Case No. A173289

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION TWO

SAM CLEARE, SARAH KINCAID, JEREMIAH ROMM, AND HILDA CRISTINA HUERTA

Appellants and Petitioners

vs.

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, KENNETH CHRIS HURST, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, JAMELA SMITH-FOLDS, DEMETRIO GONZALEZ HOY, OTHEREE CHRISTIAN, AND LESLIE RECKLER

Appellees and Respondents

On Appeal From the Superior Court for the State of California, County of Contra Costa, Case No. N24-1353
Hon. Benjamin T. Reyes II
Hon. Terri Mockler

AMICUS BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA AND RYSE SUPPORTING APPELLANTS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with California Rules of Court, rule 8.208, Amici Curiae American Civil Liberties Union of Southern California and RYSE hereby respectfully submit their Certificate of Interested Entities or Persons.

Amici know of no entity or person that must be listed under rule 8.208, subd. (e)(1) or subd. (e)(2).

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I. INTRODUCTION

Williams v. State of California (Super. Ct. San Francisco, No. CGC-00-312236) was based on the landmark precedent of *Butt v. State of California* (1992) 4 Cal.4th 668. In *Butt*, the Supreme Court found that the predecessor school district to Appellee West Contra Costa Unified School District ("WCCUSD" or the "District") was unable to pay its bills. Yet that impossibility did not result in denial of a remedy. To the contrary, *Butt* recognized that when the fundamental right to an education is at stake, school districts must provide a remedy, by calling upon the State if necessary; and the State must respond to such a call. If the district has truly exhausted its own efforts and cannot remedy deficiencies, the State must step in to ensure the fundamental education right is protected. 4 Cal. 4th 691-692. Providing students with effective and credentialed teachers is not optional—even when it is challenging.

The settlement in the *Williams* case included the enactment of five statutes. They created a statutory scheme, including Section 35186 of the Education Code, that is consistent with the Supreme Court's holding in *Butt*. Minimum requisites to avoid educational "deficiencies" are stated, and "[t]he principal

or designee of the district superintendent shall remedy a valid complaint within a reasonable time period . . . ." Section 35186(b).

The Legislature created no impossibility exception in Section 35186. "[S]hall remedy a valid complaint" is mandatory language. Just as important, school districts have a fundamental obligation to remedy deficiencies within their own powers, and to involve the State if deficiencies persist, to ensure that schools are equal with respect to prevailing statewide standards. As in *Butt*, a school district that truly cannot remedy an educational deficiency on its own must seek help from the State, and the State must intervene, to meet these minimum thresholds for a quality public education. Failure to exhaust its own remedial capacities and failure to seek State help cannot be deemed to excuse the deficiency on grounds of "impossibility."

History echoes here: WCCUSD isthe same district the Supreme Court found to be violating students' rights in *Butt*, and the District (and Helms Middle School in particular) were a subject of the complaint and a key source of evidence of the constitutional deficiencies in *Williams*. In this most recent case, the District presented broad and conclusory statements about the

unwillingness of teachers to fill vacancies in the three schools at issue, although the District had identified personnel to do so; the record indicates that the District relied on its own judgments about what the Commission on Teacher Credentialing (CTC) would do rather than seeking waivers that would, if granted, have allowed identified personnel to fill vacancies.

To accept the purported impossibility defense here would defy both the explicit language of the *Williams* settlement statutes and the logic of the statutory scheme in view of its background. It would undermine the purpose and effectiveness of the statutes and create a broad exception, when the Legislature never intended one. And it would present the courts and the parties with a choice that the *Williams* statutes were intended to avoid: to litigate claims of constitutional violation involving this District again — for the third time.

For these reasons Amici respectfully request that the Court reverse and remand for a new trial as requested by Appellants.

II. INTEREST OF THE AMICI

The ACLU of Southern California ("ACLU SoCal") has spent decades advocating for education equity, including ensuring the equal treatment of students in California's

education system based on protected characteristics, such as race, wealth, sexual orientation, gender identity, immigration status, and others. ACLU SoCal served as co-lead counsel in the *Williams* case.

In addition, ACLU SoCal litigated *Smith v. LAUSD* CV (C.D. Cal. 1996, No. 93-7044 LEW) which challenged Los Angeles Unified School District's ("LAUSD") failure to provide adequate special education services for students with disabilities; *Daniel v. Californ*ia (Super. Ct. Los Angeles 1999, No. BC214156), which challenged students' lack of access to Advancement Placement courses in Inglewood and *Kern Unified School Districts; Casey A. v. Gundry* (C.D. Cal. 2010, No. CV 10-00192 GHK), which challenged deficient education and conditions in Los Angeles County's largest juvenile probation facility; *DJ v. California*, (Super. Ct. Los Angeles 2013, No. BS142775), which challenged the state's failure to ensure that English learners received sufficient English language instructional services; *Cmty. Coal. v. LAUSD* (Super. Ct. Los Angeles 2015, No.), which challenged LAUSD's failure to provide sufficient targeted services for low-income students, English learners, and foster youth as required by the Local Control Funding Formula, and *Mark S. v. Pittsburg*

Unified School District (Super. Ct. Contra Costa 2021, No. 21-1755), which challenged the practice of placing Black students, children of color with disabilities and English learners in substandard learning environments and imposing disproportionate discipline on them.

RYSE is a nonprofit organization located in Richmond, California, within the bounds of WCCUSD. RYSE is dedicated to the interests of local youth. RYSE youth members currently go to the District's schools, RYSE staff members attended these schools, and RYSE staff members' children have attended these schools. RYSE operates a formal youth emergency fund supporting young people with food, housing, health, education, and career supports, and other assistance for young people including students in the District's public schools. RYSE's office is located within one mile of Kennedy High School, one of the three schools specifically at issue. RYSE operates comprehensive programming specifically for Kennedy High School students and feeder middle schools.

RYSE has publicly voiced its support for the *Cleare v. West Contra Costa Unified School District* litigation because it addresses chronic denials of students' fundamental right to a quality education at Stege Elementary School, Helms Middle School, and Kennedy High

School. The deficiencies at those schools harm young people that RYSE has been supporting over the past two decades.

RYSE's founding organization, Youth Together, and its Co-Founder and current Executive Director, Kimberly Aceves-Iñiguez, mobilized youth across the Bay Area, including in West Contra Costa, in supporting and providing evidence for the original *Williams* case from 2002 until the case settled; and promoted compliance with the settlement thereafter.

Jack W. Londen, one of the undersigned counsel, was co-lead counsel in *Williams*. Together with Petitioners' counsel, John Affeldt of Public Advocates, he participated personally in all settlement negotiations over a period of months in 2002-2005, and in the drafting of settlement documents including the proposed statutes. Mr. Londen presented the proposed settlement to the court for approval, which the court granted on March 23, 2005.

III. THE *WILLIAMS* CASE AND SETTLEMENT, AND ITS CONSTITUTIONAL ANTECEDENTS

Interpretation of the statutes enacted as part of the *Williams* settlement must consider their genesis in the decisions of the California Supreme Court regarding equality of educational opportunity.

Butt v. State of California applied and extended the recognition of

education as a fundamental right in *Serrano v. Priest* (1971) 5 Cal. 3d 584. In *Butt*, the Richmond Unified School District — predecessor of Appellee West Contra Cost Unified School District — announced in April 1991 that it had exhausted its funds and would close six weeks early on May 1, 1991. The District had sought help from the State and had been rebuffed. "[T]he District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy." 4 Cal. 4th 673, 675. The State contended that it had no duty to step in where a school district failed to meet "prevailing statewide standards . . . ." 4 Cal. 4th at 679, even if the cause was local mismanagement.

The Supreme Court held that under the California Constitution, "the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." 4 Cal. 4th at 685. The Court ordered the State to extend the requested loan even though, as the State argued, "the cause was local mismanagement." 4 Cal. 4th at 679. In a case where educational deficiencies arise notwithstanding reasonable school district management, *Butt* stands at least as strongly for the proposition that the State must help remedy important deficiencies.

Clearly implicit, as well, is that a school district, after exhausting local options, must seek the State's help.

The *Williams* case arose directly from *Butt*. The plaintiffs in *Williams* contended that since missing the final six weeks of a school year violates students' rights and compels the State to provide a remedy, so does attending schools year-round that lack permanent qualified teachers, current books, and decent, safe classrooms and facilities. The amended complaint stated:

> The California Constitution locates responsibility for providing education to all of California's children, together with the responsibility to ensure basic educational equality, in one place: the State itself. The State's delegation of much of its responsibility to local school districts cannot elide the State's ultimate responsibility to ensure that all California public school children receive a basic education. That delegation is "not a constitutional mandate, but a legislative choice." *Butt v. State of California*, 4 Cal. 4th 668, 688 (1992). The State's ultimate responsibility, by contrast, is constitutionally mandated.

Williams Amended Complaint at 7.[1]

As part of the requirements of the *Williams* settlement, the State enacted five statutes, including Education Code Section 35186. (Declaration of Jack W. Londen in Support of Plaintiff's Motion for Approval of Settlement, paragraph 15 and exhibits thereto.[2]) Uncodified Section 25 of Senate Bill 550, which enacted Section 35186,

[1] Available at https://decentschools.org/court_papers.php .
[2] Available at https://decentschools.org/settlement/LondenDeclFinAppSA.pdf .

stated:

> It is the intent of the Legislature to memorialize and to implement the State of California's settlement agreement in the case of *Williams v. California* (Super. Ct. San Francisco, No. CGC-00-312236) and that the provisions of law added or modified by this act be substantially preserved as a matter of state policy in settlement of this case.

(Senate Bill 550, Chapter 900, Section 25 (2003-2004);[3] also Londen Decl., Exh. C at page 46.) The statutes stated recognized certain "minimum thresholds" to capture prevailing statewide standards. The three types of deficiencies that had been demonstrated in many districts (including this one) — as to teachers, instructional materials, and the safety and decency of physical facilities — were addressed by minimum thresholds stated in the new Section 35186. About those thresholds, Senate Bill 550 stated:

> Further, it is the intent of the Governor and the Legislature in enacting this act to establish these **minimum thresholds for teacher quality**, instructional materials, and school facilities. The Legislature finds and the Governor agrees that **these minimum thresholds are essential in order to ensure that all of California's public school pupils have access to the basic elements of a quality public education.** However, these minimum thresholds in no way reflect the full extent of the Legislature's and the Governor's expectations of what California's public schools are capable of achieving. Instead, **these thresholds for teacher quality, instructional materials, and school facilities are intended by the Legislature and by the Governor to be a floor, rather than a ceiling, and a beginning, not an end**, to the State of California's commitment

[3] Available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB550

> and effort to ensure that all California school pupils have access to the basic elements of a quality public education**.**

(*Id*. (emphasis added).)

The Legislative Counsel's Digest to Senate Bill 550 stated:

> **This bill would require a school district to** use its uniform complaint process to help identify and **resolve any deficiencies related to** instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and **teacher vacancy or misassignment.**

(Londen Decl, Exh. C at page 4 (emphasis added).)

In short, the Section 35186 standards were instituted to hold school districts to account by making the existence of deficiencies clear, requiring remedies by the district to valid complaints about such deficiencies, and ensuring the State learns of important deficiencies so that it can bring to bear oversight and remedial measures where necessary.

IV. FACED WITH A SECTION 35186 DEFICIENCY, A SCHOOL DISTRICT MUST EXHAUST ITS OWN REMEDIAL OPTIONS AND THEN SEEK STATE HELP IF NECESSARY.

The District concedes, and the trial court found, that the District continues to fail to remedy deficiencies according to the *Williams* standards with regard to teacher qualifications.

The first obligation of a school district facing deficiencies as the Section 35186 standards is to use its own means to provide a remedy.

This brief will not undertake to argue the remedial options that were available to the District itself. We note, however, that the District uses conclusory language that invokes the unwillingness of teachers to work in disadvantaged schools. For example, the District's brief says:

> As Appellants have pointed out, the vast majority of the District's students, especially at Stege, Helms, and Kennedy, are students of color and/or from low-income communities. . . . As such, according to the CDE, it is even more difficult for the District to hire teachers, as compared to other central and east county school districts.

(Respondents' Brief at 65.) This difficulty cannot be accepted, in light of *Butt*, as the basis for finding it impossible to remedy educational deficiencies. To do so would abrogate the fundamental duty of school districts and the State that the same prevailing standards must be met in all California schools, disadvantaged or not.

Even if the District's contention that it had done all it could to hire and assign certified teachers here were true, it could not rely on a purported impossibility defense given its failure to seek State help for its deficiencies. Instead of seeking help from the CTC the District decided for itself not to seek waivers for candidate teachers it had identified.[4]

The District acknowledges that waivers from the CTC could have

[4] *See* 2 AA280-AA282: Johnson deposition;-2 AA435-437 Respondents' Opp to motion for new trial; 2 AA445: Johnson Dec ISO Opp to motion for new trial.

addressed the teacher certification deficiencies. Any suggestion that credential waivers would not have provided help for the students misses the point that waivers bring to bear additional State oversight and supervision to schools that cannot hire fully credentialed teachers and additional requirements that waivered teachers be more closely supervised and supported by district applicants. A systemic problem that *Williams* addressed was the absence of information and oversight mechanisms for the State to learn about and correct deficiencies that school districts, left to their own devices, can fail to remedy for extended time periods. The statutes enacted as part of the settlement should be interpreted to accomplish that goal. Even assuming, arguendo, that an "impossibility" exception existed, this history should preclude importing an impossibility exception when a district decides on its own that no help from the State would be available to remedy a deficiency. *Butt* shows that a school district must seek the State's help with deficiencies before deciding that its circumstances are impossible to improve.

This Court may not need to decide whether the equitable maxim of Civil Code Section 3531, that "[t]he law never requires impossibilities," could ever apply to remedies for educational deficiencies. It would clearly be wrong as a matter of law for a school

district to invoke that maxim without asking the State for help for a deficiency that the State would have been duty-bound to remedy if a school district could not.

The District argues that regulations and a handbook statement would have prevented the CTC from granting waivers if they had been requested. But CTC's waiver provision is more than broad enough. "The commission may grant a waiver upon finding that . . . a waiver is necessary to accomplish any of the following: . . . (E) Provide other temporary exemptions when deemed appropriate by the commission.") Education Code Section 44225(m)(1)(E).

The District cites 5 CCR Sections 80120 and 80122 as imposing requirements that preclude the CTC from granting waivers. To begin with, the contention that regulations could impose requirements foreclosing "temporary exemptions when deemed appropriate by the commission" would render that statutory provision a nullity. If the regulations did have this implication, the regulations would not be enforceable:

> [A] regulation is not valid or effective unless it is consistent with and not in conflict with the enabling statute and the regulation is reasonably necessary to effectuate the purpose of the statute. (Gov. Code, § 11342.2.) A regulation conflicts with the statute if it would "'alter or amend the [governing] statutes or enlarge or restrict the agency's statutory power.'"

California Teachers Association v. California Commission On Teacher Credentialing (2003) 111 Cal. App. 4th 1001, 1010-1011. This principle applies with even more force to a "handbook."

Further, Defendants overstate the requirements of the regulations they cite. Section 80120 describes circumstances in which variable waivers will be granted without saying no waivers can be granted on other grounds, and without describing further the criteria for "[o]ther temporary waivers granted at the discretion of the Commission." 5 CCR Section 80120(b)(4). Notably, the basis for granting waivers under this Section is not limited, as Defendants impossibility argument asserts, to requiring and permitting candidates extra time to complete credential requirements. There exists broad authority as well to grant temporary discretionary waivers in order "to provide employing agencies time to fill the assignment" with a different, properly certified individual. 5 CCR Section 80120(b).

V. CONCLUSION

Amici care about the quality of K though 12 public education in West Contra Costa Unified School District and have been working to support students there for decades. The *Williams* settlement statutes define minimum standards for teacher qualifications and state that a school district *shall*

remedy deficiencies. Most fundamentally, because the Williams settlement and laws protect the basic educational equality guaranteed by the California Constitution, neither school districts nor the State may choose to ignore the teacher requirements they incorporate by consistently staffing classrooms with unqualified teachers—not even when meeting the requirements is difficult.

Further, the conclusion that it would be "impossible" for the District to do better must be rejected here because the District has not exhausted its own capacity nor has it informed the State of the unremedied deficiencies and requested its help. It is not sufficient that the District has tried other approaches for other vacancies, or that it has concluded, without asking the State, that no help is available. Districts must be compelled to remedy the deficiencies within their power to do so. If ever local options were truly exhausted, ultimately the State is responsible for achieving prevailing statewide standards at every school; and the State must be told when that is not happening and asked to do its duty. Ultimately, the District and State must work together to provide its students with the consistent and qualified teachers they deserve.

Because the trial court misconstrued the applicable law, its judgment should be reversed.

Respectfully submitted,

DATED: September 22, 2025

By: */s/ Jack W. Londen*
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CERTIFICATE OF WORD COUNT COMPLIANCE

In accordance with California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 3,122 words as established by the word count of the computer program (Microsoft Word) used for preparation of this brief. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 13-point size Century Schoolbook font.

/s/Jack W. Londen
Jack W. Londen

Re: *CLEARE, et al. v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT. et al.*
Court of Appeal Case No. A173289

PROOF OF SERVICE

I, the undersigned, declare that I am employed with the law firm of Morrison & Foerster LLP in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within cause. My business address is 425 Market Street, San Francisco, CA 94105-2482.

On September 22, 2025, I served the following documents:

1. APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA AND RYSE TO FILE AMICUS CURIAE BRIEF SUPPORTING APPELLANTS

2. AMICUS BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA AND RYSE SUPPORTING APPELLANTS APPELLANTS' OPENING BRIEF

on the following interested party(s) in said cause:

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Trial Court [Unbound Brief Only Via U.S. Mail]

Clerk of the Superior Court for the State of California
County of Contra Costa
The Honorable Benjamin T. Reyes II
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BY MAIL [CCP §§ 1013(a), 2015.5]: By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service with postage thereon fully prepaid, that same day in the ordinary course of business.

BY ELECTRONIC MAIL TRANSMISSION [CCP §1010.6]: By electronic transmission via email to the authorized electronic service address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2025, at San Francisco, California.

Gina L. Gerrish
GINA L. GERRISH