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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 COUNTY OF SANTA CLARA,
15 Plaintiff,

16 vs.

17 DONALD J. TRUMP, et al.,
18 Defendants.

No.: 17-cv-00574-WHO

Action Filed: February 3, 2017

19 CITY AND COUNTY OF SAN FRANCISCO,
20 Plaintiff,

21 vs.

22 DONALD J. TRUMP, et al.,
23 Defendants.

No. 17-cv-00485-WHO

Action Filed: January 31, 2017

**CALIFORNIA COMMUNITY COLLEGES'
[PROPOSED] BRIEF AMICUS CURIAE IN
SUPPORT OF PLAINTIFFS' MOTIONS
FOR SUMMARY JUDGMENT**

Hearing:

Date: October 18, 2017

Time: 2:00 p.m.

Courtroom: 2

(The Honorable William Orrick)

Trial Date: April 23, 2018

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(2006), p. 7 4, 5

20 U.S.C. § 1232g 5

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1 **INTRODUCTION**

2 This case arises from efforts by the current presidential administration to coerce local
3 participation in federal immigration enforcement. In considering the issues, it is imperative that the
4 Court also weigh the impact of a decision on similarly-situated organizations and institutions as well as
5 the broader society.

6 Prior to entry of the preliminary injunction, the executive order at issue in this case had
7 already spread fear among a valued and significant segment of the California community college
8 community. Amici have attempted to reassure the undocumented members of their communities that
9 they will support them, but it is impossible to know how many students have been discouraged from
10 enrolling or coming to class because of the Order. Amici are also keenly aware that they are potential
11 targets for federal authorities to expand their efforts in forced collaboration. Indeed, just a few months
12 ago, the President's displeasure with events at UC Berkeley led him to threaten withdrawal of funds.¹
13 It is extraordinarily difficult to do the work of higher education and to help students succeed in such a
14 climate of fear and uncertainty. Thus, the chilling effects of Executive Order 13768 on the exercise of
15 First Amendment rights in the community colleges are real. Amici therefore embrace the arguments
16 and concerns raised by the plaintiffs and also present for the Court's consideration the particular and
17 profound threat that the government's position at issue here poses to the vitality and effectiveness of
18 higher education.

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26 ¹ See Susan Svrluga, *Trump threatens UC-Berkeley's funding after violent protests shut down a*
27 *speaker*, WASH. POST, February 2, 2017, available at https://www.washingtonpost.com/local/education/trump-threatens-uc-berkeleys-funding-after-violent-protests-shut-down-a-speaker/2017/02/02/2a13198a-e984-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.73b3abb50a53.
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ARGUMENT

I.

THREATS OF WITHDRAWAL OF FEDERAL FUNDING BASED ON A COLLEGE OR UNIVERSITY'S POLICY DECISIONS ARE UNCONSTITUTIONAL

A. California Community Colleges Have the Same Concerns and Enjoy the Same Constitutional Protections from Federal Coercion as the Plaintiff Counties

Due to their status as State institutions, amici enjoy all the same constitutional protections raised by the plaintiffs in this case. These constitutional protections have been previously analyzed by this Court. *See, e.g.*, April 25, 2017 Order Granting the County of Santa Clara's and City and County of San Francisco's Motions to Enjoin Section 9(a) of Executive Order 13768 at pp. 35-44. Amici also have similar concerns regarding the welfare and safety of their communities, the need for victims of and witnesses to crimes to be able to call upon their police without fear of immigration consequences, and the inappropriate diversion of limited resources.

Without a permanent injunction, the coercive effect of the withdrawal of federal funds would have a severe impact upon amici. Federal funding of colleges and universities includes research and project funding, student loans, and a variety of funding for other programs. Federal funding is a substantial part of what makes higher education viable both institutionally and as an opportunity for lower income students.² Thus, the coercive impact of a federal threat to withdraw funding is just as intense for amici as it is for the plaintiffs. In addition, as detailed below, higher education has concerns that are specific to its role and mission in our society, important concerns that are distinct from those raised by the plaintiffs and other amici.

B. As Academic Institutions, California Community Colleges Have Special First Amendment Protection

The threatened enforcement of Executive Order 13768 will chill the exercise of First Amendment rights on community college campuses that are protected by long-standing precedent.

² *See, generally*, PEW Issues Brief, *Federal and State Funding of Higher Education*, June 11, 2015, available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/06/federal-and-state-funding-of-higher-education>.

1 Sixty years ago, Justice Frankfurter quoted approvingly from a speech that identified the four essential
2 freedoms of a university:

3
4 It is the business of a university to provide that atmosphere which is
5 most conducive to speculation, experiment and creation. It is an
6 atmosphere in which there prevail “the four essential freedoms” of a
7 university – to determine for itself on academic grounds who may teach,
8 what may be taught, how it shall be taught, and who may be admitted to
9 study.

10
11 *Sweezy v. New Hampshire*, 354 U.S. 234,
12 263 (1957) (Frankfurter, J., concurring).

13
14 Two decades later, in *Regents of the University of California v. Bakke*, 438 U.S. 265
15 (1978), Justice Powell cited Justice Frankfurter’s concurrence, noting that “academic freedom long has
16 been viewed as a special concern of the First Amendment.” 438 U.S. at 312. As Justice Powell
17 concluded, “Thus, in arguing that its universities must be accorded the right to select those students
18 who will contribute the most to the ‘robust exchange of ideas,’ petitioner invokes a countervailing
19 constitutional interest, that of the First Amendment. In this light, petitioner must be viewed as seeking
20 to achieve a goal that is of paramount importance in the fulfillment of its mission.” 438 U.S. at 313.

21
22 As discussed more fully below, each of California’s community colleges has a
23 longstanding commitment to diversity that includes encouraging *all* students, documented and
24 undocumented, to apply for admission, and a corollary commitment to protecting their private
25 information and their safety as valuable members of the college community. Those commitments
26 cannot be met if college communities must operate under threat of losing their federal funds if they
27 decline to aid in the enforcement of federal immigration laws. If students do not feel safe, they cannot
28 engage in the kind of robust, open discussion that is essential to learning; indeed, they may not come to
classes at all. As the majority wrote in *Sweezy v. New Hampshire*, “[s]cholarship cannot flourish in an
atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to
study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate
and die.” *Sweezy v. New Hampshire*, 354 U.S. at 250.

1 **C. A Federal Attempt to Conscript Higher Education into Immigration Enforcement**
2 **Is at Odds with the Mission and Role of Colleges and Universities in Our Society**

3 Colleges and universities, particularly our public colleges and universities, play a
4 pivotal role in our society. Dedicated to teaching and research, they have also been critical centers of
5 democracy and service to the advancement and improvement of the individual, the public, and society
6 itself. Core values that enable them to fulfill this role include independence, diversity, and community.
7 Commitment to these values pervades every aspect of amici's work and is explicitly articulated in their
8 missions.

9 Thus, the Vision articulated in the California Community Colleges Strategic Plan is to
10 "provide upward social and economic mobility through a commitment to access and student success
11" California Community Colleges System Strategic Plan, 2013 Update, available at
12 http://californiacommunitycolleges.cccco.edu/Portals/0/reportsTB/2013StrategicPlan_062013.pdf, p. 2.
13 The first planning principle is "Access to Quality Higher Education," and the values include several
14 principles pertinent here:

15 *All people* have the opportunity to reach their full educational potential.

16 The Colleges embrace diversity in all its forms.

17 * * *

18 *All people* have a right to access quality higher education.

19 *All people* have access to lifelong learning.

20 *Id.* (emphasis added).

21 Amici's commitments to independence and diversity are not mere rhetoric. Indeed,
22 these same values are foundational to all American colleges and universities and, historically, have set
23 them apart from their counterparts in other countries. In Europe, for example, universities developed
24 as nationally controlled institutions, subject to imperial and governmental control and were intended to
25 serve the nation state and its government. John C. Scott, "The Mission of the University: Medieval to
26 Postmodern Transformations" (2006) at 7, 10-12. In contrast to Europe and other parts of the world,
27 universities in the United States are not arms of the national government. *Id.* at 4, 13. Rather to the
28 extent we have public institutions of higher education, they are state colleges and universities with a

1 mission to serve and extend education and knowledge to and for the population and society, not the
2 government. Scott at 4, 15. “This notion of service to society is fundamentally American.” *Id.* at 23.
3 Thus, in the United States, colleges and universities explicitly see themselves as “conducted for the
4 common good.”³

5 The inclusivity and diversity that mark public colleges and universities in the United
6 States is an important part of their history and their mission of “democratization.” Scott at 15-17. This
7 is particularly true of California’s community colleges. The California Community Colleges constitute
8 the largest system of higher education in the nation with 114 colleges and over 2 million students each
9 year. More than 40% of community college students are in the first generation of their families to
10 attend college, and over 50% are economically disadvantaged. Foundation for California Community
11 Colleges, *About the Colleges*, available at <http://foundationccc.org/About-Us/About-the-Colleges>.

12 Current federal efforts to conscript local jurisdictions to participate in immigration
13 enforcement and the possibility that this effort would expand to include public universities and
14 colleges must be understood within this framework – a framework founded upon higher education’s
15 commitments to community, inclusion and diversity. Colleges and universities responding to the
16 current anti-immigrant climate and increased targeting of immigrants have relied upon their
17 foundational values to reaffirm their commitment to the undocumented students in their midst. They
18 have been adamant that they have no appropriate role as enforcers of the immigration laws and that the
19 current anti-immigrant sentiment and policies pose serious threats to their work as institutions of
20 higher education. They have also made clear that they are uniquely bound by federal law that protects
21 the student records of those who have enrolled at their colleges or universities. 20 U.S.C. § 1232g.

22 Thus, the Community College Chancellor’s Statement of Values and Commitment to
23 Undocumented Students states, “First and foremost the Chancellor’s Office and the Board of
24 Governors reiterate their unwavering commitment to the values spelled out in the vision statement . . .
25

26 ³ American Association of University Professors 1940 Statement of Principles on Academic Freedom
27 and Tenure, available at <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>. *See also* mission statements quoted above.
28

1 ‘All people have the opportunity to reach their full educational potential,’ ‘The Colleges embrace
 2 diversity in all its forms,’ “All people have the right to access quality higher education.”⁴ The
 3 Statement goes on: “The California Community Colleges remain committed to serving all students,
 4 regardless of immigration status and to providing safe and welcoming environments in which to learn.”
 5 *Id.* It then reaffirms that the California Community Colleges are open to all students who meet the
 6 minimum requirements for admission, regardless of immigration status, that the Chancellor’s Office
 7 will not release any personally identifiable student information, including any data related to
 8 immigration status, without a judicial warrant, subpoena or court order, unless authorized by the
 9 student or required by law, that the office will not cooperate with any federal effort to create a registry
 10 of individuals based on any protected characteristics such as religion, national origin, race, or sexual
 11 orientation, and that it will continue to advocate for educational opportunities for all students in the
 12 community college system, regardless of immigration status, at the state and federal level. *Id.*

13 The individual amicus districts have made similar commitments. The Governing Board
 14 of the Contra Costa Community College District has recognized and affirmed its responsibility to
 15 advocate for educational opportunities for all students in the community college system, regardless of
 16 immigration status, at the federal, state, and local levels.⁵

17 The Board of Trustees of the Foothill-De Anza Community College District has
 18 adopted Resolution 2016-44 in Support of Undocumented Students and Affirming the Privacy of
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23
 24 ⁴ California Community Colleges Chancellor’s Office Statement of Values and Commitment to
 25 Undocumented Students, December 5, 2016, available at www.cccco.edu/Portals/1/statement-values.pdf; *see also* Resolution of the Board of Governors California Community Colleges No. 2017-
 26 01 available at http://extranet.cccco.edu/Portals/1/ExecutiveOffice/Board/2017_agendas/January/Item-2.3-Attachment-REVISED-Resolution.pdf.

27 ⁵ Resolution No. 1-S Before the Governing Board of the Contra Costa Community College District,
 28 January 25, 2017, available at <http://www.4cd.edu/crpa/docs/Resolution%201-S.pdf>.

1 Student Records, which states that the district will not cooperate in efforts to create a registry of
2 targeted groups and will hold fast to its policy on the privacy of student records.⁶

3 The Mendocino-Lake Community College District has reiterated its “tireless and strong
4 promise to stand united in keeping undocumented students enrolled and safe in our college” and has
5 pledged “to continue providing accessible, affordable, and superior educational opportunities for the
6 communities we serve.”⁷

7 The Peralta Community College District’s Board of Trustees has taken a very active
8 stance supporting its undocumented students and all students who have reasons to be concerned about
9 any potential unjust actions taken by the federal government.⁸

10 City College of San Francisco has pledged “to advocate proactively at the local, state,
11 and federal levels to extend every possible measure of legal, social, and political protection to our
12 vulnerable immigrant students and their families.”⁹

13 And in an open letter to students dated September 5, 2017, the President of the Santa
14 Barbara City College affirmed the commitment of the college’s trustees, its faculty and administration
15 that they will not act on behalf of federal agencies to enforce immigration laws or aid in deportation or
16 share student records containing confidential information without written consent, a court order, or
17 other legal mandate.¹⁰

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19 ⁶ Resolution 2016-44 of the Board of Trustees of the Foothill-De Anza Community College District in
20 Support of Undocumented Students and Affirming the Privacy of Student Records, available at
21 [http://www.boarddocs.com/ca/fhda/Board.nsf/files/AGEM7Z59EF31/\\$file/2016-44_Affirmation
%20of%20Privacy_Resolution.pdf](http://www.boarddocs.com/ca/fhda/Board.nsf/files/AGEM7Z59EF31/$file/2016-44_Affirmation%20of%20Privacy_Resolution.pdf).

22 ⁷ Mendocino College Releases Statement in Support of DACA Students, September 8, 2017, available
23 at <https://www.mendocino.edu/article/mendocino-college-releases-statement-support-daca-students>.

24 ⁸ Peralta Community College District Resolution in Support of Undocumented & Concerned Students,
25 December 13, 2016, available at [http://web.peralta.edu/staff-development/files/2015/10/PCCD-Reso-
Signed.pdf](http://web.peralta.edu/staff-development/files/2015/10/PCCD-Reso-Signed.pdf).

26 ⁹ City College of San Francisco joins the City and County of San Francisco in affirming its sanctuary
27 status for all people of San Francisco, December 15, 2016, available at [http://www.ccsf.edu/BOT/
2016/December/346r.pdf](http://www.ccsf.edu/BOT/2016/December/346r.pdf).

28 ¹⁰ Santa Barbara City College, An open letter to DACA Students, September 5, 2017, available at
[http://www.sbccc.edu/presidentsoffice/presidentcommunications/2017waypoints/Sept%205%20An%20
Open%20letter%20to%20DACA%20Students.pdf](http://www.sbccc.edu/presidentsoffice/presidentcommunications/2017waypoints/Sept%205%20An%20Open%20letter%20to%20DACA%20Students.pdf).

1 The plaintiffs in this litigation have demonstrated the severe detriment to their
2 operations posed by the Executive Order. Given their unique mission and role in our society, public
3 colleges and universities are equally threatened by this federal demand. Any effort, direct or indirect,
4 to force them into partnership with federal immigration law enforcement is anathema to their mission
5 and role, fundamentally misguided, and unconstitutional.

6 **CONCLUSION**

7 The relevant facts of this case are clear and undisputed. The threat that federal funds
8 will be withdrawn unless an institution collaborates with this administration’s immigration project on
9 terms that are demanded by federal authorities and yet that subvert a college’s ability to fulfill its
10 mission is real. The overreaching and illegality of the government’s coercive efforts are also clear.
11 Therefore, amici add their voices to the request that this Court uphold the fundamental constitutional
12 rights imperiled here and grant summary judgment in favor of plaintiffs.

13 Dated: October 4, 2017

14 Respectfully Submitted,

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