labor force of nearly 2,300 is black; and of the 721 classified and unclassified blacks employed by the City, 622 (86%) earn less

than \$6,000 annually.

X.

A. Blacks who are somehow fortunate enough to pass the examinations and obtain employment with the City of Birmingham are discriminatorily assigned to certain jobs or duties; harrassed in the performance of their duties; subjected to disciplinary punishment for infractions which are overlooked when committed by whites, or more severe punishments, including discharge, than is received by whites for similar offenses.

B. Moreover, the defendant George Seibels through his department heads subjectively evaluates the performance of black employees for promotional purposes, which serves to disadvantage black applicants for promotion relative to white applicants for promotion, and these subjective evaluations have not been shown to and do not in fact actually predict job performance.

XI.

A. The defendants and their predecessors in office have historically discriminated against blacks in employment with the City of Birmingham. Prior to 1965, there were no black classified employees of the city; virtually all of the blacks employed by the City of Birmingham were utilized in common laborer or other menial positions, and they were confined to two or three departments because of their race or color.

B. The effects of this historic policy and practice of racial discrimination in employment by the City of Birmingham continue unabated to this date; and these lingering effects are readily apparent in the paucity of blacks ever hired by the City of Birmingham; the preponderance of blacks in certain departments and in unclassified (i.e., common laborer) jobs within those respective departments; the discouragement of many qualified blacks from applying for various positions with the City because of historic and notorious practice of racial discrimination; and the denial of promotions to certified black employees of the various departments of the City ostensibly on the ground that their seniority is not as great as that of many of their white co-workers. The present effects of past discrimination hereinbefore outlined are merely illustrative, and not by any means exhaustive of the current problems occasioned by the historic

fact of racial discrimination by the City of Birmingham.

XII.

A. The conditions and practices herein alleged constitute deprivation of rights secured by the Constitution and laws of the United States. Additionally, defendants are aware of the racially discriminatory practices herein alleged. Nevertheless, the defendants have not remedied the practices herein complained of and have knowingly and intentionally continued them in effect.

B. The defendants have failed to establish an effective administration system to prevent and to remedy unlawful racial discrimination by the City of Birmingham and the Jefferson County Personnel Board.

C. The defendant George Seibels, Jr., has failed to approve an affirmative action program that would overcome the continued racially discriminatory effects of the defendants' practices as set forth herein. On or about December 28, 1973 the said defendant vetoed just such an ordinance enacted unanimously by the City Council of the City of Birmingham, stating that it would have required "preferential hiring" and the hiring of persons not qualified for the job.

XIII.

The actions and omissions of defendants, their agents and employees alleged herein violate the rights of black applicants, present black employees, and former black employees as secured by the Fourteenth Amendment to the Constitution of the United States and Title 42 U.S.C. Sections 1981, 1983, and 2000e et seq.

Plaintiffs have no adequate remedy at law. Plaintiffs have suffered, are suffering, and will continue to suffer irreparable injury as a result of Defendants' discriminatory practices alleged herein unless and until the relief demanded in this complaint is granted. Neither the City of Birmingham nor the State of Alabama has a law prohibiting the practices herein complained of.

RELIEF PRAYED

WHEREFORE, plaintiffs pray that this Court:

(a) Issue a declaratory judgment that the employment and other practices and conditions set forth above are violative of the rights secured by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42 U.S.C. §§§ 1981, 1983, and 2000e et seq.

(b) Issue a preliminary and permanent injunction:

(i) prohibiting the defendants, their successors, agents and employees and those acting in concert with them from engaging in any of the practices set forth above or in any other practice shown to be racially discriminatory or arbitrary and capricious;

(ii) prohibiting the defendants from using as conditions or criteria for employment and promotion tests or other factors which are not professionally developed or properly validated and which disqualify or disadvantage a higher proportion of black applicants for hiring promotions than white applicants and officers similarly situated;

(iii) requiring that the defendants immediately award promotions to black applicants on the basis of valid, non-discriminatory criteria;

(iv) requiring the defendant George Seibels and the City of Birmingham, Alabama to immediately institute an affirmative recruitment, hiring and promotion program to eliminate the effects of past racially discriminatory practices, including, but not limited to the appointment of not less than one qualified black for each white hired until the proportion of blacks in each department of the City reflects their percentage in the City.

(v) prohibiting the defendants from discriminating in the administration of discipline on the basis of race;

(vi) requiring the defendants to reinstate, with full back pay and seniority, all black former employees found to have been discharged, compelled

to resign, or refused reinstatement as a result of their race.

(c) Award such other and further relief as may be necessary and proper;

(d) Allow the plaintiffs herein their costs and reasonable attorneys' fees;

(e) After a prompt hearing of this action according to law, issue an order retaining jurisdiction of this claim until such time as this Court is assured from the activity of the defendants and their agents that the violations of rights complained of herein have ceased and are no longer threatened and that the effect of past violations have been remedied.

Dated this 4th
day of January, 1974

Respectfully submitted,

ORIGINAL SIGNED BY:
U. W. CLEMON

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