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CITY OF OAKLAND



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February 21, 2012

OAKLAND CITY COUNCIL
Oakland, California

**RE: RESOLUTION AUTHORIZING CITY ATTORNEY TO SIGN
ONTO AN AMICUS BRIEF ON BEHALF OF THE CITY OF
OAKLAND URGING THE U.S. SUPREME COURT TO
UPHOLD THE INJUNCTION ENJOINING THE STATE OF
ARIZONA'S UNCONSTITUTIONAL ANTI IMMIGRATION
LAW (SENATE BILL 1070)**

Dear President Reid and Members of the Council:

I. Introduction and Purpose of Report

The Santa Clara County Counsel's Office is preparing an amicus ("friend of the court") brief which it will file in the United States Supreme Court, urging the Court to uphold the lower courts' injunction which enjoined the implementation of the State of Arizona's unconstitutional anti immigration law (Senate Bill 1070). County Counsel requested that the City of Oakland and other municipalities sign onto the amicus brief. Below we provide background regarding the case and our recommendation that the City Council pass the referenced resolution authorizing the City Attorney to join the amicus brief.

II. Background

In 2010, the State of Arizona enacted SB 1070, an anti-immigrant measure cloaked as one intended to encourage the attrition of undocumented immigrants from Arizona by deputizing all local law enforcement officers as enforcers of federal immigration law. The law thereby limits localities' ability to protect public safety and forces local governments to divert resources to duties

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that are the responsibility of the federal government. SB 1070 also creates criminal penalties for civil immigration violations, forces lawful immigrants to carry documents that substantiate their legal status, and criminalizes the activities of day laborers.

Before the law was scheduled to take effect, the federal government filed a lawsuit challenging its constitutionality. The lawsuit asserted that the federal government has the exclusive authority to regulate immigration, and Arizona's law, therefore is preempted by federal law. The federal district court issued a preliminary injunction enjoining four provisions of the law. The district court concluded that the United States was likely to succeed on the merits in establishing that those four provisions are preempted by federal law, that the federal government's interests likely would be irreparably harmed if the law took effect and that preventing enforcement of provisions that likely are unconstitutional outweighed Arizona's interest in enforcing SB 1070. The state filed an appeal. In April 2011, the United States Court of Appeals for the Ninth Circuit upheld the district court's injunction holding that four key provisions of the law are impliedly preempted by federal immigration law, and preventing them from going into effect. The State of Arizona filed a petition for writ of certiorari asking the United States Supreme Court to hear the case and the high court agreed to hear the case.

The County of Santa Clara, California, is preparing an *amicus curiae* brief on behalf of counties, cities, and local law enforcement agencies that will support the U.S. government's position and urge the Supreme Court to affirm the Ninth Circuit's holding. An *amicus curiae* is a "friend of the court" brief that is not technically adverse to any party in the litigation, but provides the court additional information that could affect the court's ruling.

Joining the brief is a meaningful way to help prevent the implementation of SB 1070 and copycat laws across the country, and to show support for immigrant communities locally and nationwide.

The following local governmental entities joined on Santa Clara County's brief in the Ninth Circuit Court of Appeals: The City of Baltimore, Maryland; The City of Berkeley, California; The City of Minneapolis, Minnesota; The County of Monterey, California; The City of New Haven, Connecticut; The Council of the City of New York, New York; The City of Palo Alto, California; The City of Portland, Oregon; The City of Saint Paul, Minnesota; Salt Lake City, Utah; The City and County of San Francisco, California; The City of San Jose, California; The County of San Mateo, California; The City of Seattle, Washington; and the

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United States Conference of Mayors. Santa Clara County Counsel's Office advised that many of those jurisdictions have already agreed to sign on to the brief that Santa Clara County will file in the Supreme Court.

III. The Provisions of Arizona Senate Bill 1070

Arizona's SB 1070, known as the "Support Our Law Enforcement and Safe Neighborhoods Act," was signed by Arizona Governor Jan Brewer on April 23, 2010, and amended a week later by Arizona House Bill 2162. The Act makes "attrition [of undocumented immigrants] through enforcement" the official policy of the State of Arizona and all local government agencies within the state. The Act's provisions "are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." The Supreme Court will be reviewing the four provisions of SB 1070 that lower courts enjoined. Those provisions are summarized below:

Section 2(B): requires local law enforcement officers and agencies to make a reasonable attempt to determine the immigration status of a person who has been lawfully stopped, detained, or arrested, whenever the officer or agency has "reasonable suspicion" that the person is unlawfully present in the U.S. Although the Act provides that law enforcement "may not consider race, color or national origin" beyond constitutional limits, it provides no guidelines for determining when "reasonable suspicion" exists, nor does it provide any guidelines for preventing the use of racial profiling as a means for identifying persons who may be unlawfully present in the U.S. The section also requires local law enforcement officers and agencies to detain an arrestee until the arrestee's immigration status has been determined.

Section 3: imposes criminal penalties for violations of federal immigration laws, such as failure to complete or carry alien registration documents.

Section 5(C): makes it a state crime for an undocumented immigrant to knowingly apply for work, solicit work in a public place, or perform work in Arizona. The maximum sentence for violation of this provision is a six month term of imprisonment.

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Section 6: peace officers are authorized to arrest a person *without a warrant* based on probable cause that the person committed a public offense that makes them deportable, a significant expansion of those officers' arrest authority.

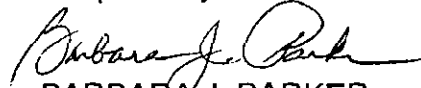
When it was passed, the bill was widely condemned by federal, state, and local officials across the nation. The City of Oakland passed a resolution opposing the legislation and its implementation.

The provisions now before the Court have been described as infringing on the authority of federal immigration enforcement and encouraging, or even requiring, racial profiling. Authorities from around the country have raised concerns about the fact that implementation of the law will erode the relationships of trust between immigrant communities and police that allow local law enforcement to ensure public safety.

III. CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we recommend that the City Council pass the resolution authorizing the City Attorney to sign onto the amicus brief in the **United States Supreme Court** asking the Court to uphold the lower courts' injunction.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

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Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

Introduced by Council President Larry Reid and City Attorney Barbara J. Parker

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SIGN ONTO AN AMICUS BRIEF ON BEHALF OF THE CITY OF OAKLAND URGING THE U.S. SUPREME COURT TO UPHOLD THE INJUNCTION ENJOINING IMPLEMENTATION OF THE STATE OF ARIZONA'S UNCONSTITUTIONAL ANTI-IMMIGRATION LAW (SENATE BILL 1070)

WHEREAS, in 2010 the State of Arizona enacted Senate Bill ("SB") 1070, entitled the "Support our Law Enforcement and Safe Neighborhoods Act"; and

WHEREAS, SB 1070 is an anti-immigrant measure cloaked as one intended to encourage attrition of undocumented immigrants from Arizona by deputizing all local law enforcement officers as enforcers of federal immigration law; and

WHEREAS, the law was widely condemned by federal, state and local officials across the nation, and the City Council of City of Oakland passed a resolution opposing the legislation and its implementation; and

WHEREAS, SB 1070 limits localities' ability to protect public safety and forces local governments to divert resources to duties that are the federal government's responsibility; and

WHEREAS, SB 1070 creates criminal penalties for civil immigration violations, forces lawful immigrants to carry documents that substantiate their legal status and criminalizes activities of day laborers; and

WHEREAS, the federal government filed a lawsuit in federal court challenging SB 1070's constitutionality; and

WHEREAS, the lawsuit asserted that the federal government has exclusive authority to regulate immigration and SB 1070 therefore is preempted by federal law; and

WHEREAS, the federal district court granted a preliminary injunction enjoining four provisions of the law, concluding that those four provisions likely

were preempted by federal law, that federal interests would be irreparably harmed if the law took effect; and

WHEREAS, in April 2011, the U.S. Court of Appeals for the Ninth Circuit upheld the district court's injunction, holding that four key provisions of the law are impliedly preempted by federal immigration law, and preventing them from going into effect; and

WHEREAS, the State of Arizona filed a petition for writ of certiorari asking the U.S. Supreme Court to hear the case, and

WHEREAS, the high court granted review and is expected to hand down its decision in 2012; and

WHEREAS, the County Counsel of the County of Santa Clara is preparing an amicus curiae ("friend of court") brief on behalf of counties, cities, and local law enforcement agencies that will support the U.S. government's position and urge the Supreme Court to affirm the Ninth Circuit's holding; and

WHEREAS, joining the amicus brief is a meaningful way to help prevent the implementation of SB 1070 and copy cat laws across the country and to show support for immigrant communities locally and nationwide; now therefore be it

RESOLVED: That the City Council hereby authorizes the city attorney to sign the amicus brief that Santa Clara County Counsel will file in the U. S. Supreme Court, urging the Court to uphold the injunction prohibiting implementation of SB 1070, Arizona's unconstitutional, anti-immigration law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

**AYES - BROOKS, BRUNNER, DE LA FUENTE, KERNIGHAN, NADEL,
 SCHAAF, KAPLAN AND PRESIDENT REID**

**NOES -
ABSENT -
ABSTENTION -**

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California