



Office of the City Attorney

February 18, 2022

Chief Justice Tani G. Cantil-Sakauye and  
Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Supreme Court Case No. S273160: Amicus Curiae Letter in Support of Petition for Review in *Save Berkeley's Neighborhoods v. The Regents of the University of California (American Campus Communities)*

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, the City of Berkeley respectfully requests that the Supreme Court grant the Petition for Review of Order Denying Petition for Writ of Supersedeas and Request for Immediate Stay filed in *Save Berkeley's Neighborhoods v. The Regents of the University of California (American Campus Communities)*, Supreme Court Case No. S273160.

The Petition seeks a stay of the judgment in this case, which prohibited Petitioner The Regents of the University of California ("the Regents") from enrolling more students in 2022-2023 than were enrolled in 2020-2021. Because the 2020-2021 school year had abnormally low enrollment due to the pandemic, the result of this judgment would be to deny more than 5,000 qualified students the opportunity to attend University of California, Berkeley ("UC Berkeley") this fall. As the Petition states, this result would impose significant, irreparable harm, not only on the students who will be denied attendance at UC Berkeley, but also on the broader Berkeley community and local economy. For this reason, the City of Berkeley urges the Court to grant the Petition for Review and Request for Immediate Stay.

## **I. Statement of Interest of Amicus Curiae**

The City of Berkeley is a charter city duly organized and existing under Government Code sections 34000, et seq., and is the home of UC Berkeley. In 2019, the City, like Respondent Save Berkeley's Neighborhoods ("SBN"), filed suit against the Regents, challenging their approval of the Upper Hearst Development for the Goldman

School of Public Policy (“GSPP Project” or “Project”) on the UC Berkeley campus. The basis for this lawsuit was the City’s claim that the Regents had failed to adequately analyze the potential environmental impacts of the Project under the California Environmental Quality Act (“CEQA”, Pub. Resources Code, § 21000 et seq.). The City’s case was related to the SBN case that is at issue in this Petition.

After briefing, hearing, and entry of the trial court’s order granting the City and SBN’s petitions for writ of mandate, but before entry of final judgment, the City and the Regents reached a settlement agreement, which provided the City with increased funding for City services, among other terms. Thus, while the City was involved in the underlying litigation, it dismissed its case pursuant to the settlement and was not subject to the judgment at issue here. Moreover, prior to settling, the City never sought an enrollment cap as a remedy for its CEQA claims.

The City is concerned that without review and an immediate stay by this Court, there will be irreparable harm to more than 5,000 qualified students who will not be able to attend UC Berkeley this fall, as well as to the broader Berkeley community and local economy.

**II. Review and an immediate stay by this Court are warranted to prevent the Regents from having to deny more than 5,000 qualified students’ admission to UC Berkeley in the fall and to prevent the resulting harm to the broader Berkeley community and local economy.**

In considering whether to grant review and an immediate stay, this Court considers not only the legal issues at stake, but also the balance of harms resulting from granting or denying the stay. Code of Civ. Procedure § 923; *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1050 (considering merits of appeal and balancing harms to parties). In this case, the City of Berkeley agrees with the Regents that capping enrollment at 2020-2021 levels for the 2022-2023 school year would irreparably harm not only the more than 5,000 students who will be denied admission to UC Berkeley, but also the larger City community and local economy.

The enrollment cap and corresponding \$57 million tuition shortfall also would negatively affect the broader Berkeley community and local economy. As one example, the City’s revenues from its sales and use tax and hotel occupancy tax are likely to decline due to decreased patronage of local businesses by students and their families. Additionally, Berkeley residents would be impacted to the extent that the tuition shortfall would result in decreased funding for maintenance of grounds and facilities within the City but controlled by UC Berkeley.

Further, UC Berkeley students represent an important source of paid and volunteer labor for various arms of the government, Berkeley businesses, non-profits,

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public schools, volunteer organizations, and other entities. In the currently tight labor market, a decrease in students is likely to exacerbate shortages in the labor pool.

In addition, Berkeley is the base for both start-up and well-established companies that foster technological progress, and these companies regularly hire Berkeley students and graduates, either as employees or interns. A reduction in the student population and their attendant intellectual capital would represent lost opportunities for innovation.

For all of these reasons, the City supports the Regents' Petition for Review and Request for Immediate Stay. Thank you for your consideration of our views.

Very truly yours,

/s/ Farimah Faiz Brown

Farimah Faiz Brown  
City Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, I electronically filed the following document(s): **AMICUS CURIAE LETTER** using the TrueFiling system designated by the California Supreme Court. The TrueFiling system will provide service of such filing(s) via Notice of Electronic Filing (NEF) to the following NEF parties:

<b>Party</b>	<b>Attorney</b>
Save Berkeley's Neighborhoods : Plaintiff and Appellant	Thomas N. Lippe Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Floor San Francisco, CA 94105 Email: <a href="mailto:Lippelaw@sonic.net">Lippelaw@sonic.net</a>  Timothy D. Cremin Amrit Kulkarni Meyers Nave Riback Silver & Wilson 1999 Harrison Street, 9th Floor Oakland, CA 94612 Email: <a href="mailto:tcremin@meyersnave.com">tcremin@meyersnave.com</a> ; <a href="mailto:akulkarni@meyersnave.com">akulkarni@meyersnave.com</a>
City of Berkeley : Plaintiff and Appellant	Robert Perlmutter Winter King Mindy Jian Shute, Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 Emails: <a href="mailto:perlmutter@smwlaw.com">perlmutter@smwlaw.com</a> ; <a href="mailto:King@smwlaw.com">King@smwlaw.com</a> ; <a href="mailto:mjian@smwlaw.com">mjian@smwlaw.com</a>
The Regents of the University of California : Defendant and Appellant	Alison L. Krumbein Office of the General Counsel - University of California 1111 Franklin Street, 8th Floor Oakland, CA 94607-5201 Email: <a href="mailto:alison.krumbein@ucop.edu">alison.krumbein@ucop.edu</a>  David M. Robinson UC Berkeley, Office of Legal Affairs 200 California Hall, #1500 Berkeley, CA 94720 Email: <a href="mailto:dmrobinson@berkeley.edu">dmrobinson@berkeley.edu</a>

<b>Party</b>	<b>Attorney</b>
	<p>Philip J. Sciranka            Carolyn J. Lee            Lubin Olson &amp; Niewiadomski            600 Montgomery Street, 14th Floor            San Francisco, CA 94111            Email: <a href="mailto:psciranka@lubinolson.com">psciranka@lubinolson.com</a>; <a href="mailto:cllee@lubinolson.com">cllee@lubinolson.com</a></p> <p>Nicole H. Gordon            The Sohagi Law Group, PLC            11999 San Vicente Boulevard, Suite 150            Los Angeles, CA 90049            Email: <a href="mailto:ngordon@sohagi.com">ngordon@sohagi.com</a></p>
<p>American Campus Communities:            Real Party in Interest and            Respondent</p>	<p>Deborah E. Quick            Phillip J. Wiese            Morgan Lewis &amp; Bockius LLP            One Market Spear Street Tower            San Francisco, CA 94105            Email: <a href="mailto:deborah.quick@morganlewis.com">deborah.quick@morganlewis.com</a>;</p>
<p>Collegiate Housing Foundation :            Real Party in Interest and            Respondent</p>	<p>Amanda Monchamp            Robert Taboada            Monchamp Meldrum LLP            50 Francisco Street, Suite 450            San Francisco, CA 94133            Email: <a href="mailto:amonchamp@mlandlaw.com">amonchamp@mlandlaw.com</a></p>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 18, 2022, at Berkeley, California.

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 /s/ Ramonda Clarke  
 Ramonda Clarke

Document received by the CA Supreme Court.