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April 22, 2004

The Honorable Chief Justice and the Associate  
Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: California Statewide Communities Development Authority v. All Persons  
Interested Nos. C042944, C042947, C042948

Dear Justices:

Pursuant to Rule 28(g) of the California Rules of Court, Amicus Curiae, a group of thousands of religious primary, secondary and collegiate level educational institutions, and organizations that support such institutions in the State of California, submits this letter in support of the California Statewide Communities Development Authority's request for review in the above referenced cases. This letter first describes the Amici institutions and outlines the practical impact the decision of the Court of Appeal has had, and will have, on their ability to obtain tax-exempt financing. Second, the letter explains the legal significance of the decision below under both the California and federal constitutions.

## 1. Interest of Amicus Curiae

Amici include almost every religious school in California. These schools are sponsored by a wide range of religious denominations. Two of the Amici are associations, one consisting of almost every religious college or university in California, and the other embracing the vast majority of the state's religious primary and secondary schools. Because of the decision of the Court of Appeal, many of these schools will be unable to obtain tax-exempt bond financing. And even those religious schools still technically eligible to receive the financing under the test utilized by the Court of Appeal will face greater difficulty in doing so because of the chilling effect produced by the decision. The net effect will be to significantly increase the

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cost of building projects at religious schools in a manner that discriminates against them relative to non-religious schools.

These schools share a common interest in ensuring that, like their non-religious counterparts, they are able to participate in tax exempt financing in which no State funds go to the schools, and no funds are used for religious purposes. What follows is a short description of the individual Amici:

The California Association of Private School Organizations (CAPSO) is California's oldest, largest and most inclusive consortium of private school administrative units and service agencies. An affiliate of the Council for American Private Education, CAPSO's member organizations strive to promote educational excellence and to preserve the philosophical diversity and religious values that has long been a hallmark of private education. CAPSO's members represent about three-fourths of the nearly 600,000 private school students in California who are enrolled in grades K-12.<sup>1</sup>

The Association of California Colleges and Universities (AICCU) represents 76 California independent colleges and universities, many of which have religious affiliations.<sup>2</sup> The institutions comprising AICCU work together to maintain high standards in private college education. They take pride in offering a personal touch with respect to admissions, teaching, and campus environment while maintaining the uniqueness and individual character of each campus.

The Association of Christian Schools International (ACSI), an affiliate of CAPSO, is a non-profit, non-denominational, religious association providing support services to more than 4,100 Christian preschools, elementary, and secondary schools in the United States. ACSI currently serves 890 educational institutions in California.

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<sup>1</sup> The constituent organizations of CAPSO are: Association of Christian Schools International – Northern California and Hawaii Region, Association of Christian Schools International – Southern California Region, Bureau of Jewish Education of Greater Los Angeles, California Association of Independent Schools, California Association of Private Special Education Schools, California Catholic Conference, Christian Schools International, District VIII, Diocese of Fresno Education Corporation, Diocese of Oakland Department of Catholic Schools, Episcopal Diocese of California, Episcopal Diocese of Los Angeles, Evangelical Lutheran Education Association – Northern California, Lutheran Church Missouri Synod, California-Nevada-Hawaii District, Lutheran Church Missouri Synod, Pacific Southwest District, Lutheran Schools of Southern California and Hawaii, and Pacific Union Conference of Seventh-day Adventists

<sup>2</sup> The AICCU consists of such non-religious colleges and universities as Stanford University and Pomona College, and such religious colleges and universities as Mount St. Mary's College and Point Loma Nazarene University. Each of the individual college and university Amici are members of the AICCU.

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Loma Linda University (LLU) is a California non-profit religious corporation and is part of the Seventh-day Adventist Church. LLU, which is located in Loma Linda, California, is an institution of higher education serving 3,500 undergraduate, graduate, and professional students. More than 55 programs are offered by the schools of Allied Health Professions, Dentistry, Medicine, Nursing, Pharmacy, Public Health, and the Graduate School.

Azusa Pacific University (APU) is a comprehensive Christian, evangelical university, dedicated to excellence in higher education and to making a positive impact on society. The main campus is situated northeast of Los Angeles with several locations throughout California, and has more than 8,000 full and part-time students. APU offers more than 40 areas of undergraduate study, 21 master's degree programs, and four doctorates.

Pepperdine University is a Christian university committed to the highest standards of academic excellence and Christian values, where students are prepared for lives of purpose, service, and leadership. The University is recognized nationally for its excellent academic programs and has approximately 8,000 full-time and part-time students enrolled in its five colleges and schools. With a full-time faculty of more than 300 professors and scholars, Pepperdine offers bachelor, master and doctoral studies in a wide range of disciplines.

Concordia University Irvine (CUI) is a thriving university with a current student body of 1,738 undergraduate and graduate students. As a leader in higher Christian education, CUI provides a well rounded liberal arts education and opportunities to enrich the body, mind, and spirit of each student.

La Sierra University is a comprehensive Christian university located in inland Southern California and is part of the Seventh-day Adventist system of higher education. As a community of learning that is also a community of faith, La Sierra fulfills its mission by engaging in three kinds of activity: It educates undergraduate and graduate students in the College of Arts and Sciences, School of Education, School of Business, and School of Religion; it promotes research in the areas in which it offers instruction; and it contributes to the good of the larger society through an emphasis on community action and service learning.

Point Loma Nazarene University is a California nonprofit public benefit corporation established in 1902 by the Church of the Nazarene. The University offers quality liberal arts and professional programs on its main campus in San Diego and select graduate and professional programs throughout the denomination's southwest educational region. The University exists to provide higher education in a vital Christian community where minds are engaged and challenged, character is modeled and formed, and service becomes an expression of faith. The University has more than 3,400 students enrolled in a variety of undergraduate and graduate programs.

A number of these institutions have sought and used tax exempt bonds in the past. All would like to have the opportunity do so in the future. If the Court of Appeal's decision

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stands, **all** of these institutions will find it much more difficult to obtain bond financing. Many of them will be unable to do so. The three main bond authorities in California have all indicated that, while servicing religious schools has been a regular occurrence in the past, no transactions with religious schools have taken place since the lower court decision. Indeed, a significant number of deals that were being considered prior to the decision of the trial court, which was affirmed by the Court of Appeal, have been cancelled.

Those agencies have indicated that there is now a chill on the conduit bond market for religious schools, as even those that might technically qualify will need to be screened **with great care to make sure that they are not** “pervasively sectarian.” There are no clear criteria under California jurisprudence for what constitutes a “pervasively sectarian” school, and it seems apparent that the authorities will choose to err on the side of caution. Even if the authorities apply the standard appropriately, they necessarily will have to engage in a Constitutionally impermissible inquiry into the most intimate details of applicant schools and the role that religion plays in their day-to-day operations.

Thus, the Amici institutions rightly fear that they will be hindered from participating in the bond market as they have in the past. This inability to access relatively inexpensive financing will ultimately and unfairly impact the quality of education they are able to provide to their students.

## **2. Legal Significance Of The Issue Presented**

Beyond its practical significance, the decision below has profound implications for the development of church-state law. The central issue in this case is which of two competing interpretations of Article XVI, Section 5 of California Constitution is correct—the one adopted by the Court of Appeal, which forbids tax-exempt bonds from going to certain religious schools, or the one advocated by Appellants, which allows the conduit bond financing to be accessed equally by all qualifying religious schools. Amici believe that Appellant’s interpretation is directly supported by principles set down in *CEFA v. Priest*, 12 Cal. 3d 593 (1974).

But the importance of this case goes beyond reaching the right interpretation of the California Constitution, and implicates the U. S. Constitution. Many of the Amici herein played a unique role at the Court of Appeal in demonstrating how the interpretation of Article XIV, Section 5 urged by Appellant is the only interpretation supported by the U.S. Constitution.

On the other hand, the Court of Appeal’s interpretation of Art. XVI, § 5 not only violates the U.S. Constitution, but calls into question numerous other incidental public benefits the State already provides to religious groups. These benefits include the provision of police, fire, water, sewer and electrical services to places of worship, religious hospitals, and parochial schools. The Court of Appeal’s extreme interpretation should be rejected by this Court.