

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>HAROLD B. DAVIS,</b> Plaintiff  vs  <b>WILSON COUNTY, TENNESSEE,</b> Defendant	Case No. 3:13-0238  Hon. Campbell/Bryant  <b>JURY DEMAND</b>
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**FIRST AMENDED COMPLAINT**

Plaintiff, pursuant to F.R.C.P. 12(a)(1)(B) and 6(d), files this First Amended Complaint.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. § 1331 to hear Plaintiff's claims arising under the Constitution and laws of the United States and under 28 U.S.C. § 1343 to hear Plaintiff's claims to recover damages and to secure equitable relief under any Act of Congress providing for the protection of civil rights. This Court also has jurisdiction under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*
2. This Court has supplemental jurisdiction over all state law claims alleged in this complaint under 28 U.S.C. § 1367 as there is a common nucleus of operative facts between the state and federal law claims.
3. Venue is appropriate in the Middle District of Tennessee under 28 U.S.C. § 1391(b)(2) as this is the judicial district in which a substantial part of the events or omissions giving rise to this claim occurred.

**PARTIES**

4. Plaintiff Harold Davis is a citizen and resident of Nashville-Davidson County, Tennessee. Plaintiff is African American.
5. Defendant Wilson County is a political subdivision of the State of Tennessee.

## GENERAL ALLEGATIONS

6. On page 75 of the Wilson County Employee Handbook it states that the County "permits the employment of relatives" but provides "guidelines" to "reduce the possibility or perception of favoritism and avoid placing related staff in embarrassing positions. Related staff may not be assigned to positions where one relative may have the opportunity to check, process, review, approve, audit, or otherwise affect the work of another relative; Related staff may not be assigned to positions where one relative might influence the salary progress or promotion of another."
7. These written guidelines are mere window dressing because in practice Wilson County government officials routinely violate these policies with no consequences and otherwise generally practice nepotism and favoritism as a matter of course. The following are examples of this county-wide practice and pattern of nepotism:
  - a. The now-retired Wilson County Finance Director, Ron Gilbert, a white male, during sworn testimony on May 12, 2009, admitted that the Mayor, Bob Dedman, had his wife work for Mr. Dedman when Mr. Dedman was the Property Assessor.
  - b. Mr. Gilbert also admitted to knowingly and intelligently violating the anti-nepotism policy by hiring his own granddaughter to work for him at the Finance Department.
  - c. Although he admitted that the hiring of his granddaughter was not consistent with the County's anti-nepotism policy, he testified that "there's no real penalty for violating that particular policy."
  - d. The position into which Mr. Gilbert's granddaughter was hired was not advertised.
  - e. Mr. Gilbert also hired an employee named Julie Jenkins, a white female who attended Mr. Gilbert's church.
  - f. Ms. Jenkins was paid considerably more per hour than almost any other employee in the Finance Department, including the one African American in the department that actually had more seniority on the job.
  - g. The position into which Mr. Gilbert's church friend was hired or promoted was

not advertised.

- h. Mr. Gilbert also used the son of his secretary as an IT consultant on an independent contractor basis.
- i. The position into which Mr. Gilbert's secretary's son was hired was not advertised.
- j. Mr. Gilbert also employed County Commissioner Randy Hall.
- k. Mr. Gilbert hired Randy Hall after Randy Hall asked him for a job.
- l. Randy Hall was completely unqualified for the job. According to a former Finance Department employee, Pam Franklin, Mr. Hall "did not understand how to do billing. Knew nothing about billing. Knew nothing about insurance. Had cost the county several hundreds of thousands of dollars for his mistakes... And I couldn't train him. He wouldn't listen."
- m. According to Ms. Franklin, Mr. Hall could not even handle a job licking envelopes.
- n. When it became apparent that Mr. Hall could not perform the job of WEMA (Wilson County Emergency Management Agency) billing clerk, he was moved to a newly created secretarial position even though Mr. Gilbert already had a secretary.
- o. According to a list of job descriptions provided by Wilson County through an open records request on August 16, 2012, the Finance Department did not have a job description for two secretaries.
- p. The position into which Mr. Hall was hired and into which he was moved was not advertised.
- q. Mr. Gilbert also employed the niece of Debbie Moss, another employee in the finance department.
- r. The position into which the niece was hired was not advertised.
- s. On January 26, 2010, Ron Gilbert admitted to violating the county's anti-nepotism policy when questioned by a County Commissioner at the Commission Hearing that night. In his defense, Mr. Gilbert said, "countywide nepotism is far and deep in Wilson County in numerous instances."

8. In sworn testimony on May 14, 2009, Robert Dedman, a white male and the former Mayor of Wilson County, testified that the County did not have a nepotism policy. Mr. Dedman admitted to hiring his wife when he was the Property Assessor so that she could vest in the State's retirement system. Mayor Dedman also testified that he did not think that any of the department heads in Wilson County advertised job openings and that the County did not have a policy regarding whether or not job openings should be advertised.
9. The position into which Mr. Dedman's wife was hired was not advertised.
10. When asked to review the written nepotism policy in the County's employee handbook after testifying that the County did not have a nepotism policy, Mr. Dedman testified, "Well, there's plenty of department heads up there that hire their wives. So, would they be just as guilty? And their daughters and their sons. No more than that, you know." Mr. Dedman then went on to list several other department heads that hired their wives and daughters and stated that several County Commissioners have sons and daughters working for the county. Mr. Dedman also responded affirmatively when asked if it was fair to say that hiring relatives by department heads in Wilson County was common even though he believed it was inappropriate. As County Mayor, Mr. Dedman had never done anything about the common violation of the County's own anti-nepotism policy.
11. Danny Heron, a white male and a shift commander at WEMA, the Wilson County Emergency Management Agency, had his daughter working part-time, then full time on his shift. When his daughter was considered for hiring full-time, the only position open was under her father's shift so she was placed under her father in violation of the County's anti-nepotism policy, and concurred to by the WEMA Director, because there was no other open shift to put her into. Ultimately, another person had to be moved to another shift to accommodate Mr. Heron's daughter.
12. The position into which Mr. Heron's daughter was hired was not advertised.
13. Another WEMA employee was hired directly after he "proved to be a good fellow" based on the recommendation of his son who was employed at WEMA at the time, according to former WEMA director Jerry McFarland.
14. The position into which this person was hired was not advertised.

15. Nepotism is common in the Wilson County Sheriff's department as well. County Commissioner Kenny Reich, a white male, has a son who is employed by the Sheriff's Department.
16. The position into which Mr. Reich's son was hired was not advertised.
17. County Commissioner Gilbert Graves, a white male, has a son who works for the Sheriff's Department.
18. The position into which Mr. Graves' son was hired was not advertised.
19. County Commissioner L.T. Jenkins, a white male, has a son who works for the Sheriff's Department.
20. The position into which Mr. Jenkins' son was hired was not advertised.
21. Wendall Marlowe, a white male and a former County Commissioner, had a son, Patrick Marlowe, who worked in the Sheriff's Department.
22. David Hale, a white male and former EMS paramedic at the Wilson County Emergency Management Agency and current Judicial Commissioner, had a son, Gary Hale, who worked in the Sheriff's Department.
23. David Hemontolor, Sr., a white male, was a former Captain in the Sheriff's Department. At the time Mr. Hemontolor was the Captain, he also had his mother and a son working for the Sheriff's Department.
24. Jim Goodall, a white male and the County Clerk, has a daughter and a niece who work in his department.
25. The position into which Mr. Goodall's daughter and niece were hired were not advertised.
26. Jimmy Martin, a white male and the former County Clerk, was hired by Jim Goodall.
27. Mr. Martin then, in turn, hired his own daughter.
28. The positions into which Mr. Martin and his daughter were hired were not advertised.
29. Jimmy Martin's sister, Angela Lolonde, a white female, was hired by Ron Gilbert to work in the finance department. She was hired on July 29, 2009.
30. Ernie Lasater, a white male and the former Trustee, hired his wife, Doylene Lasater.
31. The position into which Doylene Lasater was hired was not advertised.
32. Cindy Lynch, Assistant Director of Solid Waste, hired Gayle Oliver, the wife of a friend

of Bill Arnold, the Director of Solid Waste, as a Recycling Coordinator. When Gayle Oliver quit the job, no replacement recycling coordinator was hired because the position was eliminated.

33. The position of Recycling Coordinator was never advertised.
34. There is no such job description for Recycling Coordinator in the Solid Waste Department.
35. The daughter of Linda Neal, a white female and the Circuit Court Clerk, works in the Building Inspector's office.
36. Cindy Lynch, a white female and Assistant Director of Solid Waste, is the aunt of Heather Christian.
37. Heather Christian works in the Solid Waste Department.
38. The position into which Heather Christian was hired was not advertised.
39. On January 24, 2006, the Wilson County Commission, including then Mayor Robert Dedman, voted to hire Stacy Swindell, a white female and the daughter of District 15 Commissioner Billy Swindell, despite a unanimous recommendation by the Judicial Committee that William Earl Coggins, an African American, be hired for the position.
40. Billy Swindell actively lobbied for his daughter with other County Commissioners.
41. William Earl Coggins had prior experience as a judicial commissioner for Wilson County and, at the time, served as a school resource officer for the Wilson County Sheriff's Department at Lebanon High School.
42. Stacy Swindell was, at the time, unemployed and had no prior experience as a judicial commissioner.
43. According to a quote in The Lebanon Democrat, Stacy Swindell's father, County Commissioner Billy Swindell on January 24, 2006, defended his vote for his own daughter by saying "I think what happened is the kid needed a job real bad, and I did everything I could to help her. I didn't think she was the most qualified. I just think she needed a job and I think she's smart enough to do it and I think she'll do a good job. That's all.... I mean, if that's something a father's not supposed to do, I don't know what to do."
44. On April 16, 2006, Stacy Swindell was again hired by the Wilson County Commission to

serve a full 4-year term as a judicial commissioner, the prior hiring being only to fill an unexpired term of another resigning judicial commissioner. On this date, again, the Judicial Committee unanimously recommended the hiring of Earl Coggins.

45. Earl Coggins attributed his defeat to Stacy Swindell as "good 'ole boy politics".
46. Lori Alexander was an entry level clerk employed in the Wilson County Finance Department.
47. On July 13, 2009, Lori Alexander was terminated.
48. Lori Alexander performed work in the finance department related to insurance and payroll.
49. Cedric Jennings, a black male, who had extensive experience in insurance adjusting, heard about the opening at the finance department caused by Lori Alexander's departure and was going to apply for the job.
50. However, Angela Lolonde, the white sister of Jimmy Martin (the former County Clerk and present employee at the County Clerk's office) was hired for the job previously held by Lori Alexander. Angela Lolonde heard about the job opening through her brother, Jimmy Martin, who heard about the job opening by word of mouth through Linda Shehane, a finance department employee who is a white female.
51. When Mr. Jennings heard the job had already been given to a relative of a Wilson County government employee, he did not apply.
52. In sworn interrogatory responses in the case of *Franklin v Wilson County*, Case No. 3:08-00250 (MD Tennessee), Wilson County admitted that it does not regularly post any job openings in county government and any such postings are on an entirely *ad hoc* basis based on the subjective decision of a department head.
53. A thorough review of all purchase orders from 2003 to 2009, current as of June 2, 2009, for help wanted ads in newspapers revealed the following:
  - a. Over a six year time period, there were only 10 job openings advertised in newspapers.
  - b. In 9 of the 10 instances in which a job was advertised in the newspaper, the advertisement was placed only in newspapers circulated exclusively within

Wilson County.

- c. Often times, if advertised at all, a job would be advertised either after it had already been filled or very shortly before the hiring decision would be made.
  - d. For example, a help wanted ad for the position of judicial commissioner was ordered by purchase order dated March 26, 2006. This was after the January 24, 2006 hiring of Stacy Swindell by the County Commission and just two weeks before the hiring for a new four year term of Stacy Swindell on April 16, 2006.
  - e. For another example, a help wanted ad for the position of judicial commissioner was placed in the Lebanon Democrat on January 7-9, 2009 for a position that was filled by James Tuggle on February 1, 2009.
  - f. Out of the 10 job openings advertised, only two were for management positions; 1) Finance Director and 2) Road Superintendent.
54. The finance director candidate was required to be a Wilson County resident and at least one applicant turned down the position because he was not willing to relocate to Wilson County.
55. The Road Superintendent was also required to be a Wilson County resident.
56. According to EEO-4 reports filed by the County for the fiscal years of June 2004 through June 2007, there were 145 people hired into positions at the county.
57. If only 10 of those positions were ever advertised, and even then only advertised in Wilson County newspapers, then the other 135 positions must have been filled by referrals to friends, family, church members, and acquaintances of those existing County employees that knew of the job openings.
58. The EEO-4 form, which is supposed to reflect the employment picture for the entire Wilson County government, does not include information for the County Clerk or the Register of Deeds because the data gathered for the report was taken from the Finance Department payroll program and those two departments perform their own payrolls.
59. As of June 30, 2009, Out of 691 employees in Wilson County, 23 were black, a ratio of 3%. In that same period, out of 87 new hires, only 3.5% were black. As of June 30, 2011, out of 623 employees reported, only 16, or 2.6%, were black, showing a decrease over the



- previous reporting period. Out of 15 new hires, only 1 was black.
60. Out of department heads with the authority to hire, promote, and fire and on how much to pay employees, all of them are white.
  61. Job openings are usually learned about by "word of mouth". In a deposition on July 16, 2009, Mr. Armistead, the Road Superintendent, suggested that if his department advertised job openings, one would not believe "how many people starts [sic] through that door daily. And it could get caught up in the shuffle..." Mr. Armistead testified that they have never had to advertise job openings. "I mean, we could advertise, but we've never had to – we've never had to advertise because we have – we have good insurance... I'm telling you, you go down to the Road Department and say, 'Hey, they're taking applications.'"
  62. In a deposition on August 18, 2009, Mr. Armistead testified about giving a job to David Hemontolor, Sr., a former Captain in the Sheriff's Dept. after he had been demoted.
  63. Mr. Armistead gave the job to David Hemontolor of replacing street signs that had been taken down, etc. The job, according to Mr. Armistead, did not call for "a lot of experience to take a phone call and say that a sign is down, stop sign is down... [I]t's just a matter of calling and giving him his orders of what to do. He knows what to do, go get the signs, go bolt them up, put them up, very simple job." Despite the simplicity of the job, Mr. Hemontolor was paid \$16 or \$17 an hour and now makes \$18 an hour. The sign replacement job given to Mr. Hemontolor was not advertised. As Mr. Armistead put it, "I don't advertise; it's word of mouth; I don't have to advertise."
  64. Out of 75 employees in the road department, only one is black.
  65. According to the former Director of WEMA, Jerry McFarland, in a deposition taken in an unrelated discrimination case on July 16, 2009, "none of the positions at WEMA was ever advertised." According to Mr. McFarlane, the hiring at WEMA is generally recommended by the battalion chiefs (all white males) and the Director then signs off on it.
  66. Mr. McFarland also hired an old white Army buddy of his named Gary Nokes for a part-time position that was not advertised.

67. Out of 112 employees in WEMA in 2007, only one was black. However, according to the 2011 EEO-4 report, WEMA now has zero blacks.
68. The Building Inspector, Bobby Sloan, a former Wilson County Commissioner appointed by former Mayor Bob Dedman, got the job of inspector after Kathy Dedman retired. This job was not advertised.
69. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, out of more than 415 employees in Wilson County government, there were only 29 who are African American, 19 full-time and 10 other than full-time. This equates to a ratio of 7.4% African American for full-time employees and 6.3% for other-than-full-time employees, not counting the County Clerk's office and the Register of Deeds office which are both predominately white.
70. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, out of the 19 full-time African American employees, 9 were employed in service/maintenance, 9 in administrative support and only one worked as an Official or Administrator.
71. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, out of the 19 full-time African American employees, only 4 are paid \$33,000 per year or more.
72. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, in positions of Official or Administrator, there was only one African American compared with 38 whites, a ratio of 2.6%. 28 of the Caucasian officials or administrators make as much as or more than the one African American.
73. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, out of 95 new hires in that same reporting time period, only 10 were African American.
74. According to the EEO-4 form filed by Wilson County with the Equal Employment Opportunity Commission for the fiscal year 2007, out of the 10, 6 were hired by the

Sheriff's Department. The other 4 were hired in administrative support or service/administrative positions.

75. According to a payroll report issued on May 8, 2009 for the purpose of compiling information for the 2009 EEO-4 report;
  - a. The highest concentration of African American workers, as a percent of total employees in any given department, is in the Building Maintenance Department which employs janitors;
  - b. Out of more than 106 employees in the Wilson County Emergency Management Department, which operates ambulances and fire services, there was only 1 African American, a ratio of 0.9%.
  - c. Out of 36 employees in the Solid Waste Department, which included Animal Control and the County Landfill, there was only 1 African American who worked part-time and was paid at the lowest rate within that department, a ratio of 2.8%. That one African American was hired on March 3, 2009. Before that, there were zero African Americans employed at the Solid Waste Department.
76. According to former Animal Control Officer, Paige Heriges, Bill Arnold, the Director of Solid Waste had never hired an African American the entire time she was employed there.
77. Out of 21 employees in the Health Department, there was only 1 African American, a ratio of 4.8%.
78. There are no African American court officers out of 15 employees.
79. There are no African American probation officers.
80. There are no African American judicial commissioners.
81. There are no African Americans employed in the Trustee's Office.
82. There is only 1 African American employed in the Circuit Court Clerk's office out of 33 employees, a ratio of 3%.
83. There is only 1 African American employed in the Finance Department out of 14 employees.
84. At the Ward Agricultural Center, there are 3 African American employees out of 21,

- making \$7.80, \$7.62, and \$9.06 per hour respectively, among the lowest paid in that department.
85. The use of derogatory or disrespectful terms to refer to minorities is widespread within Wilson County government, even among the top echelons of the government. During a deposition on May 14, 2009 in an unrelated case dealing with sexual discrimination, Mayor Robert Dedman, on his own and unsolicited, told a joke during a break in testimony that contained the word "nigger" in it, and then laughed. In later questioning, Mr. Dedman testified that he had heard the joke for the last 50-60 years and would still hear it but it was not his place to tell others not to repeat the joke when he would hear it again. He could not explain what prompted him to repeat the joke during a break in his deposition.
  86. Racial jokes allow individual joke tellers to break societal taboos and thereby gain pleasure from expressing normally repressed feelings and views. In a civilized society, particular individuals use racist jokes to siphon off subconscious aggressive feelings that cannot otherwise be released. Therefore, much racist joking substitutes for even more aggressive actions against the racial targets.
  87. During a Finance Committee meeting on April 16, 2007, Mayor Dedman also publicly disclosed the name of a female in the Finance Department who had filed a complaint of sexual harassment by a co-worker and referred to her as "little lady".
  88. This type of labeling is called "paternalistic sexism" or "benevolent sexism" and is closely correlated with hostile sexism and racism.
  89. Ron Gilbert, the Finance Director, during his deposition on May 14, 2009, in another case dealing with discrimination, referred to his salary negotiations with the Finance Committee as being "jew'd down from what I had asked for." Mr. Gilbert explained that "jew'd down" means "talked down".
  90. "Jew down" is "a derogatory term meaning to haggle or bargain down the price." Urban Dictionary, [www.urbandictionary.com](http://www.urbandictionary.com), last visited February 11, 2013.
  91. County Commissioner Randy Hall testified at his deposition on August 18, 2009 regarding another discrimination case that interoffice personality conflicts in the Finance

Department were just "a bunch ... [of] women up there... Ladies tend to gossip and talk, you know. Guys tend to go outside and duke it out and get it over with."

92. Steve Armistead, the white male Road Superintendent, during his deposition on August 18, 2009 during an unrelated discrimination case, referred to an employee of the Finance Department whose name he could not recall as "the little black girl". When asked to explain that term, Mr. Armistead said "little" was "just my description of ... how I perceive her to be." Mr. Armistead has not referred to any men that he did not help raise as "little boy" and could not explain why he would use that term for a female employee of the county. He would also call his own secretary "little girl" but would not call his Assistant Road Superintendent "little boy" because "I don't think he would accept that too well."
93. County Commissioner Annette Stafford, the only African American on the County Commission, in her deposition in an unrelated discrimination case on July 14, 2009, testified that Mayor Dedman has called her "little lady" or "girl". She testified that she is offended by that and when she tells the Mayor that, he responds by saying he did not mean anything by it. She has been referred to as "girl" by other County Commissioners as well. Commissioner Stafford just dismissed the use of "girl" and "little lady" by the Mayor and others as just the way his "age group" communicates. She also testified that if she knew of the Mayor telling a joke with the word "nigger" in it she would be offended.
94. According to a written statement by a dispatcher employed at WEMA, Steve Fox (a white male Battalion Captain) refused to approve the dispatch of an ambulance to a 911 call at public housing, telling the dispatcher "I'm not pulling a unit to go to some fucking nigger that was probably out dealing drugs and got his head bashed in when some little old lady might legitimately need us."
95. Sometime in April 2008, Paige Heriges stopped working as a Wilson County Animal Control Officer.
96. After she was terminated, Bill Arnold called Josh Greer, a white male, to see if he would be interested in applying for the position.
97. After Josh Greer told Bill Arnold that he was not interested in applying for the job, Bill

- Arnold then offered the job to Patrick Harris, another white male.
98. Patrick Harris was hired but resigned shortly thereafter.
  99. On August 5, 2008 and after her termination, Paige Heriges gave a grievance letter to County Attorney Mike Jennings which, in part, raised the issue of the Solid Waste Department's failure to advertise job openings.
  100. Approximately two weeks after the County Attorney was put on notice of the failure to advertise job openings and after Josh Greer turned down the offer and after Patrick Harris resigned, the Wilson County Solid Waste Department ordered a help wanted ad to be placed in local newspapers for Animal Control Officer and Heavy Equipment Operator.
  101. The order was made through a purchase order sent to the Finance Department on August 19, 2008 and filled out and signed by Cindy Lynch, a supervisor at the Solid Waste Department.
  102. The help wanted advertisements for animal control officer and heavy equipment operator ran for only three days in The Wilson Post and for only one day in The Lebanon Democrat.
  103. The Wilson Post is a “twice weekly community newspaper serving Lebanon, Tennessee. (See, [www.wilsonpost.com/about-us](http://www.wilsonpost.com/about-us), last visited on February 18, 2013.)
  104. On September 8, 2008, Nick Forbes filled out an application for animal control and on November 20, 2008 Bill Arnold hired him as an Animal Control Officer.
  105. Mr. Forbes had no prior experience in law enforcement in general.
  106. On his job application where he was to fill in “previous experience and training”, Mr. Forbes left it blank. His job history only showed one job as a “General Laborer”.
  107. Although hired as an Animal Control Officer, Mr. Forbes performed duties for the landfill side of Solid Waste as a heavy equipment operator as needed.
  108. Employees that worked as Animal Control Officers would regularly work with employees working on the landfill and were fully interchangeable. They would do what Bill Arnold, the Director, wanted regardless of their technical job title.
  109. In a letter dated February 17, 2009, Mr. Forbes was put on probation for "poor job performance". The letter was signed by Cindy Lynch and was written on "Wilson County

- Solid Waste" letterhead, listing Bill Arnold as "Superintendent".
110. Leave Forms filled out by Nick Forbes were on "Wilson County Solid Waste" forms and list "Animal Control" as a "Work Location", not a department. On other "Solid Waste" leave forms, Mr. Forbes put his "Work Location" as "Landfill". The leave forms were signed either by Cindy Lynch or Bill Arnold.
  111. On or about the middle to latter part of December, 2008, Karl Tartt, a black male, went to the Wilson County landfill to apply for a job.
  112. As he approached the trailer-office located at the landfill, he was greeted by Solid Waste Department employee Heather Christian, who is also the niece of Cynthia Lynch, the Assistant Solid Waste Department Director, who is the sister of the County Attorney, Mike Jennings.
  113. When Karl Tartt asked if this was the location to apply for a job without specifying which job he was interested in, Heather Christian asked if he wanted an application for Animal Control or Convenience Center, in other words, the place where people go dump their garbage.
  114. In sworn testimony during a deposition, Ms. Christian could not say why she offered applications for only animal control or the dump sites when there were other jobs within Solid Waste.
  115. Mr. Tartt was then given a job application, told to fill it out and mail it back and that she (Ms. Christian) would give it to "the boss", Bill Arnold, who was not there at the time.
  116. However, if anyone mails their application to the Wilson County landfill or Solid Waste department, it is returned by the Postal Service because they do not have a mail receptacle at that location.
  117. Mr. Tartt asked Heather Christian if he did not get a job would they keep his application on file. She responded, "I believe so."
  118. Mr. Tartt proceeded to fill out the job application in his car and when he completed it he went back in to the office and handed it to Paula Heird, another employee, since Heather Christian had left.
  119. Mr. Tartt wrote at the top of his application "animal control/open position", meaning that

- he wanted to be considered for any open position.
120. There are no signs at the Solid Waster trailer where Mr. Tartt asked for an application designating it as an office only for Solid Waste and there are no signs directing anyone to another location for questions about animal control. All those who apply for jobs that are under the supervision of Bill Arnold go to the same window.
  121. Putting phrases like “any position”, “anything”, “any”, or “flexible” on job applications was quite common, obviously denoting the applicants’ wish to be considered for any job.
  122. At the top, the job applications would say “Wilson County” and then either “Animal Control” or “Solid Waste” in handwriting over what seemed to be the original wording. But within Solid Waste, some job applications would say “Road Commission” or “Urban Type Facilities Board” or be blank.
  123. After not hearing anything about his job application for several weeks, Mr. Tartt called the landfill on the morning of January 15, 2009.
  124. Heather Christian answered the telephone.
  125. When Mr. Tartt asked about the status of his job application, Ms. Christian told him that the "lady that takes care of that is not here right now" (meaning Cindy Lynch) but told Mr. Tartt that she would tell Cindy Lynch that he had called. When Mr. Tartt asked for a good time that he could call Ms. Lynch, Ms. Christian told him that Cindy Lynch would not be back until the following Monday or Tuesday. Although Ms. Christian offered to have Cindy Lynch call Mr. Tartt, Ms. Christian never asked for Mr. Tartt's telephone number where he could be reached.
  126. Mr. Tartt again called the Landfill on the morning of January 20, 2009.
  127. Again, Heather Christian answered the phone. Mr. Tartt asked to speak with Cindy Lynch and Ms. Christian asked him for his name and put him on hold. Moments later, she returned and told Mr. Tartt that Cindy Lynch was not there and offered to take a message. When Mr. Tartt explained that he was calling to check the status of his job application, Ms. Christian responded that "I don't know anything about those so I'll let her know you called." Like before, Ms. Christian never asked Mr. Tartt for a number where he could be reached.



128. That same afternoon, on January 20, 2009, Mr. Tartt called the landfill again. Like before, Heather Christian answered the phone. This time, Mr. Tartt asked to speak with Mr. Arnold. Ms. Christian asked him for his name and when Mr. Tartt gave his name and explained that he was calling about the status of a job application, Ms. Christian immediately told him that Mr. Arnold was on another line and offered to take a message.
129. Instead, Mr. Tartt asked to hold and wait for Mr. Arnold to get off the phone. He was put on hold and moments later Cindy Lynch, who Ms. Christian earlier said was not in the office, picked up the phone and asked Mr. Tartt if she could help him.
130. Mr. Tartt explained that he had called several times trying to find out the status of his job application. Ms. Lynch asked Mr. Tartt what position he had applied for and he responded that he had applied for Animal Control. Ms. Lynch responded that they did not have any positions open with animal control and that, although they accept applications at all times, they "don't have any positions open at the present time." Mr. Tartt explained that at the time he filled out his application there was a position open and asked if it had been filled. Ms. Lynch asked him how long ago he had filled out his application because the position of Animal Control had been filled "six months ago".
131. Mr. Tartt confirmed that it was the landfill where he filled out and submitted the job application and Cindy Lynch again repeated that "the last position we filled was back about six, seven months ago. We haven't had anything open since then."
132. When Mr. Tartt asked her if she could check to make sure they still had his application on file Ms. Lynch told him she could not check because the job applications were kept in a separate office so, "there's no way I can check." Nonetheless, Ms. Lynch offered to check if his application was on file later. But she never asked Mr. Tartt for a number where he could be reached in case she could not find his application.
133. However, all of the Solid Waste offices at the landfill are interconnected and Ms. Lynch could have easily checked to make sure Mr. Tartt's job application was on file.
134. Mr. Tartt asked if his application would be kept on file numerous times as an indication that he was interested in any job, not just Animal Control Officer.
135. According to a Wilson County payroll report generated on May 8, 2009, from the period

of June 20, 2008 to January 20, 2009, the period Ms. Lynch told Mr. Tartt that they had not had "anything open", the Wilson County Solid Waste Department had hired four employees, all white males.

136. In fact, a white male was hired at the landfill on December 20, 2008 just days after Mr. Tartt had applied for a job at the landfill trailer.
137. None of the positions into which the four white males had been hired were ever advertised at all nor the job at the landfill.
138. Sometime in 2010 or 2011, a new Animal Control Director was appointed.
139. Even though Mr. Tartt had been assured by two people at the landfill (Heather Christian and Cindy Lynch) that his application would be kept on file in case another position came open, according to the payroll report, another individual was hired in the Solid Waste Department on April 27, 2009, also a white male.
140. Mr. Tartt could not be considered for any other jobs because his job application was destroyed.
141. This is not the first time the job application of an African American applicant has been destroyed. According to an affidavit signed by a former Wilson County Animal Control Officer named Paige Heriges on September 22, 2010 and filed as D.E. 22-1 in this case, she personally witnessed Cindy Lynch, at the time Assistant to the Director of Solid Waste but now the Director of Solid Waste, throw the application of a black applicant in the trash, saying, "yeah, like that will ever happen."
142. The resume of Paige Heriges, a white female, on the other hand, was kept on file for over a year, maybe longer, before she was hired.
143. On March 6, 2011, Plaintiff Harold Davis personally went to the Wilson County Mayor's office to inquire about jobs with the county. At the mayor's office, he encountered the mayor's secretary named Rachael Warren.
144. He told Rachael Warren that he was interested in employment with Wilson County and she told him that they did not have a human resources department but that they were working on getting one. She asked if he had access to the internet and told him that he could print an application from the website or he could leave his resume but that, at least

- as to the mayor's office, they did not have any openings. Mr. Davis left her a copy of his resume.
145. Rachael Warren told Mr. Davis that any job openings "for the most part" would be advertised on the internet. She offered to provide him with a list of department heads and said he was welcome to walk around and see if other departments had any openings.
  146. She went on to say that they had just passed a resolution to create an HR department so the procedure would be "much easier" in the near future.
  147. She gave him a list of what she called department heads that had mailing addresses and other contact information. She said several departments were located in her building but that several were contacted in other buildings and she could not tell him 100% that all vacancies would be on the website but that they were "encouraging" other departments to post jobs there.
  148. The first office Mr. Davis walked into was the Wilson County Trustee's office. He asked for the Trustee and a lady he spoke with told him the Trustee was not in.
  149. The next office he walked into was the Veterans Service Office where the individual he talked to said he needed to go back to the Mayor's office. Mr. Davis was somewhat confused because Rachael Warren at the Mayor's office told him that he needed to apply separately to the offices on the list, which included Veterans Service. Mr. Davis felt he was getting the run-around.
  150. Next Mr. Davis went to the Property Assessor's office which told him there were no vacancies. He was not invited to leave his resume.
  151. Finally, Mr. Davis walked to the Register of Deeds office which also told him there were no vacancies. He was not invited to leave his resume.
  152. According to minutes from the Human Resource Ad Hoc Committee meeting on March 9, 2011, three days after Mr. Davis inquired about a job opening at the mayor's office, the committee voted to have Mayor Hutto handle the hiring of the newly created Human Resources Director. According to those minutes, the qualifications for the position would be a Bachelors Degree in Human Resource Management, Employment Law, Business Management or "closely related field".

153. Mr. Davis has a Bachelors in Psychology which he considers to be a “closely related field” to those listed and feels that he would have been qualified to at least be interviewed for the position of HR Director. However, Mr. Davis was never considered for the job.
154. Some time after April 25, 2011, Mr. Davis listened to an audio recording of a white male named Dave Barela inquire about jobs at the Wilson County mayor’s office. He recognized the woman’s voice on the recording as the same woman who he had spoken to on March 6. If he did not know better, he would swear that this was a different person. When he was there, he had the feeling that she could not get him out of the office fast enough. On the recording with Dave Barela, she was inviting and talkative and even invited him to come around her desk and look over her shoulder at her computer screen. She did not invite Mr. Davis to do that.
155. A review of the list of departments Mr. Davis was given by Rachael Warren in comparison with a list of departments from the Wilson County website reveals that missing from the list Mr. Davis was given are the Health Dept., Ag Extension, Soil Conservation, Tourism, Drug Court, Archives, Juvenile, Probation, County Attorney, Ground Water, Judicial Commissioners, Building Maintenance, Solid Waste, and Animal Control.
156. Mr. Davis does not know how the county expects him to know about job openings if he is instructed to go to individual departments to apply but then he is given an incomplete or erroneous list of departments, while white people are referred to a more complete list on the county web site.
157. According to a report by the Economics and Statistics Administration and the National Telecommunications and Information Administration in the Department of Commerce, dated November, 2010, households where the householder had at least a college degree were much more likely in 2009 to have broadband internet than their counterparts with a high school degree or less. Similarly, Hispanic households and non-Hispanic black households had broadband internet adoption rates which were half of non-Hispanic white adoption rates in 2001. Substantial gaps in internet household adoption persisted across the race and ethnic groups in 2009.

158. The vast majority of jobs in Wilson County government do not require a college degree and are entry level jobs requiring, at most, a high school diploma. New hires are more often than not trained on the job.
159. Between April 23 and May 11, 2011, Mr. Davis sent approximately 28 letters with his resume enclosed to various Wilson County offices expressing his interest in a job. They were all essentially the same and included a statement that he was a black male.
160. On or about April 28, 2011, Mr. Davis received a written letter from the Wilson County attorney Mike Jennings telling him that he had no vacancies. He also wrote "I must advise you that many branches and departments of Wilson County Government are responsible for hiring their own employees. For example, the Wilson County Road Commission hires Road Commission employees, the Wilson County Board of Education hires teachers and other classified and certified personnel, the Wilson County Sheriff hires his deputies, etc. If you wish to be considered for employment by any other department in Wilson County government, I would suggest that you send a letter and resume to the particular department for which you seek employment." Unfortunately, he did not provide a list of such departments or where Mr. Davis could find such a list that was accurate and up to date.
161. On or about May 6, 2011, Mr. Davis received a letter from Larry Tomlinson, the Director of the James E. Ward Agricultural Center telling him that Wilson County was accepting applications for Human Resources Director (with an application deadline of May 11) and bilingual office assistant at the Health Department and directing him to the county website. He closed by saying he was "not aware of any other job vacancies at this time. I will keep your resume on file."
162. On or about April 26, 2011, Mr. Davis received a letter from Barbara Webb, the Clerk and Master, stating that she did not have any openings at that time but that she would "keep your resume on file."
163. On or about May 24, 2011, Mr. Davis received a letter from J.C. Satterfield, Wilson County Veterans Service Officer, saying "there are no job openings in the Veterans Office." He also said he would keep Mr. Davis' resume on file for future reference should

a job become available. Mr. Satterfield had earlier told Mr. Davis in person on March 6 that he needed to send his application to the mayor since it was the mayor that did all the hiring for his office.

164. On or about May 19, 2011, Mr. Davis received a letter from Tom Brashear, Wilson County Planning Director, saying that at “this time, there are no available, unfilled positions within the Wilson County Planning Office. I will continue to keep your resume on file should a position become available.”
165. Other than the five written responses mentioned above, Mr. Davis did not receive any other responses to his letters.
166. On Mr. Davis’ behalf, on August 16, 2012, Attorney Jerry Gonzalez sent open records requests to over two dozen departments or offices of Wilson County seeking employment records. Over several days in October 2012 through January 2013, Mr. Davis and Mr. Gonzalez reviewed thousands of pages of job applications of these departments that were assembled in response to the Open Records request at the office of the Wilson County attorney, Mike Jennings and scanned them all. The table below accurately reflects the result of their inspection.

**Table 1.** OCR Search of “Davis” and “Harold” in Wilson County Job Applications - Selected Departments

<b>Departments to which Letter and Resume Sent by Harold Davis</b>	<b>Job Applications Examined - Pages (N)</b>	<b>Harold Davis found (Page No. of Department File)</b>
Mayor	745	618, 619, 621
Elections	5	3, 4
Building Inspector	190	--
Clerk and Master	116	44, 45
County Clerk	175	--
Schools	16,686	--
Ward Ag Center	24	1, 3, 5
Solid Waste	615	353, 355, 357
Planning	28	18, 19, 21
Property Assessor	60	--
Register of Deeds	93	--

Roads	266	--
Stormwater	289	--
Trustee	4	--
Veterans	162	--
WEMA	1134	--
Human Resources	571	--

Note: N=21,033. Open Records Act request asked for "All job applications and resumes held by your office for calendar years 2007-2012". Departments selected by 1) if Harold Davis sent a letter and resume and, 2) if job applications were provided for examination. Davis letters and resumes sent April - May 11, 2011. Individual job applications may contain more than one page.

As shown above, out of the 17 departments/offices whose records were produced and reviewed (over 21,000 pages of documents) and to which Mr. Davis had mailed a resume, only six had retained his letter and resume.

167. Consistent with their written assurances that they would keep Mr. Davis' resume on file, Mr. Brashear of the Planning Department, Barbara Webb of Clerk and Master, and Larry Tomlinson of the James E. Ward Ag. Center, did in fact keep his resume on file. However, within the job applications submitted by the Veterans Office in response to the Open Records Request, Mr. Davis' resume and cover letter were nowhere to be found. Nor was his resume found in any of the other departments noted in the table above with a "--" even though Mr. Davis mailed these departments a resume.
168. In reviewing all the job applications and other documents produced, it is apparent that Wilson County does not track the race or gender of job applicants, as required by Equal Employment regulations.
169. Wilson County's Record Retention Policies Mandate retention of employment records.
  - a. Policy No. 15-026, "Payroll Records", refers to the record retention policy for employment records.
  - b. Policy No. 16-001 "Advertisements Regarding Job Openings, Promotions, Training Programs or Overtime Work" requires records in this category to be retained for "five years" and specifically makes reference to possible causes of action based on race under 28 U.S.C. 1658 and *Jones v R.R. Donnelley & Sons*

*Co.*, 124 S.Ct. 1836 (2004).

- c. Policy No. 16-004, “Applications, resumes or other replies to job advertisements, including temporary positions”, requires all records to be retained for “five years from date record was made or human resources action is taken, whichever is later.” As authority, it again refers to 28 U.S.C. 1658 and *Jones*.
- d. Policy No. 16-007, “Contracts, Employment”, requires records retention of all contracts “between city and employees or independent contractors” for a period of seven years after termination of employment or contract.
- e. Policy No. 16-008, “Demotion records”, requires retention of such records for five years.
- f. Policy No. 16-009, “Discrimination or Enforcement Charges”, requires the retention of all “[p]ersonnel records relevant to charge of discrimination or enforcement against employer, including record relating to charging party and to all other employees holding positions similar or sought after, such as application forms or performance documentation” until “final disposition of charge or action.” As authority this policy refers to 29 C.F.R. 1627.3(b)(3), 29 C.F.R. 1602.31, and Executive Order 11246.
- g. Policy No. 16-011, “EEOC Information”, requires the retention of all records “kept by local governments... which are necessary for the completion of Report EEO-4 (Local Government Information Reports) regardless of whether or not the jurisdiction is required to file a report” for a period of “two years from the date of the making of the record or the personnel action involved, whichever occurs later.” As authority, this policy refers to 29 C.F.R. 1627.3 and 29 C.F.R. 516.5.
- h. Policy No. 16-019, “Hiring Records”, requires the retention of such records for a period of “five years from date records are made or personnel action is taken, whichever is later.” As authority, this policy again refers to 28 U.S.C. 1658 and *Jones*.
- i. Policy No. 16-026, “Payroll Records - Additions or Deductions from Records Paid”, requires retention of all “records used by the employer in determining



- additions to or deductions from wages paid” for five years.
- j. Policy No. 16-027, “Payroll Records for Age Discrimination in Employment Act Purposes”, requires retention of “[p]ayroll or other records containing each employee’s name, address, date of birth, occupation, rate of pay and compensation earned per week” for five years.
  - k. Policy No. 16-028, “Payroll Records for FLSA-Exempt and Non-exempt Employees”, requires retention of “[b]asic time and wage records for employee: name in full of employee; identifying number or symbol, if such is used on payroll records; home address, including zip code; date of birth, if under 19 years of age; sex and occupation; time of day and day of week on which employee's work week begins, if this varies between employees--otherwise a single notation for the entire establishment will suffice; total wages paid each pay period; dates of payment and pay period covered; hours worked; rate of pay; records of overtime and camp time hours worked and premiums paid; records of any additions to or deductions from wages” for five years.
  - l. Policy No. 16-029, “Payroll Records for Title VII Purposes”, requires the retention of “[r]ecords regarding promotion, demotion, rates of pay or other terms compensation” for five years.
  - m. Policy No. 16-030, “Payroll Records - Records regarding basis for determining wage levels” requires retention of “additional records, outside of the scope of those records which must be kept under the FLSA, which an employer may keep in the regular course of business operations which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices, etc.” for two years.
170. Mr. Davis was not given a fair “**opportunity**” to compete equally with others for current job openings or future job openings on his particular qualifications and merit and without regard to the color of his skin if his resumes are not kept on file and otherwise destroyed or lost. Nor is Mr. Davis afforded an equal opportunity to compete for jobs when he does not know of any job openings.

171. This county-wide practice and pattern of cronyism, nepotism, and favoritism and word of mouth job referral system by an all-white supervisory pool is rooted in racial animus, as described in detail above, with the intent of keeping African Americans out of the Wilson County work force. Additionally, without regard to intent, this subjective hiring system has a disparate impact on African Americans by keeping them out of the pool of individuals who could be considered for available jobs and denying them a fair and equal opportunity to compete for those jobs based on merit and without regard to their race or color of skin.
172. Dr. David Sharp, a PhD Economist, analyzed the payroll of Wilson County government generated on May 8, 2009 along with EEO-4 Reports for 2005, 2007, and 2009. (Exhibit 1 to this Amended Complaint, at 8). The analysis consisted of the hourly wages for 676 hourly employees (Exhibit 1, at 11) and controlled for variables such as age of the employee, full time vs part time, hire date (tenure), department, race and gender. (Exhibit 1, at 10). Dr. Sharp concluded that there was a “statistically significant under-representation of African Americans... [T]he statistical probability that this hiring pattern could have occurred by chance events alone is, again, 0.00000 percent.” (*Id.*, at 17, ¶28).
173. When analyzing the data across departments, Dr. Sharp concluded that “Defendant’s overall selection of African Americans as hourly employees to the various departments is inconsistent with a race-neutral hiring policy. As in all prior tables, the statistical probability that this hiring pattern could have occurred by chance events alone is 0.00000 percent.” (*Id.*, at 21, ¶35.)
174. When comparing hourly rates, Dr. Sharp concluded that “controlling for all other explanatory variables, African American employees earn less than their non-African American counterparts by about \$1.43 per hour, on average. This coefficient is significant at the 95 percent level, which, in the context of Hazelwood, is equivalent to two standard deviations. Thus, there is less than a 5 percent chance that this outcome could have occurred by chance events alone.” (*Id.*, at 28, ¶49).

#### **COUNT 1**

#### **(42 U.S.C. § 1983 & 1981 - Disparate Treatment)**

175. Plaintiff is a member of a protected group, that is, African American.
176. Decision makers within every department/office/agency of Wilson County government, acting under color of law, developed and maintained policies or customs and practices exhibiting deliberate and intentional violation of Plaintiff's statutory and constitutional rights.
177. It was the policy and custom of the entire Wilson County government, through its decision makers and policy-makers and supervisors, to intentionally discriminate against African Americans in job opportunities and hiring.
178. Defendant's discriminatory conduct abridged a right enumerated in 42 U.S.C. 1981, that is, the right to make and enter into employment contracts.
179. Defendant's discriminatory conduct also abridged the equal protection clause of the 14<sup>th</sup> Amendment to the U.S. Constitution.
180. As a direct result of Defendant's employment practices, including but not limited to the employment practice of destroying job applications of black applicants, not keeping race and ethnic information about applicants, not advertising jobs, and referring jobs to white friends and family, Plaintiff has experienced damages, including the equal opportunity to compete for available jobs without regard to his race, and humiliation and indignity.

## **COUNT 2**

### **(Title VII - Disparate Treatment)**

181. Plaintiff is a member of a protected group, that is, African American.
182. Plaintiff was denied a fair opportunity to compete for jobs on the basis of his merit and qualifications and without regard to his race, in whole or in part, because he was African American.
183. Plaintiff was qualified for the vast majority of jobs within all Wilson County government offices that are predominately entry level when he applied for employment.
184. As a direct result of Defendant's employment practices, Plaintiff has experienced damages, including the equal opportunity to compete for available jobs without regard to his race, and humiliation and indignity.

## **COUNT 3**

**(THRA - Disparate Treatment)**

185. The conduct of Defendant described in this complaint constitutes unlawful discriminatory practices in violation of the Tennessee Human Rights Act, T.C.A. §§ 4- 21-101 *et seq.*
186. The conduct of Defendant, as described herein, constitutes “discriminatory practices” as defined by the Tennessee Human Rights Act, T.C.A. § 4-21-102(4), and is in violation of sections 401(a)(1) and 401(a)(2) of the Tennessee Human Rights Act:
187. The plaintiff was racially discriminated against in the opportunity to compete for available jobs without regard to his race.
188. As a direct result of Defendant’s employment practices, Plaintiff has experienced damages, including the equal opportunity to compete for available jobs without regard to his race, and humiliation and indignity.

**COUNT 4**

**(Title VII - Disparate Impact)**

189. Plaintiff is a member of a protected group, that is, African American.
190. The practices of Wilson County, in the aggregate and as individual departments, have a disparate impact on African Americans and other minorities, including Plaintiff. Such practices include, but are not limited to:
- a. Not advertising job openings;
  - b. If job advertisements of job openings are made, they are
    - i. rare,
    - ii. only in local newspapers of limited circulation,
    - iii. done on an ad hoc basis;
    - iv. often contain a residency requirement with no bona fide business purpose,
    - v. are made after a friend, family or otherwise connected person has already been offered the job,
    - vi. advertised for just a day or two
  - c. Subjective hiring decisions by all-white decision makers;
  - d. Nepotism, cronyism and favoring friends, family, and those connected to friends and family;

- e. Destroying job applications of black job applicants;
  - f. Failing to keep race and ethnic information regarding job applicants.
191. None of these employment practices have a manifest relationship to the actual employment nor are they a business necessity.
192. There exist other selection protocols that would serve the defendant's interest without creating the undesirable discriminatory effect.
193. In the context of a predominately white work force, word-of-mouth hiring is discriminatory because of its tendency to perpetuate the all-white composition of the work force.
194. When the work force is predominantly white, nepotism, cronyism, failure to advertise, destroying job applications of black applicants and other similar practices that operate to exclude outsiders discriminates against minorities as effectively as any intentionally discriminatory policy.
195. As a direct result of Defendant's employment practices, Plaintiff and other African Americans have experienced damages, including the equal opportunity to compete for available jobs without regard to his race, and humiliation and indignity.

**COUNT 5**

**(THRA - Disparate Impact)**

196. Plaintiff is a member of a protected group, that is, African American.
197. The practices of Wilson County, in the aggregate and as individual departments, have a disparate impact on African Americans and other minorities, including Plaintiff. Such practices include, but are not limited to:
- a. Not advertising job openings;
  - b. If job advertisements of job openings are made, they are
    - i. rare,
    - ii. only in local newspapers of limited circulation,
    - iii. done on an ad hoc basis;
    - iv. often contain a residency requirement with no bona fide business purpose,
    - v. are made after a friend, family or otherwise connected person has already

- been offered the job,
- vi. advertised for just a day or two
  - c. Subjective hiring decisions by all-white decision makers;
  - d. Nepotism, cronyism and favoring friends, family, and those connected to friends and family;
  - e. Destroying job applications of black job applicants;
  - f. Failing to keep race and ethnic information regarding job applicants.
198. None of these employment practices have a manifest relationship to the actual employment nor are they a business necessity.
199. There exist other selection protocols that would serve the defendant's interest without creating the undesirable discriminatory effect.
200. In the context of a predominately white work force, word-of-mouth hiring is discriminatory because of its tendency to perpetuate the all-white composition of the work force.
201. When the work force is predominantly white, nepotism, cronyism, failure to advertise, destroying job applications of black applicants and other similar practices that operate to exclude outsiders discriminates against minorities as effectively as any intentionally discriminatory policy.
202. The conduct of Defendant described in this complaint had a disparate impact on the basis of race and therefore was in violation of the Tennessee Human Rights Act, T.C.A. §§ 4-21-101 *et seq.*
203. As a direct result of Defendant's employment practices, Plaintiff and other African Americans have experienced damages, including the equal opportunity to compete for available jobs without regard to his race, and humiliation and indignity.

#### **RELIEF SOUGHT**

Therefore, Plaintiff asks for the following relief:

1. A jury to try this cause;
2. Injunctive relief compelling Defendant to maintain all employment records in compliance with law and their own record retention policy, to not destroy job applications, to

- advertise job openings in a manner that ensures broad messaging to the entire regional labor pool, including minorities, and to not discriminate on the basis of race and any other remedies this Court deems fit to correct historic discrimination;
3. Compensatory damages under the Tennessee Human Rights Act, 42 U.S.C. 1981, and Title VII;
  4. Attorneys' fees and cost of the litigation as allowed by law;
  5. Such other relief as this Court deems proper.

Respectfully submitted,

/s/ Jerry Gonzalez  
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### **CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of Electronic Filing to the following:

Jeffrey R. Thompson, BPR # 020310  
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This the 11<sup>th</sup> day of June, 2013.

/s/ Jerry Gonzalez