Appellate Case No.: H036191

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SUPPORT SYSTEMS HOMES,

Petitioner and Appellant,

VS.

CITY OF CAMPBELL,

Respondent.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

HONORABLE KEVIN MURPHY

SANTA CLARA COUNTY SUPERIOR COURT CASE NO. 1-09-CV-154405

APPLICATION TO FILE AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SIXTH APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: H036191
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JAMES L. MARKMAN/T. PETER PIERCE/TOUSSAINT S. BAILEY (43536/160408/245641) RICHARDS, WATSON & GERSHON 355 South Grand Avenue, 40th Floor Los Angeles, CA 90071-3101 TELEPHONE NO.: (213) 626-8484 FAX NO. (Optional): (213) 626-0078 E-MAIL ADDRESS (Optional): jmarkman@rwglaw.com/ppierce@rwglaw.com/tbailey@rwglaw.com ATTORNEY FOR (Name): Amicus Curiae LEAGUE OF CALIFORNIA CITIES	Superior Court Case Number: 1-09-CV-154405
	FOR COURT USE ONLY
APPELLANT/PETITIONER: SUPPORT SYSTEMS HOME RESPONDENT/REAL PARTY IN INTEREST: CITY OF CAMPBELL	

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1. This form is being submitted on behalf of the following party (*name*): Amicus Curiae League of California Cities

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

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[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 15, 2011

Toussaint S. Bailey
(TYPE OR PRINT NAME)

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities respectfully requests permission to file the amicus curiae brief that accompanies this application.

The League of California Cities ("League") is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance.

The League and its members have a substantial interest in this case because each member is a city charged with the difficult task of balancing, on one hand, the exercise of constitutionally-granted power to control land uses through neutral regulations and, on the other hand, the statutory duty to make reasonable accommodations, where such accommodations are necessary to afford disabled individuals equal opportunity to use and enjoy housing. This appeal seeks a determination of the appropriate standard of

review, by a trial court, of a local government's decision to deny an accommodation.

The League, of course, recognizes the importance of the reasonable accommodation process, and respects cities' legal obligations with respect to making reasonable accommodations. However, should this Court conclude that the "independent judgment test" is the appropriate standard of review where, as here, the requested accommodation was determined by the local entity to be unreasonable on the record presented and the requesting party failed to demonstrate that the accommodation was necessary to afford disabled individuals an equal opportunity to use and enjoy housing, cities' constitutional power to protect the residential character of their neighborhoods will be diluted and the cost of exercising such power will increase substantially. Regardless of whether a party requesting an accommodation attempts to support its request with evidence of reasonableness or necessity, a city could, in every instance, be dragged into court to defend through trial de novo the merits of its reasonable accommodation decision. Further, the independent judgment test provides no consideration of or deference to the local elected officials' conclusion, even though that conclusion must be based on substantial evidence.

The undersigned attorney has examined the briefs of the parties and is familiar with the issues involved in this case. On the primary question of whether this cases involves a "fundamental vested right," the parties' briefs focus principally (though not exclusively) on whether the Appellant's interest in the requested accommodation had "vested." The League respectfully submits that the Court's ultimate deliberation will be aided by additional discussion of authorities bearing on whether the accommodation request involves a "fundamental right." For the reasons stated in this application, the League respectfully requests leave to file the amicus curiae brief that accompanies the application.

The proposed brief was authored by James L. Markman, T. Peter Pierce, and Toussaint S. Bailey of the law firm Richards, Watson & Gershon, a professional corporation. No party, person, or entity made a monetary contribution to fund the preparation of the brief.

Dated: April 15, 2011

Respectfully submitted,

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
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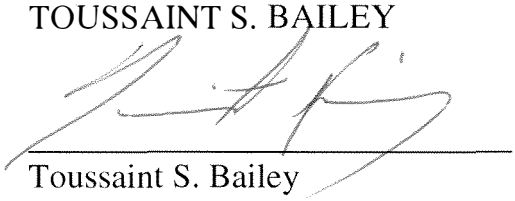


Toussaint S. Bailey
Attorneys for Amicus Curiae,
League of California Cities

PROOF OF SERVICE

I, Karen Forrand, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On April 15, 2011, I served the within document(s) described as:

APPLICATION TO FILE AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT

on the interested parties in this action as stated below:

William R. Seligmann, Esq. CITY ATTORNEY OF CAMPBELL 333 Church Street, Suite A Santa Clruz, CA 95060	Attorneys for Petitioner/Appellant
Jeffrey Janoff BOSTWICK & JANOFF 111 West St. John Street, Suite 1040 San Jose, CA 95113	Attorneys for Respondent
Clerk of the Superior Court Honorable Judge Kevin Murphy 191 North First Street San Jose, CA 95113	
Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797	4 copies

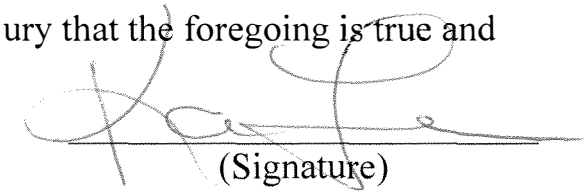
[X] (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 15, 2011, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Karen Forrand
(Type or print name)



(Signature)

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FOR THE COUNTY OF SANTA CLARA

HONORABLE KEVIN MURPHY

SANTA CLARA COUNTY SUPERIOR COURT CASE NO. 1-09-CV-154405

AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES ON BEHALF OF RESPONDENT

JAMES L. MARKMAN (Bar No. 43536)
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I.

INTRODUCTION

This case concerns the balance local governments must strike in exercising their constitutional power to regulate land uses through neutral zoning ordinances and their statutory duty to make reasonable accommodations, where such accommodations are necessary to provide disabled individuals an equal opportunity to use and enjoy housing. The Appellant, Support Systems Homes, alleged below that the Respondent, the City of Campbell ("City"), abused its discretion in attempting to strike this difficult balance.

The primary issue raised by Appellant here is whether or not the accommodation it requested from the City involves a "fundamental vested right," where the accommodation was determined by the City to be unreasonable on the record presented and Appellant failed to establish that the accommodation was necessary to afford disabled individuals an equal opportunity to use and enjoy housing. Appellant seems to agree that if this case does not involve a fundamental vested right, the trial court appropriately applied the "substantial evidence test" in reviewing the City's decision to deny Appellant's reasonable accommodation request. (See, Appellant's Opening Brief, p. 4; Respondent's Brief, p. 9.) As discussed below, there are several reasons why the reasonable accommodation request cannot be properly characterized as a "fundamental right."

First, unlike identified, traditional fundamental rights such as equal protection and due process guarantees, which have constitutional foundations, the reasonable accommodation concept was born out of statute;

Second, local governments are endowed by the state and federal Constitutions with police power which may be employed to protect the residential character of neighborhoods;

Finally, an opportunity for a reasonable accommodation is not "guaranteed" as would be an individual's rights related to equal protection and due process. A public entity is not obligated to make a reasonable accommodation unless and until the requesting party meets its burden of establishing that the particular accommodation is necessary to afford disabled individuals an equal opportunity to use and enjoy housing. And, even then, accommodations must yield to superior public interests, such as preserving the fundamental nature of a public entity's zoning program.

The League of California Cities ("League"), as amicus curiae, urges this Court to reject Appellant's contention that a reasonable accommodation request involves "fundamental rights," requiring trial de novo where, as here, the request was quite correctly found by the City to be unreasonable on the record presented and was not shown by Appellant to be necessary to afford disabled individuals an equal opportunity to use and enjoy housing.

II.

FACTUAL AND PROCEDURAL HISTORY

Rather than restate the facts and procedural history in detail, the League adopts the facts as set forth in the Respondent's Brief.

III.

ARGUMENT

A. Unlike Traditional Fundamental Rights, Which Are Rooted In The State And Federal Constitutions, The Concept Of Reasonable Accommodation Was Created By Statute

Reasonable accommodations are not of the same constitutional pedigree as the traditional fundamental rights to which Appellant compares them. Appellant arrives at the erroneous conclusion that this case involves a fundamental right by improperly seizing on language from *County of Alameda v. Board of Retirement*, (1988) 46 Cal.3d 902 ("*County of Alameda*"): "Obviously 'individuals rights guaranteed under the due process and equal protection clauses of the state and federal Constitutions' are considered fundamental vested rights." (Appellant's Opening Brief, p. 12 (quoting *County of Alameda*, 46 Cal.3d at p. 907.) This inapposite statement forms the crux of Appellant's "fundamental vested right" argument.

The due process and equal protection guarantees referenced in

County of Alameda are deeply rooted in the state and federal Constitutions. (Cal. Const., art. I, §§ 7, 15 (state due process), 7(a) (state equal protection); U.S. Const., 14th Amend. (federal due process and equal protection). By contrast, a local entity has a duty to approve a reasonable accommodation request only when approval is necessary to afford disabled individuals an equal opportunity to use and enjoy housing. That duty is derived not from constitutional provisions, but from statutory provisions such as the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B) ("FHA")[1], the Americans with Disabilities Act, 42 U.S.C. § 12131(2) ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Furthermore, although it may be true that the concept of a "fundamental vested right" includes individual rights guaranteed under the due process and equal protection clauses of the state and federal Constitutions, (see, *County of Alameda*, 46 Cal.3d at p. 907), "[t]here is little similarity between the analysis applied in determining (1) whether a right is a "fundamental right" for equal protection/due process purposes on the one hand, and (2) which scrutiny is applicable for administrative review purposes, on the other hand." (*Berlinghieri v. Department of Motor Vehicles* (1983) 33 Cal.3d 392, 397 ("*Berlinghieri*").)

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[1] The Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, Pub.L. No 100-430, 102 Stat. 1619, added handicap and familial status to the list of impermissible bases of discrimination.

"The principle of 'fundamentality' differs depending on the context or analysis within which the concept arises. Thus, for example, when determining which rights are 'fundamental' for due process purposes, a court's attention focuses primarily on whether the right (1) is specifically guaranteed by the Constitution, (2) affects the integrity of the political process, or (3) has a disproportionate impact upon a discrete and insular minority." (*Berlinghieri*, 33 Cal.3d at p. 397 (citing *U.S. v. Carolene Products Co.* (1938) 304 U.S. 144, 152-153, fn. 4, 58 S.Ct. 778, 82 L.Ed. 1234).)

"Obviously, the foregoing *Carolene Products* test bears little relation to the standard used when determining which rights are 'fundamental' under the *Bixby* rule for administrative review purposes. In this latter situation, we examine a right or interest to see if it is important enough 'to individuals in their life situations' to require an independent judicial review of the evidence." (*Ibid*; accord, *Interstate Brands v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal.3d 770, 779.)

As discussed below, the Appellant's interest in the requested accommodation is too attenuated to be deemed a "fundamental right."

B. The Statutory Duty To Make Reasonable Accommodations Is Weighed Against Potent Constitutional Police Powers

Courts have recognized the tension between local governments' lawful exercise of the police power to control land uses through neutral regulations, such as the regulations at issue here, [2] and their statutory duty to make reasonable accommodations, where necessary to afford disabled individuals equal housing opportunities. (See, *Bryant Woods Inn, Inc. v. Howard County* (4th Cir. 1997) 124 F.3d 597, 603 ("*Bryant Woods Inn*").) "[R]egulation of land use is perhaps the quintessential state activity." (*FERC v. Mississippi* (1982) 456 U.S. 742, 768 n. 30, 102 S.Ct. 2126, 72 L.Ed.2d 532 (emphasis added).) In *Berman v. Parker*, (1954) 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 ("*Berman*"), the United States Supreme Court observed:

> "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an

---

[2] It is important to note that in an earlier mandamus action between Appellant and the City, the trial court held that Appellant's facility which is the subject of this action "was a 'Residential Service Facility, Large;'" and that the City, by treating it as such, had "engaged in a lawful exercise of its police power, not an unlawful discrimination against Petitioner." (Respondent's Brief, p. 8.)

> almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river."

Id. at 32-33. "A quiet place where yards are wide, people are few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs." (*Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, 9, 94 S.Ct. 1536, 39 L.Ed.2d 797 ("*Village of Belle Terre*").)

"Public safety, public health, morality, peace and quiet, law and order-these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it." (*Berman*, 348 U.S. at p.32.) "That zoning ordinances, when reasonable in object and not arbitrary in operation, constitute justifiable exercise of police power, is now well established; and it is equally well established that the power extends to the regulation of uses of property which do not actually amount to nuisances." (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 307; see also, *Miller v. Board of Public Works* (1925) 195 Cal. 477, 487 ("The police power as evidenced in zoning ordinances, has a much wider scope than mere suppression of the offensive uses of property . . . it acts, not only negatively, but constructively and affirmatively, for the promotion of the

public welfare.").) The police power is "ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." (*Village of Belle Terre*, 416 U.S. at p. 9; see also, *City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725, 732-33, 115 S.Ct. 1776, 131 L.Ed.2d 801.)

As a general rule, "[c]ases involving abuse of discretion charges in the area of land use regulation do not involve fundamental vested rights." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356 n. 4.) As explained below, "[i]n enacting FHA, Congress clearly did not contemplate abandoning the deference that courts have traditionally shown to local zoning codes." (*Bryant Woods Inn,* 124 F.3d at p. 603; see, *infra*, part III.C.1.)

C. Unlike Traditional Fundamental Rights, Reasonable Accommodations Are Not Guaranteed To Any Individual Or Entity

"Seeking to recognize local authorities' ability to regulate land use and without unnecessarily undermining the benign purposes of such regulations, Congress required only that local government make 'reasonable accommodation' to afford persons with disabilities 'equal opportunity to use and enjoy' housing in those communities." (*Bryant Woods Inn,* 124 F.3d at p. 603 (quoting 42 U.S.C. § 3604(f)(3)(B)).) The

FHA thus requires an accommodation for persons with disabilities to be (1) reasonable and (2) necessary (3) to afford disabled persons equal opportunity to use and enjoy housing. (See, *Community Services, Inc. v. Wind Gap Municipal Authority* (3rd Cir. 2005) 421 F.3d 170, 184 n. 12; *Bronk v. Ineichen* (7th Cir. 1995) 54 F.3d 425, 428 29 ("*Bronk*").)

1. A Requesting Party's Interest In An Accommodation Must Yield Where There Are More Compelling Public Interests

The reasonable accommodation concept "does not provide a blanket waiver of all facially neutral zoning policies and rules, regardless of facts, [citation], which would give the disabled carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary, [citation]." (*Bryant Woods Inn,* 124 F.3d at p. 603.) Whereas traditional fundamental rights such as those guaranteed under the equal protection and due process clauses of the state and federal Constitutions operate to limit exercise of the police power,[3] the converse is true of the relationship between reasonable accommodations and the police power. The police

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[3] See, 8 Witkin, Summary 10th (2005) Const. Law, § 983, 547 ("(1) Due Process. The Due Process Clause of the Fourteenth Amendment is the chief limitation on the exercise of police power. . . . [¶] (2) Equal Protection. The Equal Protection Clause of the Fourteenth Amendment is the other limitation commonly invoked on the exercise of the police power.")

power, including zoning power, operates as a limitation on local governments' duty to make reasonable accommodations.

"The requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person; cost (to the defendant) and benefit (to the plaintiff) merit consideration as well." (*Bronk*, 54 F.3d at p. 429; see also, *United States v. Village of Palatine* (7th Cir.1994) 37 F.3d 1230, 1234 ("determining whether a requested accommodation is reasonable requires, among other things, balancing the needs of the parties involved.") A local government may consider as factors "the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations and the benefits would provide to the handicapped. It may also consider whether alternatives exist to accomplish the benefits more efficiently." (*Bryant Woods Inn,* 124 F.3d at p. 604.)

"[I]n measuring the effects of the accommodation, the court may look not only to its functional and administrative aspects, but also to its costs." (*Ibid.*) "Reasonable accommodations" do not require accommodations which would impose "undue financial and administrative burdens." (*Southeastern Community College v. Davis* (1979) 442 U.S. 397, 412, 99 S.Ct. 2361, 60 L.Ed.2d 980).) Moreover, reasonable accommodations do not require "changes, adjustments, or modifications to existing programs that would be substantial, or that constitute fundamental

alterations in the nature of the program." (*Alexander v. Choate* (1985) 469 U.S. 287, 301 n. 20, 105 S.Ct. 712, 720 n. 20, 83 L.Ed.2d 661).)

Thus, "inherent in the concept of 'reasonable accommodation', as established by the Fair Housing Act, is that the interest of, and benefit to, handicapped individuals in securing equal access to housing must be balanced against the interest of, and burden to, municipalities in making the requested accommodation under the facts of each case." (*Oxford House, Inc. v. City of Virginia Beach* (E.D. Va. 1993) 825 F.Supp. 1251, 1261.) "The Fair Housing Act does not insulate [the requesting party] from legitimate inquiries designed to enable local authorities to make informed decisions on zoning issues." (*Oxford House-C v. City of St. Louis* (8th Cir. 1996) 77 F.3d 249, 253 (internal citation and quotation marks omitted).)

Indeed, courts have acknowledged that local officials are in the best position to recognize and balance the imperative of good land use planning against the propriety of a proposed accommodation. In *Oxford House-C*, the court noted that the FHA is not intended to transform courts into "zoning boards by deciding fact-intensive accommodation issues in the first instance." (77 F.3d at p. 253; see also, *Schwarz v. City of Treasure Island* (11th Cir. 2008) 544 F.3d 1201, 1223 ("*Schwarz*").) In *Schwarz*, the court observed, "[s]tate and local officials have experience in [the regulation of land use] and know best the needs of their citizenry." (544 F.3d at p. 1223.) That court went on to express its doubt that Congress intended to

ignore "the considered judgments of these officials when deciding what is reasonable in a particular case."[4] (*Ibid.*)

2. A Local Government Has No Obligation To Provide A Reasonable Accommodation Until The Party Seeking The Accommodation Proves That It Is Necessary Under The Circumstances

In contrast to the equal protection and due process guarantees identified by Appellant (see, Appellant's Opening Brief, p. 12), which are absolute, no party has a "right" to a reasonable accommodation unless and until that party proves such accommodation is necessary. "[T]he requested accommodation must be "necessary," meaning that, without the accommodation, the plaintiff will be denied an equal opportunity to obtain the housing of her choice." (*Wisconsin Community Services, Inc. v. City of Milwaukee* (7th Cir. 2006) 465 F.3d. 737, 749; *see also Giebeler v. M & B Assocs.* (9th Cir.2003) 343 F.3d 1143, 1155 ("*Giebeler*").) To prove that

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[4] The court's doubt was based, in part, on the fact that "Title I of the ADA-which Congress passed just two years after adding the disabled as a protected class under the FHA-directs courts to consider 'the employer's judgment as to what functions of a job are essential' when examining reasonable accommodation claims in the employment context. 42 U.S.C. § 12111(8)." (*Schwarz*, 544 F.3d at p. 1223.) The court reasoned, "[i]f employers' views on what is essential about a job are relevant, then surely local officials' views on what is essential about their zoning districts are at least as relevant as well." (*Ibid.*)

an accommodation is necessary, "[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice." (*Giebeler*, 343 F.3d at p. 1155 (quoting *Smith & Lee Assocs., Inc. v. City of Taylor* (6th Cir. 2006) 102 F.3d 781, 795).) "This requirement has attributes of a causation requirement. And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be necessary." (*Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir. 2002) (internal quotation marks and citations omitted).)

In *Bronk*, the court drew an important distinction between reasonable accommodation cases and traditional discrimination cases such as those alleging housing discrimination on the basis of race:

> "[P]laintiffs' reliance on cases involving housing discrimination on the basis of race are inapposite. The concept of reasonable accommodation has meaning only when an accommodation is required; in race discrimination cases, it is not accommodation but equal treatment that is mandated . . . .

54 F.3d at 429 n. 5 (emphasis added).

Here, Appellant makes a fallacious assumption that reasonable accommodations are tantamount to the individual rights guaranteed under the equal protection and due process clauses of the state and federal Constitutions. Equal protection and due process are guaranteed; whereas "'[w]ithout a causal link between defendants' policy and the plaintiff's injury, there can be no obligation on the part of defendants to make a reasonable accommodation.'" (*Giebeler*, 343 F.3d. at p. 1155 (quoting *United States v. California Mobile Home Park Mgmt. Co.* (9th Cir. 1997) 107 F.3d 1374, 1380); see also, *Keys Youth Services, Inc. v. City of Olathe* (10th Cir. 2001) 248 F.3d 1267, 1275-76 (holding, a city "cannot be liable for refusing to grant a reasonable and necessary accommodation if [it] never knew the accommodation was in fact necessary.") A reasonable accommodation is not a "fundamental right" because, among other reasons, "[t]he concept of reasonable accommodations has meaning only when an accommodation is required." (*Bronk*, 54 F.3d at p. 429 n. 5.)

IV.
CONCLUSION

The primary issue on appeal is whether or not this case involves a "fundamental vested right." The parties appear to agree that if the case does not involve a fundamental vested right, the "substantial evidence test" applied by the trial court is the appropriate standard of review. For the

reasons stated above, Appellant's interest in the requested accommodation is qualified and limited such that it should not be considered a "fundamental right." Accordingly, this Court should affirm the trial court's judgment finding that the City appropriately exercised its discretion in denying Appellant's reasonable accommodation request.

Dated: April 15, 2011

Respectfully submitted,

RICHARDS, WATSON & GERSHON
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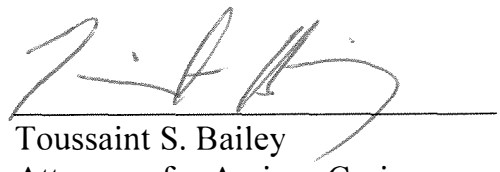


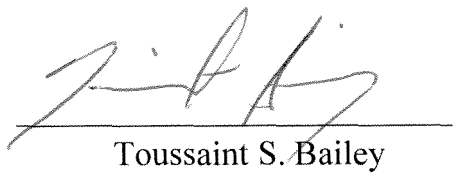
Toussaint S. Bailey
Attorneys for Amicus Curiae,
League of California Cities

CERTIFICATE OF CONFORMITY

In accordance with Rule 8.204(c)(1) of the California Rules of Court, this certifies that the League of California Cities' Amicus Curiae Brief filed in the case *Support Systems Homes v. City of Campbell* does not exceed 14,000 words, including footnotes and excluding the title page, table of contents, table of authorities, and certificate of conformity. According to the word count function on the word processing program used, this brief contains 3,074 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2011.



Toussaint S. Bailey

PROOF OF SERVICE

I, Karen Forrand, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On April 15, 2011, I served the within document(s) described as:

AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES ON BEHALF OF RESPONDENT

on the interested parties in this action as stated below:

William R. Seligmann, Esq. CITY ATTORNEY OF CAMPBELL 333 Church Street, Suite A Santa Clruz, CA 95060	Attorneys for Petitioner/Appellant
Jeffrey Janoff BOSTWICK & JANOFF 111 West St. John Street, Suite 1040 San Jose, CA 95113	Attorneys for Respondent
Clerk of the Superior Court Honorable Judge Kevin Murphy 191 North First Street San Jose, CA 95113	
Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797	4 copies

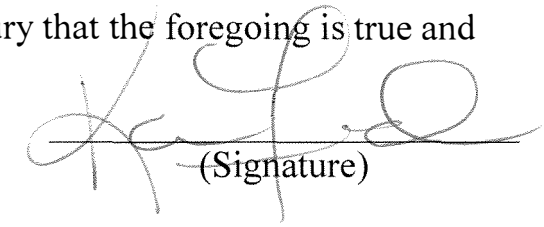
[X] (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 15, 2011, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Karen Forrand
(Type or print name)



(Signature)