

INTRODUCTION

1. This case presents a challenge to a discriminatory selection device being used by the Defendants State of California and California Commission on Teacher Credentialing ("CTC") for determining employment in the public schools. Passage of the California Basic Educational Skills Test ("CBEST") has been an absolute requirement to obtain teaching, counseling, and administrative credentials, as well as almost every other type of public school credential issued by the State of California since February 1, 1983. *Cal. Educ. Code* §§ 44252(b); 44830. (Unless otherwise noted, all subsequent code references are to the *California Education Code*.)

2. Since the design and implementation of the test in 1982 and 1983 by the Defendant CTC pursuant to State statute, the CBEST has had a severe adverse impact on the access of Latinos, African Americans, and Asians to public school credential positions. White applicants have passed the CBEST at a rate of 80%, while African Americans, Latinos, and Asians have passed at rates of only 35%, 51%, and 59%, respectively.

3. The disparity present among CBEST passing rates over the last nine years corresponds to the disparity of racial representation in California's public school teaching force. Though the student population of California's public schools is currently 55% non-white, and steadily increasing, the state's teaching force remains 82% white and only 16.5% Latino, African American and Asian. Despite the huge influx of minorities into California's general population and the working force over the last decade -- a period when whites declined from 67% to 57% of the general population -- the 82% white composition of the teaching force has remained unchanged.

4. As Plaintiffs allege herein, the CBEST is not a licensing exam for the teaching profession. Its statutory application -- as well as the entire State credentialing process -- extends no further than the State's one common Public School System. As such, the CBEST is an employment exam required and administered by the State exclusively for State employment.

5. Despite the passage of ten years of implementation and the exam's administration to over 350,000 individual test-takers, the CBEST has never been subjected to the well-established professional standards required of any public or private employer or federal fund recipient utilizing such a high-stakes selection device with such a disproportionate racial impact.

6. The test purports to measure the college-level reading, writing, and math skills needed by a minimally competent entry-level teacher, counselor, administrator, or other public school credential holder. Yet, the Defendants have never demonstrated that the CBEST actually measures those skills; nor have they shown that whatever is measured by the test is necessary to perform the critical or important aspects of California's varied public school credential positions; nor have they shown that the test in any way predicts competent job performance.

7. Moreover, the passing scores established by the State were not based on any rational, job-relevant criteria. Instead, the State ignored the passing scores recommended by two separate State-convened validation panels involving over 300 educators. In order to placate perceived fears surrounding the quality of public education, the State set substantially higher passing rates than recommended based entirely on political considerations and contrary to the State's own data.

8. In responding to the well-intentioned but ill-informed mandate of the Legislature to create a single teacher accountability measure, Defendant CTC and its test contractor, the Educational Testing Service ("ETS") of Princeton, New Jersey, have had the impossible task of devising a single standardized, multiple choice test that somehow captures the diverse job content of some 250,000 credential positions in California's public schools. Unable to do so, the Defendant CTC has settled on a test that purports to measure one's abstract mental functioning. Not only have the Defendants failed to prove the CBEST capable of such a task, but such attempts to create surrogate I.Q. tests violate a fundamental axiom of our nation's civil rights laws: that tests "must measure the person for the job and not the person in the abstract. . . ." Griggs v. Duke Power Co, 401 U.S. 424, 436, 91 S.Ct. 849, 854, 28 L.Ed.2d 158 (1971).

9. Absurd results flow from absurd measures: proven administrators who have neither studied nor needed geometry in thirty years are suddenly at risk of losing a job which requires no geometry because of the CBEST math section; much-needed bilingual math teachers are prevented from teaching because their written English lacks idiomatic flair; teachers of Spanish for native-speakers are hired instead by private schools because they cannot answer as many reading questions in an hour as a native English test-taker.

10. Because the CBEST has discriminated against the individual Plaintiffs, the Plaintiff organizations, their past, present, and future minority members, and other similarly situated minorities (hereinafter referred to collectively as "Plaintiffs" or "Plaintiff class") for nearly a decade without being sufficiently job-related; because other more valid, less discriminatory means exist by which to ensure that teachers have competent skills; because the public schoolchildren of California have suffered too long from a severe underrepresentation of minority and bilingual teachers, Plaintiffs allege as follows:

JURISDICTION

11. As all claims alleged herein arise under the laws of the United States providing for the protection of civil rights, jurisdiction of the subject matter of this action is established in this Court pursuant to 28 U.S.C. § 1331 and § 1343. As to those specific claims arising under Title VII of the 1964 Civil Rights Act, as amended, this Court's jurisdiction is additionally established pursuant to 42 U.S.C. § 2000e-5(f)(3).

12. All requirements relating to the exhaustion of administrative remedies and the timely filing of claims have been met by Plaintiffs. Timely charges covering the Plaintiffs' allegations of discrimination by Defendants were filed with the Equal Employment Opportunity Commission. The Attorney General of the United States has issued to Plaintiffs notices of right to sue based on these charges and Plaintiffs have brought this action within ninety days of notice thereof.

PLAINTIFFS

a. Association of Mexican-American Educators

13. Plaintiff ASSOCIATION OF MEXICAN-AMERICAN EDUCATORS ("AMAE") is a non-profit, tax-exempt corporation organized under the laws of and operating in the State of California for the purposes of advancing the education of Mexican American and Latino youth, facilitating the recruitment and advancement of Mexican American and Latino

educators, and ensuring the provision of equal educational opportunities, benefits, and civil rights for all students, especially those of Mexican American and Latino descent. AMAE's current members include approximately 1700 Latino, African American, and Asian elementary and secondary school educators.

14. The Defendants' practice of denying credentials to past, present, and potential Latino, African American, and Asian AMAE members based solely on their CBEST test results has injured AMAE's members and potential members by denying them employment opportunities in the public schools and has injured AMAE by reducing its membership and frustrating its ability to carry out the goals of the organization.

b. California Association For Asian-Pacific Bilingual Education

15. Plaintiff CALIFORNIA ASSOCIATION FOR ASIAN-PACIFIC BILINGUAL EDUCATION ("CAFABE") is a non-profit, tax-exempt corporation organized under the laws of and operating in the State of California in order to ensure educational equity and attainment of full potential for Asian-Pacific American language minority elementary and secondary students, to promote the learning of Asian-Pacific languages for all students, and to increase the representation and influence of Asian-Pacific Americans at all levels of the educational system. CAFABE's current members include approximately 300 Asian, Latino, and African American, elementary and secondary school educators.

16. The Defendants' practice of denying credentials to past, present, and potential Asian, Latino, and African American CAFABE members based solely on their CBEST test results has injured CAFABE's members and potential members by denying them employment opportunities in the public schools and has injured CAFABE by reducing its membership and

frustrating its ability to carry out the goals of the organization.

c. Oakland Alliance of Black Educators

17. Plaintiff OAKLAND ALLIANCE OF BLACK EDUCATORS ("OABE"), an affiliate of the National Alliance of Black School Educators, is an unincorporated association organized and operating since 1975 in the State of California in order to eliminate and rectify the effects of racism in education, to advance the education of African American schoolchildren, to promote and provide for the recruitment and professional advancement of African American educators, to serve as a clearinghouse for articulating the needs of Oakland's African American educators and schoolchildren to policymakers and the general public, and generally to serve as advocates for African American schoolchildren in the African American community. OABE's current members include approximately 120 African American elementary and secondary school educators.

18. The Defendants' practice of denying credentials to past, present, and potential African American, Latino, and Asian OABE members based solely on their CBEST test results has injured OABE's members and potential members by denying them employment opportunities in the public schools and has injured OABE by reducing its membership and frustrating its ability to carry out the goals of the organization.

d. Sara MacNeil Boyd

19. Plaintiff SARA MACNEIL BOYD is an African American woman, residing in Santa Clara County in the State of California where she has taken the CBEST on numerous occasions. She is seeking to maintain her current employment in the public schools of San

Mateo County, California.

20. BOYD is seeking an administrative services credential in order to maintain her position as the Instructional Vice-Principal at Menlo-Atherton High School in Atherton, California.

21. The essential minimum requirements for an administrative services credential include possession of a valid teaching credential; a minimum of three years service as a teacher; completion of an approved professional preparation program in administrative services at an institution of higher education; and passage of the CBEST. §§ 44270; 44252(b).

22. BOYD has taken and failed the CBEST on several occasions.

23. She has fully completed the course work and field work and all other requirements for her administrative credential.

24. The Defendants are denying BOYD her administrative credential and, thereby, the opportunity to obtain unconditional employment as an administrator in the public schools solely as a result of her CBEST scores.

25. BOYD currently possesses valid California life credentials in Secondary Education and in Counseling/Pupil Personnel Services. She has also held credentials for teaching in the public schools of North Carolina and in the District of Columbia and, additionally, currently holds a Master's degree in Education.

26. Plaintiff SARA BOYD has 14 years of experience as a high school teacher in the public schools of California, the District of Columbia, and North Carolina, 14 years of experience as a Guidance Counselor in California's public schools, and another two years of experience in the quasi-administrative role of Head Guidance Counselor, also in California's public schools.

27. In her positions in the public schools of North Carolina and the District of Columbia, BOYD performed at more than a minimally competent level, consistently receiving high praise and excellent evaluations.

28. Similarly, in her teaching and counseling positions in California's public schools, BOYD has performed at more than a minimally competent level, consistently receiving high praise and excellent evaluations.

29. Some of the numerous accolades BOYD has received in recognition of her excellence as a teacher and a counselor include the 1973 American Field Service Outstanding Teacher/Counselor of the United States Award; the 1983 YWCA Palo Alto Outstanding Black Woman of the Year Award; the 1983 Sequoia Union High School District Employee of the Year Award; the 1984 Math, Engineering, Science Achievement California State Outstanding Service Award; the 1988 KSOL San Mateo County Outstanding Service in Education Award, and, in 1990, being asked to sit on Defendant CTC's special advisory panel for the setting of statewide counseling standards.

30. BOYD's superior skills as an educator and an administrator were recognized by the Sequoia Union High School District when in 1989 she was appointed to the position of Instructional Vice-Principal at Menlo-Atherton High School.

31. The Menlo-Atherton High School population is made up of 60% Latino, African American, and Asian students.

32. Plaintiff SARA BOYD is the first African American administrator responsible for instruction at Menlo-Atherton High School and, as such, is especially suited to serve as an extra-sensitive conduit and role model for the school's large minority student population.

33. That BOYD had already served this role well as Head Guidance Counselor is

evidenced by the State Department of Education's identifying Menlo-Atherton High School as one of the top schools in the State in terms of placing its ethnic minority graduates in college programs. BOYD was in turn identified by Menlo-Atherton High School's administration as the individual primarily responsible for this result.

34. BOYD has been able to serve as Instructional Vice-Principal for the past three years despite not having passed the CBEST only by receiving special waivers from the State Board of Education in recognition of her superior qualifications as an administrator, of the school's great need for her skills, and of her competent performance in the position during the past three years.

35. The State Board of Education can waive the CBEST requirement pursuant to its general authority to waive provisions of the Education Code upon special application by school districts. § 33050 et seq.

36. The State Board of Education routinely grants short-term waivers for substitute teachers, but much less often grants waivers for individuals with special talents that a school district specifically needs.

37. The State Board's waivers are only temporary and do not provide a recipient with the full rights and benefits of a credential.

38. Moreover, the Board's waiver authority for the CBEST will expire on June 30, 1994. § 44225(m).

39. Defendant CTC can waive any provision of the Teacher Credentialing chapter of the Education Code under § 44225(m).

40. Plaintiffs are informed and believe, and on that basis allege, however, that the CTC has never used its authority pursuant to § 44225(m) to waive the CBEST requirement for the

granting of any credential.

41. Upon receiving her CBEST waivers, Plaintiff SARA BOYD has consistently performed competently as an administrator, receiving high praise for her superior skills in the job, especially as regards her interactions with students, teachers, and staff; for her abilities to obtain outside grants for special programs; and for her efforts in designing and implementing special programs targeted at mainstreaming non-native English speaking students and students with high potential but poor preparation in the basic skills.

42. Despite neither having passed the CBEST, nor possessing a full administrative credential, BOYD was nominated 1992 Administrator of the Year for the State of California by members of the Association of California School Administrators (ACSA) and ultimately received an ACSA Certificate of Recognition as the top administrator for 1992 in her region.

43. In May of 1992, the State Board of Education issued a further two-year waiver to allow BOYD to continue in her current administrative position but indicated to her that it would be the last such waiver it would issue on her behalf. At the expiration of this period, Plaintiff SARA BOYD will lose her position as an administrator and be demoted to the job of counselor or teacher.

e. Florence Flores

44. Plaintiff FLORENCE FLORES is a Latino woman, residing in Los Angeles County in the State of California.

45. FLORES is a member of the Association of Mexican-American Educators.

46. FLORES is seeking an administrative credential in order to become the school site administrator for a vocational skills center or an Adult Education school within the public

school system.

47. FLORES has taken and failed the CBEST.

48. She has fully completed the course work and field work and all other requirements for her administrative credential.

49. The Defendants are denying FLORES an administrative credential and, thereby, the opportunity to obtain employment as an administrator in the public schools solely as a result of her CBEST scores.

50. Plaintiff FLORENCE FLORES has worked in the Los Angeles Unified School District (L.A.U.S.D.) for twenty-five years, beginning as a teacher's aide at the age of 18. Due to the high quality of her work as a teacher's aide, FLORES was provided with a grant by L.A.U.S.D. to attend college and obtain a teaching credential.

51. FLORES obtained an Elementary Education/Multiple Subjects teaching credential in 1976, which became a life credential in 1982 and remains valid to the present.

52. Since 1976 FLORES, who is bilingual, has taught bilingual and non-bilingual classes and English as a Second Language (ESL) classes at the elementary level. She has also taught ESL classes and Vocational English as a Second Language classes in Adult Education.

53. For the past six years FLORES has served in a variety of capacities as a counselor and as a quasi-administrator at Pacoima Skills Center, a vocational skills training center of L.A.U.S.D. where she has developed programs and services to provide career and employment opportunities for students.

54. Approximately 85% of the center's student population is Latino.

55. Some of the positions FLORES has held at the Pacoima Skills Center include serving as the GAIN Coordinator in which position she directed the center's efforts to provide

welfare recipients with a high school education, as Coordinator of the center's Amnesty Program pursuant to the 1986 Immigration Reform Act, as a Jobs Training Partnership Act Youth Counselor, a Recruitment Counselor, a Summer Youth Employment Coordinator, and her most recent position as a Special Projects Counselor.

56. FLORES' minimum competency as an educator and administrator has been more than established by the consistent high praise she has received from her supervising principals and from the district's Assistant Superintendent who have described her as highly motivated and unusually effective in the performance of her teaching duties; as possessing superior vitality, energy, and judgment; as being resourceful and exceptionally quick to understand; as deeply involved in improving the instructional program for students and as generally well-suited to serving as an administrator.

57. One of FLORES' supervising principals has said that he knows of no other instructor who could operate in the type of difficult facility in which he observed her work and create such a successful program. He found her talents, rapport with staff, students and administrators, and concern for students all to be first-rate.

58. FLORES' immediate supervisors have not been alone in recognizing her superior skills as an educator and administrator. In 1989, FLORES received an Outstanding Educator Award from the L.A. Unified School Board in recognition of her exemplary teaching and dedication to limited English-proficient students. In 1991, FLORES received AMAE's Outstanding Adult Education Teacher of the Year Award.

f. Sam Genis

59. Plaintiff SAM GENIS is a Latino man, residing in Los Angeles County in the State of California.

60. GENIS is a member of the Association of Mexican-American Educators.

61. GENIS desires to obtain a Multiple Subjects credential with a Bilingual Emphasis in Spanish for teaching bilingual classes at the elementary level and a Single Subjects credential in Spanish for teaching at the secondary level in the public schools.

62. The essential minimum requirements for the issuance of a teaching credential -- whether a multiple subjects or a single subject -- are possession of a baccalaureate degree; completion of an approved fifth-year credentialing program at an institution of higher education; passage of the National Teacher's Examination ("NTE") in the appropriate subject matter area or completion of an approved waiver program of approximately 60-130 semester units of coursework; and passage of the CBEST. §§ 44259; 44252(b).

63. GENIS has taken and failed the CBEST on several occasions.

64. He has fully completed the course work and field work for his Multiple Subjects credential and is two courses away from fulfilling the credential program requirements for his Single Subject credential.

65. The Defendants are denying GENIS a teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of his CBEST scores.

66. Though he has passed the math and the writing sections and has scored enough overall points to pass the CBEST, GENIS has missed by one point obtaining the score set by the State and the CTC as the lowest permissible score on the reading section.

67. At the time the CBEST requirement took effect in 1983, Plaintiff SAM GENIS was

teaching his third year on an emergency credential in El Rancho Unified School District where he consistently received excellent evaluations as a teacher.

68. In order for an emergency credential to be issued, the applicant's school district must first verify to the CTC that it is experiencing a shortage of credentialed teachers. § 44300(a). Many, if not most, large school districts have received approval from the CTC for obtaining emergency permits.

69. The essential minimum requirements for an emergency multiple or single subject teaching credential include possession of a baccalaureate degree; intent to enroll or enrollment in a credentialing program; passage of the NTE or completion of 10-15 semester units of coursework; and, since 1983, passage of the CBEST.

70. Emergency permits are generally valid for only one year. § 44251(a)(4). Yet, once issued, they are generally renewed as long as the district's verification of teacher shortage has not lapsed.

71. An individual who has passed the CBEST but who has not fulfilled all the other requirements for a regular teaching credential, such as passage of the NTE, or completion of a credentialing program, can often teach for a number of years on an emergency credential.

72. Because of his failure to pass the CBEST, as required of all emergency credential holders, GENIS lost his job at El Rancho Unified School District.

73. El Rancho Unified School District has continued to contact GENIS in the ensuing years with the hope of reemploying him upon his obtaining a teaching credential from the State and the CTC.

74. After losing his job in the El Rancho Unified School District, GENIS obtained employment at St. Benedict's School, a parochial school in Montabello, California, serving

grades kindergarten through eight. St. Benedict's student population is 95% Latino.

75. At St. Benedict's, GENIS's consistently received excellent evaluations as an elementary teacher and as an eighth grade math teacher.

76. GENIS further served the students of St. Benedict's by initiating several successful academic and social service programs which provide remedial and enrichment classes for targeted students and extended day care for struggling working parents and, further, by devoting himself to a full array of extracurricular activities including serving as Athletic Director, Yearbook, and Student Council Advisor.

77. Plaintiff SAM GENIS demonstrated a sufficiently high level of competence as a teacher and educator such that the St. Benedict's School administration appointed him Vice-Principal of the school for the regular academic year program, and full Principal of the school's 400-student strong summer program.

78. GENIS has recently left St. Benedict's and moved to St. John's Bosco High School in Bellflower, California so that he can gain experience as a secondary Spanish teacher. At St. John's, GENIS teaches Spanish for Native Speakers. His classes are 85% Latino.

g. Viry Kem

79. Plaintiff VIRY KEM is an Asian man, residing in Sacramento County in the State of California.

80. KEM, who was born in Cambodia and whose first language is Khmer, desires to obtain a Multiple Subjects credential with a Bilingual Emphasis in Khmer for teaching bilingual classes at the elementary level in the public schools.

81. KEM would be one of only a handful of Khmer-speakers credentialed by

Defendants to address the needs of over 24,000 Khmer-speaking students in California's public schools.

82. KEM has taken and failed the CBEST on several occasions.

83. Though he has passed the math and writing sections and has scored enough overall points to pass the CBEST, VIRY KEM is four points short of obtaining the score set by the State and the CTC as the lowest permissible score on the reading section.

84. Plaintiff VIRY KEM has fully completed the course work and field work and all other requirements for his Multiple Subjects credential.

85. The State and the CTC are preventing KEM from obtaining his teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of his failure to obtain a score on the reading section of the CBEST at a level deemed passing by the Defendants.

86. KEM has amply demonstrated his ability to read English at the college level by having successfully completed both a post-graduate teacher preparation program at the California State University, Sacramento ("CSUS") and the program for a Bachelor's degree in Liberal Studies, also at CSUS, with a 3.18 grade point average.

87. In addition to fulfilling all the academic, student teaching, and other teacher preparation requirements, KEM has otherwise demonstrated his competence as a teacher by way of the consistently positive evaluations he has received for his teaching skills in a variety of educational settings over the last eleven years.

88. In 1981, while himself a refugee fleeing Cambodia, KEM successfully served as an instructor and Khmer-English interpreter for the United Nations High Commission on Refugees at the U.N. refugee camp on Bataan Island in the Philippines.

89. From 1982 to 1987, KEM successfully served as a Bilingual Program Aide on the junior and senior high school level for limited English-proficient students from Asia and Latin America in the public schools of Oklahoma.

90. From 1988 to 1989, KEM worked at Golden State Middle School in the Washington Unified School District as a Bilingual Instructional Aide. His supervisor there rated his performance outstanding, finding him to be thorough and competent, professional, warm, and an effective problem-solver with excellent judgment.

91. KEM, likewise, has received positive evaluations for the teaching skills exhibited in his teacher preparation program at CSUS. His supervisor at the elementary school where he student-taught full-time for a semester found his work highly commendable, and found KEM personally dedicated, hard-working, and in possession of a special commitment to the teaching profession. One of his professors at CSUS found Plaintiff VIRY KEM not only distinguished himself as an outstanding writer and verbal contributor to class, but more generally, as an outstanding student and a brilliant educator, rating KEM as already better than 90% of the teachers currently practicing.

92. KEM is currently working part-time as a guidance counselor and student mentor at CSUS while he continues to retake the CBEST.

93. Unable to obtain employment as a teacher in the public schools, Plaintiff VIRY KEM has been forced to continue his regimen of part-time work and retaking the CBEST. If he does not soon prevail with regard to the CBEST, he will be forced to seek employment in another field to the detriment of California's Khmer-speaking student population.

h. Toua Yang

94. Plaintiff TOUA YANG is an Asian man, residing in Sacramento County in the State of California.

95. YANG is Hmong, an ethnic group deriving from regions of Southeast Asia and southern China. He was born in Laos in 1963 and lived there until 1975 when he moved with his family to Thailand. YANG lived in Thailand for ten years, until late 1984 when he moved to the United States. Consequently, YANG is multi-lingual, speaking Hmong, Lao, Thai, and English fluently.

96. YANG desires to obtain a Multiple Subjects credential with a Bilingual Emphasis in Hmong, Lao, and Thai, for teaching bilingual classes at the elementary level in the public schools.

97. YANG would be one of only a handful of bilingual-speakers credentialed by Defendants to address the needs of over 21,000 Hmong-speaking, 16,000 Lao-speaking, and 1,800 Thai-speaking students in California's public schools.

98. YANG has taken and failed the CBEST on several occasions.

99. Though he has passed the math and writing sections, YANG has not yet obtained a score on the reading section at a level which the Defendants deem passing.

100. Though YANG is otherwise fully qualified to obtain an emergency teaching credential, he has elected to pursue study in a one-and-a-half year teacher preparation program so that he can directly obtain his preliminary teaching credential. He will complete his teacher preparation program and otherwise be qualified to obtain a Multiple Subjects credential in December 1993.

101. The State and the CTC are preventing YANG from obtaining a teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as

a result of his failure to obtain a score on the CBEST at a level deemed passing by the Defendants.

102. YANG has amply demonstrated his ability to read English at the college level by having successfully completed the program for a Bachelor's degree in Liberal Studies at the California State University, Sacramento and most of the first semester of the CSUS teacher preparation program with a cumulative grade point average of approximately 3.0.

103. As further evidence of his ample intellectual abilities, Plaintiff TOUA YANG consistently ranked among the top students in both Laos and Thailand on standardized national achievement tests. In both third and sixth grade, for example, his achievement test scores were second in the nation among thousands of students at his grade level.

104. TOUA YANG has otherwise demonstrated his competence as a teacher by way of the consistently positive evaluations he has received for his teaching skills in a variety of educational settings over the last twelve years.

105. From 1980 to 1984, YANG successfully served as a teacher in a primary school in Thailand.

106. Since beginning his undergraduate studies, YANG has worked as a teacher's aide in three different elementary school settings.

107. His supervisors have found him to be an exceptional individual, a self-motivator with an extremely positive attitude, one who displays a tremendous sensitivity towards children from various ethnolinguistic backgrounds and, as such, is able to teach to a wide array of learning modalities.

i. Robert Williams

108. Plaintiff ROBERT WILLIAMS is an African American man, residing in Alameda County in the State of California. He is seeking employment in the public schools of Alameda County, California and in that county has taken the CBEST on numerous occasions.

109. ROBERT WILLIAMS is seeking an administrative services credential in order to regain his position as an Assistant Principal.

110. He has taken and failed the CBEST on several occasions.

111. Though he has passed the reading and writing sections and has scored enough overall points to pass the CBEST, ROBERT WILLIAMS is six points short of obtaining the score set by the State and the CTC as the lowest permissible score on the math section.

112. He has fully completed the coursework and fieldwork and all other requirements for an administrative credential.

113. The Defendants are denying ROBERT WILLIAMS an administrative credential and, thereby, the opportunity to obtain employment as an administrator in the public schools solely as a result of his CBEST scores on the math section.

114. Plaintiff ROBERT WILLIAMS graduated with a Bachelor's degree in Education from Linfield College in the State of Oregon in 1974 at which time he received a credential to teach in Oregon's public schools. In 1975, ROBERT WILLIAMS graduated from the STEP Program at Stanford University at which time he received a Master's degree in Physical Education from Stanford and a credential for the teaching of Physical Education from the Defendants. Additionally, ROBERT WILLIAMS possesses a public school teaching credential from the State of Alaska.

115. Plaintiff ROBERT WILLIAMS has taught Physical Education for four years in Alaska in the Anchorage Unified School District and for five years in California in the San

Leandro Unified School District.

116. During his time in the Anchorage Unified School District, he consistently received high praise and excellent evaluations as an educator.

117. Similarly, during his time in the San Leandro Unified School District, he has consistently received high praise and excellent evaluations as an educator. His instructional techniques and strategies have been rated exemplary. Moreover, as a teacher, he was particularly commended for his excellent leadership potential and for the extent to which his attitude, countenance, and skill level make him an excellent role model for students.

118. Further evidence of Plaintiff ROBERT WILLIAMS' more than minimally competent skills as an educator is the fact that he was appointed by the San Leandro Unified School District to the position of Assistant Principal at San Leandro High School from November 1990 to June 1992. He was able to fill an administrative position without having an administrative credential under a temporary "Teacher on Special Assignment" program.

119. ROBERT WILLIAMS' major duties as Assistant Principal included overseeing campus supervision, the Social Studies and Physical Education programs, the athletics program, the student conflict resolution program, the peer counseling program, and the library and textbook program.

120. None of these duties required the type or degree of math required to achieve a passing score on the math section of the CBEST.

121. Plaintiff ROBERT WILLIAMS was more than a minimally competent administrator during his two years as Assistant Principal. His supervisors on the school site and district level rated his work as outstanding, finding him effective, excellent, and superior in the full range of his duties. His colleagues recognized his special effectiveness in building

positive relationships with the growing population of African American males at San Leandro High School and lauded his ability to serve these young people as a strong, positive role model and to provide them and their parents with a sense of belonging to the school.

122. As further evidence of his potential as an administrator, ROBERT WILLIAMS was admitted to a special "Leadership Training Program" at the School of Education at California State University, Hayward for the training of promising future public school administrators.

123. ROBERT WILLIAMS has also demonstrated his administrative and leadership ability by way of his extensive involvement in the affairs of the school district and the greater local community. ROBERT WILLIAMS has established the Martin Luther King, Jr. Service Award for recognizing outstanding individual contributions from students, staff, and community members to the San Leandro School District. He has also been elected by his peers to serve as Vice-President of the San Leandro Teachers' Association and to serve on the Mentor-Teacher Nominating Committee. Additionally, he recently has been appointed to the Board of Directors of the San Leandro Community Council, a non-profit, grass roots, community service organization.

124. Because he has not passed the CBEST, ROBERT WILLIAMS' efforts to obtain an administrative credential and, thereby, to continue his career in education as an administrator have been thwarted, forcing him to return to teaching Physical Education.

j. Frank Rivera

125. Plaintiff FRANK RIVERA is a Latino man, residing in Los Angeles County in the State of California.

126. He has taken and failed the CBEST on several occasions.

127. RIVERA is being denied the opportunity to return to employment as a bilingual teacher in the public schools by the Defendants solely as a result of his CBEST scores.

128. RIVERA already holds life credentials in both Standard Elementary Education and Standard Secondary Education and has served as a classroom teacher on the elementary or secondary level for approximately 15 out of the last 27 years.

129. During his years in the classroom, RIVERA has performed competently, receiving evaluations rating him satisfactory to outstanding in the performance of his teaching duties.

130. The Defendants have revoked their previously unconditional life authorization to RIVERA to teach, regardless of the fact that he has performed competently, and have required that he pass the CBEST before returning to the classroom since he was not employed in a certificated position in the public schools for a period exceeding thirty-nine months. See § 44830(c). (As used herein, "certificated" refers to those positions or personnel requiring credentials.)

131. In addition to his life credentials in elementary and secondary education, RIVERA has earned several other credentials during his twenty-seven year career in education. These include a General Services Administrative Credential, a life Supervisor/Instructional Credential, a life Adult Education Credential, a life Community College Credential, and certification as a Teacher of English to Speakers of Other Languages.

132. In addition to his successful efforts as a classroom teacher, RIVERA has been employed as an administrator of categorical programs at the district and state level, primarily those dealing with migrant and bilingual education and the return of high school drop outs to the public school system.

133. During the period in which RIVERA was not employed in a certificated position in the public schools for a period exceeding thirty-nine months, he did not leave the field of education but served, rather, in parochial schools. RIVERA taught English, Reading, and Religion at St. Thomas More Parish School for two years, at which time he demonstrated a sufficiently high level of competence in the classroom that he was appointed principal of All Souls Parish School by the Archdiocese of Los Angeles for a one-year period.

k. Ricardo Peinado

134. Plaintiff RICARDO PEINADO is a Latino man, residing in Los Angeles County in the State of California.

135. PEINADO is seeking a Pupil Personnel Services Credential in order to obtain employment as a counselor in the public schools.

136. The essential minimum requirements for a counseling credential are possession of a baccalaureate degree; completion of an approved fifth-year credentialing program at an institution of higher education; and passage of the CBEST. §§ 44266; 44252(b).

137. PEINADO has taken and failed the CBEST on several occasions.

138. PEINADO has fully completed the course work and field work and all other requirements for his Pupil Personnel Services credential

139. The Defendants are denying him said credential and, thereby, the opportunity to obtain employment as a counselor in the public schools, solely as a result of his CBEST scores.

140. Though he has passed the math and writing sections, as of yet, PEINADO has not attained a score on the reading section of the test at a level which the Defendants deem passing.

141. Plaintiff RICARDO PEINADO has demonstrated his ample fitness to serve as an

entry level counselor in the public schools, including whatever level of reading skill is necessary to perform the critical or important aspects of the job of counseling elementary or secondary school children, by successfully graduating from the University of California at Irvine, and by completing the course work and field work for a counseling credential and for a Master's degree in Counseling with a 3.61 grade point average at the California State University, Los Angeles.

I. Marta Leclaire

142. Plaintiff MARTA LECLAIRE is a Latino woman, residing in Alameda County in the State of California. She is seeking employment in the public schools of Alameda County, California and in that county has taken the CBEST on numerous occasions.

143. LECLAIRE, whose first language is Spanish, desires to obtain a Multiple Subjects credential with a Bilingual Emphasis in Spanish for teaching bilingual kindergarten classes in the public schools.

144. LECLAIRE has taken and failed the CBEST on several occasions.

145. LECLAIRE has fully completed the course work and field work for her Multiple Subjects credential.

146. The State and the CTC are denying LECLAIRE her teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of her CBEST scores.

147. For the past three years, LECLAIRE has taught a bilingual preschool class and an afterschool enrichment class for early school-age children at El Centro Infantil de la Raza, a State-funded early childhood development center in the Oakland Unified School District.

148. El Centro's student population is 95% Latino.

149. During the decade-and-a-half prior to her work at El Centro, LECLAIRE spent seven years teaching at a State preschool in San Francisco and at a State early childhood development center in the Oakland Unified School District.

150. In addition to her teacher preparation, Plaintiff MARTA LECLAIRE has demonstrated her competence as a primary teacher by way of her consistently excellent evaluations while at El Centro and at the State preschool programs at which she has worked.

151. LECLAIRE has further demonstrated her expertise in early childhood development by way of her appointment as a consultant to the Nicaraguan Ministry of Education on early childhood development and her work as an educational television producer in Nicaragua where she produced fourteen documentaries on child development, teacher training, and parental involvement. Two of LECLAIRE's films won awards at international education film and television production competitions in Tokyo, Japan and Havana, Cuba.

152. LECLAIRE's more than minimum qualifications as a primary teacher are further evidenced by the numerous invitations she has received from Oakland Unified and other school districts, from statewide educational organizations, and from the State Department of Education to provide presentations and trainings on her innovative methods for designing early childhood development lesson plans.

m. Antoinette Williams

153. Plaintiff ANTOINETTE WILLIAMS is an African American woman, residing in Alameda County in the State of California. She is seeking employment in the public schools of Alameda County, California and in that county has taken the CBEST on numerous

occasions.

154. ANTOINETTE WILLIAMS seeks to obtain an emergency substitute teaching credential so that she can finance her post-baccalaureate teacher preparation education by substituting in the public schools.

155. The essential minimum requirements for an emergency substitute teaching credential are possession of a baccalaureate degree and passage of the CBEST. Title 5, *California Code of Regulations*, § 80025.

156. ANTOINETTE WILLIAMS has taken and failed the CBEST.

157. She has fulfilled all other requirements for the substitute teaching credential.

158. ANTOINETTE WILLIAMS is being denied a substitute teaching credential by the Defendants and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of her CBEST scores.

159. ANTOINETTE WILLIAMS has demonstrated her competency to become a substitute teacher at the elementary or secondary level by having successfully taught for three years at Merritt College in Oakland, California and in a substitute position in the State of Missouri.

160. She has otherwise demonstrated her competencies in the field of education by operating what is believed to be California's first school of security and investigation training, designing the school's curriculum, and writing one of its standard texts.

161. Further evidence of Plaintiff ANTOINETTE WILLIAMS' fitness of character and potential to serve as an inspirational role model to her students of color can be seen in her twenty years of successful work in the criminal justice field as, among other positions, a federal probation officer, a deputy sheriff, and as what is believed to be California's first

licensed African American woman private investigator.

n. Diana Kwan

162. Plaintiff DIANA KWAN is an Asian woman, residing in the City and County of San Francisco in the State of California. She is seeking employment in the public schools of the City and County of San Francisco, California and in that county has taken the CBEST on numerous occasions.

163. KWAN, who was born in mainland China, is fluent in both Mandarin and Cantonese. She desires to obtain a Multiple Subjects credential with a Bilingual Emphasis in Cantonese for teaching bilingual classes at the elementary level in the public schools.

164. KWAN has taken and failed the CBEST on several occasions.

165. Though KWAN has passed the math and writing sections of the test and has obtained the minimum passing score on the reading section, her overall score remains four points below the total score deemed passing by the Defendants.

166. Though KWAN is otherwise fully qualified to obtain an emergency teaching credential, she would prefer to begin study in a one-year teacher preparation program so that she can directly obtain her preliminary teaching credential. She has been informed by the program of her choice, however, that she will not be admitted without having passed the CBEST.

167. Based on her inability to pursue a course of teacher training and the knowledge that upon completion of a teacher preparation program, she would nonetheless be prevented from obtaining a credential absent CBEST passage, KWAN has been forced to seek and obtain employment outside the education field.

168. Were the CBEST requirement eliminated, KWAN would immediately seek admittance to her chosen credentialing program, for which she is otherwise fully qualified, in order to obtain a preliminary teaching credential.

169. The State and the CTC are preventing KWAN from obtaining a teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of her failure to obtain an overall score on the CBEST at a level deemed passing by the Defendants.

170. KWAN has demonstrated her possession of the requisite level of reading skills in English necessary to performing the critical or important aspects of the job of teaching bilingual classes by completing a rigorous Liberal Studies degree in a California State University program with a 3.3 grade point average.

171. KWAN has otherwise demonstrated her competence as a bilingual teacher by way of the consistently positive evaluations she has received for her teaching skills over the last several years during which time she has served both as a teacher's aide at the Chinese American International School and as a teacher in various community-based summer school programs for Chinese youth.

o. Jaime Lara

172. Plaintiff JAIME LARA is a Latino man, residing in Los Angeles County in the State of California.

173. LARA, whose first language is Spanish, desires to obtain a Single Subject credential in Spanish in order to teach advanced Spanish, primarily to native speakers, at the secondary level. LARA is immediately seeking an emergency credential so that he can teach

while undertaking a fifth-year teacher preparation program at California State University, Dominguez Hills.

174. LARA has taken and failed the CBEST on several occasions.

175. LARA has fully completed all other requirements for obtaining an emergency credential.

176. The State and the CTC are preventing him from obtaining a teaching credential and, thereby, the opportunity to obtain employment as a teacher in the public schools solely as a result of his CBEST scores.

177. For the last six years, LARA has been a bilingual teacher's aide for thirty hours a week in math and English classes in public schools in the cities of Wilmington and Carson, California.

178. In addition to having fulfilled the other requirements for an emergency credential, LARA has demonstrated his fitness for the entry-level position he seeks by way of his experience as a bilingual aide and the excellent evaluations he has received concerning his teaching skills.

179. Plaintiff JAIME LARA has been informed by two different schools that teaching positions would be available for him during the 1992-1993 school year were he to obtain his emergency credential.

p. Joyce Santiago

180. Plaintiff JOYCE SANTIAGO is a Latino woman, residing in San Bernadino County in the State of California.

181. SANTIAGO ultimately desires to obtain a Specialist Credential with Bilingual

Certification in order to teach bilingual and regular special education classes. She is currently attempting to maintain an emergency teaching credential while she completes a credential program and a Master's degree in Special Education at California State Polytechnic University, Pomona.

182. SANTIAGO has taken and failed the CBEST on several occasions.

183. Except for CBEST passage, SANTIAGO has completed all other requirements for an Emergency Specialist Credential and, upon completion of her coursework, will have completed all other requirements for a regular Specialist Credential.

184. Plaintiff JOYCE SANTIAGO possesses a Bachelor's degree in Elementary Education and a valid Elementary Education teaching credential from Puerto Rico.

185. Prior to moving to California in 1990, SANTIAGO taught for three years in the public schools of Lawrence, Massachusetts as a special education teacher in a Resource Specialist Program and as a second grade bilingual teacher.

186. SANTIAGO has taught a special education class for the last two years, and is beginning a third year, on one-year emergency credentials in the Pomona Unified School District.

187. SANTIAGO has demonstrated her competence to teach in the public schools of California based on her professional preparation to date and on her actual job performance in the Massachusetts and the Pomona Unified systems where SANTIAGO's supervisors have rated the quality of her work as better than average to exemplary.

188. Similarly, her current principal has attested to SANTIAGO's having created a learning environment in her class that promotes confidence and cooperation; to her demonstrating a sympathetic understanding of the myriad of problems her students possess; to

her being able to develop lesson plans to meet those varied needs; as well as to her ability to counsel and assist individual pupils in a positive and comforting manner.

189. In her first year in the Pomona Unified School District, SANTIAGO was able to teach without having passed the CBEST pursuant to a One Year Nonrenewable Credential.

190. The One Year Nonrenewable Credential is a special credential for individuals credentialed outside of California who have met all the requirements for an initial California credential except for passing the CBEST and who have passed a district administered basic skills test. See §§ 44252(b)(3); 44830(m).

191. For her two subsequent years, SANTIAGO has been able to serve as a special education teacher despite not having passed the CBEST only by receiving special waivers from the State Board of Education in recognition of her qualifications as a teacher, of the school's great need for her skills, and of her competent performance in the position during the past two years.

q. Maribel Diaz

192. Plaintiff MARIBEL DIAZ is a Latino woman, residing in San Bernadino County in the State of California.

193. DIAZ ultimately desires to obtain a Specialist Credential with Bilingual Certification in order to teach bilingual and regular special education classes. She is currently attempting to maintain an emergency teaching credential while she completes a credential program and a Master's degree in Special Education at California State Polytechnic University, Pomona.

194. DIAZ has taken and failed the CBEST on several occasions.

195. Except for CBEST passage, DIAZ has completed all other requirements for an Emergency Specialist Credential and, upon completion of her coursework, will have completed all other requirements for a regular Specialist Credential.

196. Plaintiff MARIBEL DIAZ possesses a Bachelor's degree in Elementary Education and a valid Elementary Education teaching credential from Puerto Rico.

197. Subsequent to receiving her degree and credential, DIAZ taught Spanish in an elementary school for a year and a half in Puerto Rico.

198. Subsequent to her teaching experience in Puerto Rico and prior to moving to California in 1991, DIAZ taught for two years in the public schools of Chelsea, Massachusetts as a special education teacher.

199. DIAZ taught last year, and is teaching again this year, a special education class in the Pomona Unified School District.

200. DIAZ has demonstrated her competence to teach in the public schools in California based on her professional preparation to date and on her actual job performance in the Massachusetts and the Pomona Unified systems where DIAZ's supervisors have rated the quality of her work as strong to excellent and have found her to be energetic and highly competent, possessing all the qualities of an excellent teacher.

201. In her first year in the Pomona Unified School District, DIAZ was able to teach without having passed the CBEST pursuant to a One Year Nonrenewable Credential.

202. For the present year, DIAZ has been able to serve as a special education teacher despite not having passed the CBEST only by receiving a special waiver from the State Board of Education in recognition of her qualifications as an teacher, of the school's great need for her skills, and of her competent performance in the position to date.

r. Agnes Haynes

203. Plaintiff AGNES HAYNES is an African American woman, residing in Santa Clara County in the State of California where she has taken the CBEST on numerous occasions. She is seeking to maintain her current employment in the public schools of San Mateo County, California.

204. AGNES HAYNES is seeking a Single Subject credential in English in order to continue teaching her eighth grade English classes at Belle Haven School in the Ravenswood City School District.

205. She has taken and failed the CBEST on several occasions.

206. Though she has passed the reading and writing sections, AGNES HAYNES has not obtained the score set by the State and the CTC as the lowest permissible score on the math section.

207. She has fully completed the coursework and fieldwork and all other requirements for a Single Subject credential.

208. The Defendants are denying AGNES HAYNES a Single Subject credential and, thereby, the opportunity to obtain unconditional employment as a teacher in the public schools solely as a result of her CBEST scores.

209. Plaintiff AGNES HAYNES graduated with a Bachelor's degree in English from Grambling State University in the State of Louisiana in 1964. She possesses a lifetime credential for teaching English and Social Studies in the State of Louisiana. Prior to moving to California, she taught English for thirteen years in grades nine through twelve in the public schools of Louisiana.

210. During her time in the public schools of Louisiana, HAYNES consistently received high praise and excellent evaluations for her skills as a teacher.

211. HAYNES has recently returned to the teaching profession, substituting in the Ravenswood City School District last year, and being assigned to her own full-time classroom at Belle Haven School for the 1992-1993 academic year.

212. Both during her time as a substitute and as a full-time teacher in the Ravenswood City School District, HAYNES has consistently received high praise and excellent evaluations. Her supervisors have found her to possess both an excellent command of the subject matter and superlative classroom management skills.

213. Her current classes at Belle Haven School are made up entirely of students of color, approximately two-thirds of whom are African American.

214. Plaintiff AGNES HAYNES has neither studied nor needed for thirty years the type or degree of math required to pass the CBEST. Neither her past nor current duties as an English teacher require the type or degree of math needed to pass the CBEST.

215. HAYNES has also enrolled in an administrative credentialing program at San Jose State University which she expects to complete in the Spring of 1994.

216. In addition to her teaching efforts and her goal of serving as a school administrator, AGNES HAYNES has also demonstrated her prominent role in the community through her work with the Big Sisters organization and with her selection as Second Vice-President of the California State Baptist Convention, Women's Department and past President of the Bay Area Baptist District Association, Women's Division.

217. HAYNES was able to substitute last year and to teach in September and October of this year without having passed the CBEST by way of a One Year Nonrenewable

Credential, having already been credentialed in another state.

218. For the remainder of the current school year, HAYNES will be able to teach absent CBEST passage under a special one-year waiver from the State Board of Education, based on her qualifications as a teacher, the school's great need for her skills, and her competent performance to date.

219. Absent a further special waiver from the State Board of Education, HAYNES will lose her job at the end of the current school year if she does not pass the CBEST math section before then. Likewise, she will be unable to obtain an administrative credential in the future absent passage of the CBEST math section.

DEFENDANTS

220. Defendant STATE OF CALIFORNIA is a state government imbued with legislative, executive, and judicial powers, created by the Constitution of the State of California pursuant to the mandate of its citizens, and adopted into the Union of the United States of America in 1850.

221. Defendant California COMMISSION ON TEACHER CREDENTIALING ("CTC") (formerly a division of the California Department of Education and known as the Commission for Teacher Preparation and Licensing) is an independent state governmental agency to which the Defendant STATE OF CALIFORNIA has delegated broad powers for developing and administering the standards, assessments, and examinations -- including, *inter alia*, the CBEST -- for entry and advancement in certificated positions in the public schools of California. §§ 44225; 44252.5.

CLASS ACTION ALLEGATIONS

222. The individual Plaintiffs and the Plaintiff organizations seek to maintain this action on behalf of themselves, the Plaintiff organizations' members, and the class of Latino, African American, and Asian California public school credential or job applicants past, present, and future who have been or will be denied credentials or certificated positions based on the California Basic Educational Skills Test.

223. This action is maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) as the Defendants have acted with regard to the CBEST and the issuance of credentials on grounds generally applicable to the asserted class, thereby making final injunctive relief appropriate with respect to the class as a whole.

224. This action is further maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(a) in that:

- (a) The class is so numerous that joinder of all members is impracticable. Thousands of putative members are believed to exist. In the past few years alone, an annual average of approximately 40,000 individuals have taken the CBEST for the first time, 20% of whom were either Latino, African American, or Asian.
- (b) There are questions of law and fact common to the class, such as the legal status of the Defendants as employers under Title VII, the validity of the CBEST, and the existence of equivalent, less-discriminatory alternatives.
- (c) The claims of the representative parties, in as much as they represent individuals who have all been or will be prevented from obtaining their credentials solely based on CBEST scores are typical of the claims of the class.
- (d) The representatives and their attorneys, who are experienced civil rights, education, and employment litigators, will fairly and adequately protect the interests of the class.

COUNT I: TITLE VII

a. Employer Status

225. Defendant STATE OF CALIFORNIA is an "employer" of the aggrieved Plaintiff class of public school credential applicants within the meaning of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., in that, *inter alia*:

226. The State regularly employs fifteen or more persons;

227. The State has established, pursuant to its mandate to provide and govern one common free Public School System, *Cal. Const.* art. IX, §§ 5, 6, 14, the minimum standards for employment in certificated positions in the public schools, §§ 44250 et seq., 44830(a);

228. The State has not established employment standards for non-public schools under the provisions of its credentialing process, see, e.g., §§ 44203(d), 44225(b)(1), 44225(d), 44252(b);

229. The State has, as part of its public school credentialing process, interfered with the Plaintiff class's ability to obtain employment with local public school districts by mandating CBEST passage as a condition of employment, §§ 44252, 44830;

230. The State is authorized to provide, create, and govern one common free Public School System, *Cal. Const.*, art. IX, §§ 5, 6, 14;

231. Pursuant to such authority, the State approves, incorporates, and organizes the formation of local school districts, *Cal. Const.*, art IX, § 14; § 35500 et seq.;

232. The local school districts' governing boards, in all pertinent matters, function as

agents of the principal, the State;

233. The State controls the ability of its agents to hire the Plaintiffs by way of its CBEST requirement and its credentialing process, §§ 44252, 44250 et seq., 44830(a);

234. The State presides over a state-funded school finance system in which the State provides, on average, over two-thirds (approximately 69%) of the total revenues of local school districts;

235. On average, approximately 82% of a California public school district's general fund expenditures are used to pay employee salaries and benefits;

236. The State Legislature has full power to prescribe the terms of employment for teachers and other certificated positions in the public schools;

237. Moreover, local district employment contracts with certificated personnel are expressly subordinate to the State Legislature's control and power to terminate them without any impairment of contract § 44851;

238. Whereas the State delegates its authority to fix and order paid the compensation of certificated personnel to local school districts, § 45022, it continues to impose directly several restrictions on the level of compensation, including a minimum limitation on the salary paid to public school teachers, *Cal. Const.*, art. IX, § 6; a mandate that local districts expend the majority of their current expense of education for teacher salaries, § 41372; and the requirement that salary schedules shall be uniform within districts for public school teaching positions based on a uniform allowance for years of training and years of experience, § 45028;

239. Beyond compensation, the State has decided the classifications of credentials, § 44256, and has specified in often elaborate detail the specific job duties that may accompany each credential, §§ 44258-44258.7;

240. The State also, *inter alia*, regulates the period of the local school district employment contract, § 44929.20, the conditions of permanent status, §§ 44929.21, 44929.22, 44929.23, the possibility or requirement for leaves of absence and personal leaves, § 44963 et seq., the grounds for dismissal, § 44932, and the conditions for renewal of certification to remain employed, §§ 44277, 44270.1;

241. The State, through its Commission on Teacher Credentialing, can suspend or revoke the credentials of public school employees for failure to fulfill a valid local district employment contract without good cause, § 44420;

242. The State, through its Commission on Teacher Credentialing, can suspend or revoke the credentials of public school employees for any other improper conduct during employment or evident unfitness for service, § 44421;

243. The State, through its Commission on Teacher Credentialing, is intimately involved not only with the initial granting of public school teaching credentials, but also with the ongoing support, assessment, credentialing, and employment of certificated public school personnel, § 44225 et seq., § 44279.2 et seq., § 44490 et seq.;

244. The State provides for and regulates collective bargaining between the State and State employees on issues of wages, hours, and other terms and conditions of employment, *Cal. Gov't. Code* § 3512, pursuant to which laws "State employees" expressly include "the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction," *Cal. Gov't Code* § 3513(c);

245. The State has established and administers the State Teacher's Retirement System, § 22001, for the retirement of California public school teachers, under which system the State determines the level of benefits, §§ 22211, 23800 et seq., 24000-24407.5, and the various

contribution rates, §§ 22804, 23400, 23400.1, 23402, 23412, 23413, and into which system the State makes contributions separate and above that contributed by local school districts; and

246. The State, through the State Board of Education and the State Department of Education and by direct mandate, establishes textbooks, *Cal. Const.*, art. IX, § 7.5, curriculum, e.g., §§ 51210, 51220, 51220.1, 51221, 51222, 51226 and graduation requirements, § 51225.3, administers assessments of students, and otherwise significantly controls the daily classroom delivery of educational services.

247. Based on the totality of facts, the State and local school districts comprise a series of integrated educational enterprises with interrelated operations, common management, centralized control of labor relations, and common constitutional and statutory authority for governance;

248. Based on the totality of facts, the State and local school districts concurrently exert significant control over the public school positions which Plaintiffs seek, sharing or codetermining those matters which govern the essential terms and conditions of employment;

249. Defendant CTC is an "employer" of the aggrieved Plaintiff class of public school credential applicants within the meaning of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., in that the Defendant CTC regularly employs fifteen or more persons and has acted and continues to act as an "agent" of the employer, Defendant STATE OF CALIFORNIA, in its development and administration of the CBEST and its denial of public school credentials to the Plaintiff class.

250. Defendant CTC is itself, independently, an "employer" of the aggrieved Plaintiff class of public school credential applicants within the meaning of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., in that the Defendant CTC regularly

employs fifteen or more persons and has interfered with the Plaintiffs' ability to obtain employment with local public school districts by way of its development and administration of the CBEST, § 44252.5, and its refusal to grant public school credentials to the Plaintiff class, § 44250 et seq.; see also § 44225(m).

b. Liability

251. The Defendants practice of requiring Plaintiffs to pass the CBEST in order to obtain their credentials or to obtain reauthorization to work in certificated positions has prevented Plaintiffs from obtaining said credentials and certificated positions and, thereby, from securing the positions of employment in the Defendant State of California's schools for which they are otherwise qualified, together with all the rights and benefits attached thereto.

252. This practice of the Defendants has a disparate impact on the Plaintiff class of African American, Asian, and Latino applicants insofar as members of these racial minorities disproportionately fail the CBEST vis-à-vis white applicants. The CBEST, from its inception to the present, has had a disparate impact on racial minorities. Whites have passed the CBEST at a rate of 80%, while the pass rates for African Americans, Latinos, and Asians have been only 35%, 51%, and 59%, respectively.

253. Defendants' use of the CBEST is not justified by any business necessity as neither the overall test content nor the test's particular passing scores have ever been validated as job-related in accordance with the Uniform Guidelines on Employee Selection Procedure and prevailing professional standards.

254. Moreover, alternative, less discriminatory measures exist by which the Defendants can ensure that Plaintiffs possess the requisite, job-related levels of reading, writing, and math

skills. Defendants' failure to adopt any of these measures, regardless of the test's validity, itself violates Title VII.

255. Defendants' discriminatory actions against Plaintiffs, as alleged above, constitute unlawful discrimination in employment on the basis of race, in violation of 42 U.S.C. § 2000e-2.

256. As a proximate result of the Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and certificated positions, and, thereby, from securing employment in the public schools for which they are otherwise fully qualified.

257. Because the credentials and certificated positions sought by Plaintiffs cannot be secured absent injunctive relief, no adequate remedy exists at law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be unable to obtain employment in the one common Public School System in positions for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

COUNT II: TITLE VI

258. The Defendants are subject to suit under Title VI of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000d et seq., insofar as they control or themselves represent a "program or activity" within the meaning of the Act.

259. Plaintiffs are informed and believe, and on that basis further allege, that the

Defendant STATE OF CALIFORNIA receives federal financial assistance for the operation of its Public School System through the State Department of Education, which assistance is thereupon distributed by the State Department of Education to local school districts.

260. Plaintiffs are informed and believe, and on that basis further allege, that the Defendant CTC receives federal financial assistance.

261. Defendants have instituted, developed, and administered the CBEST as part of the State credentialing process through which the Defendants determine and administer the minimum standards for obtaining public school credential positions.

262. The Defendants' practice of requiring Plaintiffs to pass the CBEST in order to obtain their credentials or to obtain reauthorization to work in certificated positions has prevented Plaintiffs from obtaining said credentials and certificated positions for which they are otherwise fully qualified, together with all the rights and benefits attached thereto.

263. This practice of the Defendants has a disparate impact on the Plaintiff class of African American, Asian, and Latino applicants insofar as members of these racial minorities disproportionately fail the CBEST vis-à-vis white credential applicants. The CBEST, from its inception to the present, has had a disparate impact on racial minorities. Whites have passed the CBEST at a rate of 80%, while the pass rates for African Americans, Latinos, and Asians have been only 35%, 51%, and 59%, respectively.

264. Defendants' use of the CBEST is not justified by any educational necessity as neither the overall test content nor the test's particular passing scores have ever been validated as job-related in accordance with the Uniform Guidelines on Employee Selection Procedure and prevailing professional standards.

265. Moreover, alternative, less discriminatory measures exist by which the Defendants

can ensure Plaintiffs possess the requisite, job-related levels of reading, writing, and math skills. Defendants' failure to adopt any of these measures, regardless of the test's validity, itself violates Title VI.

266. Defendants' discriminatory actions against Plaintiffs, as alleged in Count II, constitute unlawful discrimination on the basis of race, in violation of 42 U.S.C. § 2000d et seq. and the regulations promulgated thereunder.

267. As a proximate result of the Defendants' discriminatory actions against Plaintiffs, as alleged in Count II, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and authorization to work in certificated positions from the Defendants, and, thereby, from participating in the Public School System in a manner for which they are otherwise fully qualified.

268. Because the credentials and certificated positions sought by Plaintiffs cannot be secured absent injunctive relief, no adequate remedy exists at law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be unable to obtain positions in the one common Public School System for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

COUNT III: 42 U.S.C. § 1988

269. Plaintiffs refer to Paragraphs 258 to 268, inclusive, of Count II above and incorporate them herein by reference.

270. In discriminating against Plaintiffs under Title VI of the 1964 Civil Rights Act, as amended, Defendants have violated the Plaintiffs' civil rights and are liable for the attorneys' fees and experts' fees incurred in vindicating said rights pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For injunctive relief prohibiting the Defendants from denying any of the individual Plaintiffs, members of the Plaintiff organizations, or members of the Plaintiff class a California public school credential or authorization to teach in a California public school certificated position due to California Basic Educational Skills Test results;
2. For reasonable attorneys' and experts' fees pursuant to 42 U.S.C. § 2000e et seq. and 42 U.S.C. § 1988;
3. For the costs of the suit herein incurred; and
4. For such other relief as the Plaintiffs are entitled and the Court deems proper.

Dated:

Attorneys for Plaintiffs
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