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7 CONSTITUTIONAL LAW SCHOLARS AND  
8 *AMICI CURIAE* PROFESSORS OF CONSTITUTIONAL LAW,  
ADMINISTRATIVE LAW, AND IMMIGRATION LAW

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 COUNTY OF SANTA CLARA,  
13 Plaintiff,  
14 v.  
15 DONALD J. TRUMP, President of the United  
States of America, JOHN F. KELLY, in his  
16 official capacity as Secretary of the United  
States Department of Homeland Security,  
JEFFERSON B. SESSIONS, in his official  
17 capacity as Attorney General of the United  
States, JOHN MICHAEL "MICK"  
18 MULVANEY, in his official capacity as  
Director of the Office of Management and  
19 Budget, and DOES 1-50,  
20 Defendants.

Case No. 17-cv-00574-WHO

**BRIEF OF *AMICI CURIAE*  
CONSTITUTIONAL LAW SCHOLARS  
AND *AMICI CURIAE* PROFESSORS OF  
CONSTITUTIONAL LAW,  
ADMINISTRATIVE LAW, AND  
IMMIGRATION LAW IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

Date: July 12, 2017  
Time: 2:00 pm  
Dep't: Courtroom 2  
Judge: Hon. William H. Orrick

21 CITY AND COUNTY OF SAN  
FRANCISCO,  
22 Plaintiff,  
23 vs.  
24 DONALD J. TRUMP, President of the United  
States, UNITED STATES OF AMERICA,  
25 JOHN F. KELLY, Secretary of United States  
Department of Homeland Security,  
26 JEFFERSON B. SESSIONS III, Attorney  
General of the United States, DOES 1-100,  
27 Defendants.  
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Date Filed: February 23, 2017  
Trial Date: April 23, 2018

Case No. 3:17-cv-00485-WHO

1 Amici are among the legal scholars who previously filed separate amicus briefs in support  
2 of Plaintiffs at the preliminary injunction stage. Amici Constitutional Law Scholars submitted an  
3 amicus brief detailing the potential assault that Executive Order No. 13,768 (January 30, 2017)  
4 (the “Executive Order” or “Order”) makes on Our Federalism. See D.I. 69.<sup>1</sup> Amici Professors of  
5 Constitutional Law, Administrative Law, and Immigration Law submitted an amicus brief  
6 detailing the Separation of Powers problems presented by the Order. D.I. 68.

7 In ruling on Plaintiffs’ motions for preliminary injunction, the Court held that the  
8 government’s narrow interpretation of the Executive Order is “not legally plausible.” D.I. 98 at 3.  
9 State Amici led by West Virginia nevertheless assume the Order has a “narrow scope.” D.I. 118-1  
10 at 9. They assume, for instance, that the Order does not threaten all federal funding, *id.*; that  
11 Congress (and not the President or executive branch officials) is the one placing conditions on  
12 federal funding, *id.* at 13; and that the Order and 8 U.S.C. § 1373 “do[] not require state officials  
13 to assist in the enforcement” of federal immigration law, *id.* at 12 (internal quotation marks  
14 omitted). But at the same time West Virginia and other State Amici acknowledge that any  
15 inducement to accept federal funds cannot be “coercive,” *id.* at 3, that only “Congress” and not the  
16 President or executive branch officials “may place conditions on the States’ receipt of federal  
17 funds,” *id.* at 6, and that, even then, Congress “cannot compel the States to enact or enforce a  
18 federal regulatory program,” *id.* at 9. Amici Constitutional Law Scholars and Amici Professors of  
19 Constitutional Law *et al.* submit that the constitutional infirmities identified in their respective  
20 briefs remain, at least if the Order is read as this Court read it in ruling on the preliminary  
21 injunction motions.

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<sup>1</sup> All docket numbers refer to filings in case number 17-cv-00574-WHO.

1 June 28, 2017

BARTLIT BECK HERMAN PALENCHAR  
& SCOTT LLP

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By: /s/ Nevin M. Gewertz

Nevin M. Gewertz

Abby M. Mollen

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