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**RECEIVED** THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA.

IN RE: ... )  
EMPLOYMENT DISCRIMINATION )  
LITIGATION AGAINST THE STATE )  
OF ALABAMA, et al: )  
) )  
) )  
EUGENE CRUM, JR., et al., )  
) )  
Plaintiffs, )  
v. )  
) )  
) )  
STATE OF ALABAMA, et al. )  
) )  
Defendants. )

CIVIL ACTION NO. 94-T-356-N

**MOTION FOR CERTIFICATION OF A PLAINTIFF CLASS**

Come now the plaintiffs and move, on behalf of themselves and the putative class they seek to represent, for certification of the following class pursuant to Fed. Rule of Civil Procedure 23(b)(2):

All African-Americans who applied for employment opportunities with the State of Alabama, or would have applied for such opportunities in the absence of the racial discrimination challenged in defendants' selection procedure.

As grounds for class certification, the plaintiffs state as follows:

1. The State of Alabama and its various subordinate agencies and departments utilize a common selection procedure administered and overseen by the State of Alabama Personnel Department and Board ("SPD"), as the agent of all such agencies and departments. *See, Powers v.*

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*Alabama Dept. of Education*, 854 F.2d 1285, 1294 (11th Cir.), *cert denied*, 109 S.Ct. 3158 (1988)(Holding State of Alabama departments to be liable for the acts of the SPD because "an employer cannot delegate several aspects of its promotion procedure to another agency such as SPD and then escape liability if that agency develops discriminatory practices."); *Williams v. City of Montgomery*, 742 F.2d 586, 589 (11th Cir. 1984). This selection procedure includes a common recruitment, examination, and certification process pursuant to which SPD administers the recruitment of potential applicants, the receipt of applications on a single interdepartmental application form, the determination and approval of exam eligibility requirements, the simultaneous screening of applications received to determine if the applicant is "qualified" for the classification and "eligible" for the examination, the administration of common examinations to form common registers from which all departments and agencies draw candidates through the issuance of certificates of eligibles, the certification of eligibles to departments for consideration, and the review and approval of the appointments made from such certificates of eligibles. As will be established at the evidentiary hearing on class certification, the experience of the class representatives with this joint, interdepartmental selection procedure is typical of the experiences of the entire class.

2. As a part of their individual and class claims, the plaintiffs challenge systemic discrimination in the administration of this selection procedure which is common to all defendants. The remedies sought in this case will require structural modifications to this common selection procedure.

3. The modifications to the challenged selection procedure which are sought in this action should not be entered piecemeal against only certain departments or agencies, creating a multitude of different merit systems which vary from one department or agency of the State of Alabama to

another.

4. The common claim against the defendants' selection procedure is that it disproportionately eliminates African-Americans at each of its stages. The aspects of the selection procedure that are challenged by the named plaintiffs/class representatives in their individual claims and in the claims brought on behalf of the putative class fall into three principal categories: (a) recruitment and exam eligibility practices which disproportionately exclude African-American eligibles from examinations and placement on State Merit System registers; (b) examinations which unnecessarily disadvantage the scores, and thus ranks, of African-Americans on such registers; and (c) manipulation of the registers and certificates of eligibles to avoid or disadvantage African-Americans in the certification and appointment phase of the selection procedure.

5. The individual claims of the named plaintiffs/class representatives are embedded in this systemic claim brought against the defendants' common selection procedure. Plaintiffs will establish at the class certification hearing that the class representatives have been injured and adversely affected by the selection procedure in the same ways as the putative class and thus, have claims that are typical of those of the class. The class representatives include a cross-section of the putative class who have no conflicts of interest and can provide adequate representation through counsel who have successfully prosecuted similar class actions for many years. The named plaintiffs and class representatives seek the same relief for themselves as they do for the putative class.

6. The putative class, which numbers over 90,000 members, is too numerous to join and seeks only equitable relief, satisfying numerosity and making certification under Rule 23(b)(2) appropriate.

7. The selection procedure challenged in this matter is common to all State of Alabama

Merit System job classifications regardless of the department or agency involved and will involve a common method of proof and evidence at trial regarding whether such procedure is racially discriminatory, both as to the putative class and the individual class representatives.

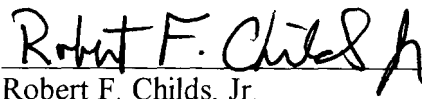
8. Denial of class certification will result in a multiplicity of separate trials challenging this common selection procedure, but in the less efficient context of individual fact situations and individualized efforts to establish liability regarding particular plaintiffs. Such a series of individual trials would have no preclusive effect on one another insofar as the plaintiffs in such separate cases are concerned.

9. Absent class certification, the issue of Title VII liability will have to be repeatedly re-litigated in a series of hundreds of individual lawsuits involving the same type of systemic discrimination as raised by the plaintiffs in this action.

10. A single class-wide trial is clearly a more economical and effective means of resolving the systemic claims brought against the defendants' common selection procedure in this case.

WHEREFORE, premises considered, the plaintiffs would move this Honorable Court to certify the class sought herein.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by placing same in the United States Mail, properly addressed and first class postage prepaid, on this the 17<sup>th</sup> day of March, 2003, on the following:

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