



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
VALUATION AND ASSESSMENT OF
IMPROVEMENTS FOR TAXATION AS
REAL PROPERTY OF NON-EXEMPT ENTITY

AMERICAN CAMPUS COMMUNITIES, INC.,

Appellant-Petitioner,

No. S-1-SC-41215

and

REGENTS OF THE UNIVERSITY OF NEW MEXICO,

Interested Party-Petitioner,

vs.

BERNALILLO COUNTY ASSESSOR,

Appellee-Respondent.

On Writ of Certiorari to the Court of Appeals of New Mexico
Ct. App. No. A-1-CA-42053

BRIEF IN CHIEF

ORAL ARGUMENT REQUESTED

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References to Record Proper: The record on appeal encompasses three consolidated appeals to the district court from three decisions of the Valuation Protests Board:

No. D-202-CV- 2022-00099 (concerning the 2012-2020 Protest);

No. D-202-CV-2023-04349 (concerning the 2021-2022 Protest and 2022 Claim of Exemption);

No. D-202-CV-2023-08882 (concerning the 2023 Protest and 2023 Claim of Exemption).

The multi-volume record proper in No. 2022-00099, which constitutes the main case and includes the administrative record and a transcript of the administrative hearing, is cited as “RP” by volume and page number. The one-volume record proper in No. 2023-04349 is cited as “RP (04349)” by page number. The one-volume record proper in No. 2023-08882 is cited as “RP (08882)” by page number.

Transcript of Proceedings: As noted in the preceding paragraph, the transcript of the administrative proceedings is cited as “RP” by volume and page number, referring to the record proper in No. 2022-00099 where the transcript is found. There is no transcript of proceedings in the district court.

Statement of Compliance with Type-Volume Limitations: The body of the attached brief exceeds the 35-page limit set forth in Rule 12-318(F)(2) NMRA. As required by Rule 12-318(G) NMRA, we certify that this brief complies with Rule 12-318(F)(3) NMRA, in that the brief is proportionately spaced and the body of the brief contains 8,939 words. This brief was prepared and the word count determined using Microsoft Word 2021.

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Introduction

The primary issue in this appeal calls on the Court to interpret the constitutional tax exemption for property “used for . . . educational purposes,” N.M. Const. art. VIII, § 3, where the property is owned by a state educational institution and dedicated by the institution to a particular use to further its educational mission and, pursuant to a public-private partnership, a private entity leases and operates the property, subject to the state institution’s control and direction, to carry out the institution’s mission.

This novel issue concerns two student residential facilities located on the campus of and owned by Petitioner University of New Mexico, which were financed, designed, and constructed at the University’s direction by Petitioner American Campus Communities (“ACC”) for the purpose of providing on-campus housing to students in furtherance of the University’s academic mission. The facilities are operated and managed by ACC pursuant to the University’s requirements and directives. Respondent Bernalillo County Assessor has assessed taxes on these properties against ACC’s leasehold and denied claims of an educational-use exemption for the properties. The Bernalillo County Valuation Protests Board upheld the assessment of taxes and denial of an exemption, and the Board’s decision was affirmed by the district court and the Court of Appeals. None of these tribunals correctly analyzed the constitutional issue consistently with

existing precedent of this Court.

In *Albuquerque Alumnae Association v. Tierney*, 1933-NMSC-011, 37 N.M. 156, the Court largely foresaw the situation presented here. In *Alumnae Association* the Court denied an exemption to a private sorority chapter house, but it drew a critical distinction between a privately owned sorority house and a student residential facility owned and devoted to that use by an educational institution: the Court did “not question” that “where [an] educational institution itself affords to its students . . . facilities” including “dormitories” and other adjuncts to education, “the uses are educational” to the same extent as “classrooms, lecture halls and laboratories.” *Id.* ¶ 17. “The very fact that an educational institution has devoted property to a use reasonably related to its general purposes, stamps that use as educational in the opinion of those intrusted with the responsibility for adopting educational policy.” *Id.* ¶ 18.

That is exactly this case. Under the public-private partnership between UNM and ACC, the University owns both the underlying land and the student housing facilities constructed on the land, which were designed and built at the University’s direction and in accordance with its specifications to meet its needs and advance its educational purpose. The absence of such institutional involvement determined the result in *Alumnae Association*, just as its presence in this case should dictate the opposite outcome here. The University’s intensive

involvement in the use of its property for student housing to advance its mission “stamps that use as educational.” 1933-NMSC-011, ¶ 18. The Court should decide this appeal using the same analysis it employed in *Alumnae Association*.

The second issue presented challenges the Assessor’s denial of an exemption for some of the years in question based on ACC’s failure to claim an educational-use exemption for those years. The Assessor represented over a period of eight years that the property was tax-exempt by virtue of UNM’s ownership, only later to assess taxes retroactively for this period. Because ACC and UNM reasonably understood during this time that there was no need to apply for an educational-use exemption because the property was exempt as state property, the Assessor should be estopped from denying an educational-use exemption based on ACC’s failure to claim one.

Summary of Facts and Proceedings

UNM Experiences a Student Housing Crisis

In 2007, the University was in “dire need” of improved facilities for student housing. (17 RP 4139, at 46:9.) The University’s “older housing stock . . . didn’t meet the current needs of [its] students.” (*Id.* at 47:1-3.) Student surveys rated dormitory rooms at the University among the worst in the nation. (*Id.* at 47:19-25; 20 RP 5237-38.) The poor condition of the University’s aging housing inventory was a serious concern to UNM’s administration. (17 RP 4239, at 301:7-13.) A

study commissioned by the UNM Board of Regents in 2007 to “reinforce the University’s mission and better support its student population” emphasized the University’s “commitment to the improvement of the on-campus residential community” – a task that was viewed as “essential.” (20 RP 5097, 5103.)

Despite the urgent need, the University lacked the ability to finance the construction of new student residences at the time. (17 RP 4139, at 48:8-22; 17 RP 4159, at 128:1-15.) The 2007 study recommended that UNM investigate public-private partnerships as a means of obtaining new student housing. (20 RP 5107.) In a public-private partnership, a private entity provides capital and expertise to develop an asset for a public institution and then manages and operates the asset cooperatively with the institution. (20 RP 4174, at 185:17-186:14.) Public-private partnerships allow public educational institutions to exercise control over projects to serve their institutional mission and values without depleting their financial resources, while benefiting from the expertise of their private partner. (17 RP 4320, at 477:2-478:18.)

UNM Engages ACC to Construct, Lease, and Manage New Student Residential Facilities To Be Owned by the University on Land Provided by the University

The University opted to pursue a partnership with a private entity to address its housing needs. In 2008 it issued a Request for Information, followed by a Request for Proposals, for a private developer to finance, design, construct, and manage new student housing facilities (the “Facilities”) on the UNM campus on

land designated by the University for that purpose. (17 RP 4139-40, at 48:13-49:5; 20 RP 5239, 18 RP 4473.)

In response to the University's requests, ACC submitted a competitive proposal that ultimately was selected by UNM. (17 RP 4140, at 50:4-9.) ACC is an industry leader in developing and operating academically oriented student housing facilities. (*Id.* at 50:10-17; 17 RP 4173, at 182:16-185: 17 RP 4321, at 480:11-481:25; 4 RP 1028.)

Following its selection, ACC entered into a term sheet with UNM that defined the parties' relationship. Those terms were then incorporated into a master agreement under which ACC, "in the best interest of the University and its students," was to "design, develop, manage and operate a multi-phase student housing program" at locations selected by the University on its main and south campus, resulting in development of the Facilities. (17 RP 4140, at 50:22-52:19; 18 RP 4500 ¶¶ A & D, 4527.) ACC was to be "solely responsible for financing and debt repayment" which "the University . . . would otherwise be required to undertake." (18 RP 4500 ¶ D.) The University was to have fee ownership of the Facilities when constructed, in addition to its ownership of the underlying land, while ACC would hold a leasehold interest in the property. (17 RP 4140, at 51:6-52:1; 18 RP 4527.) It was important to the Regents that UNM have ownership and attendant control over the Facilities. (17 RP 4175, at 191:15-21; 17 RP 4225-26, at

248:18-249:6.) The Regents were insistent on maintaining ownership as a means of control over ACC. (17 RP 4231, at 270:6-23.)

The University entered into similar, separate leases with ACC for each of the Facilities. (19 RP 4654 (Lobo Village); 21 RP 5302 (Casas del Rio).) Lobo Village is a complex of 18 apartment and townhome-style residential buildings on an 18.5-acre site on the south campus, providing 864 student beds. (17 RP 4152, at 97:1-98:24; 17 RP 4258-59, at 380:16-381:8; 17 RP 4267, at 415:6-416:20; 20 RP 5015-26.) Casas del Rio is a traditional student residence hall consisting of four residential buildings on a 4.5-acre site on the main campus, providing 1,026 beds. (17 RP 4158, at 121:6-122:25; 17 RP 4265, at 405:5-407:6; 17 RP 4268-69, at 420:10-421:21; 23 RP 5427-35.) The Facilities were built according to requirements imposed by and plans approved by the University. (17 RP 4144-45, at 68:23-69:17; 17 RP 4154, at 106:12-107:6.) The UNM Regents approved the leases and all documents. (17 RP 4157, at 119:18-120:6.) The leases have a term of 40 years with three optional renewal periods of 10 years. (19 RP 4663-64; 21 RP 5313.) As the master agreement contemplated, the leases provide that UNM possesses a fee interest in the Facilities and ACC holds a leasehold estate. (19 RP 4686; 21 RP 5338 (¶ 14).)

ACC's Operation of the Facilities Is Subject to the University's Requirements

As the University required, the leases provide that the premises may be used

“only for UNM Student residential housing” and related uses. (19 RP 4677; 21 RP 5328 (¶ 8.1.1).) ACC must meet minimum standards set by UNM relating to maintenance, staffing, management, and operation of the Facilities. (19 RP 4678-79; 21 RP 1164-65, 5330-31 (¶¶ 9.1, 9.2).) ACC’s management of the Facilities is guided by an advisory committee composed of UNM and ACC representatives which meets periodically to consider and approve such details as budgets, staffing plans, compliance with minimum operating standards, and security plans and to adopt community policies, rules, and regulations for students residing in the Facilities. (17 RP 4150, at 89:15-91:22; 17 RP 4157, at 117:1-118:9; 19 RP 4679-81; 21 RP 5331-33 (¶ 9.3.1).)

As the leases describe, students residing in the Facilities, by design, have the same opportunities and experiences as students living in UNM-managed student housing. (*See* 17 RP 4147-48, at 80:9-83:5; *see also* 17 RP 4155-56, at 112:1-114:20; 17 RP 4175, at 192:5-13.) Students living in the Facilities are provided the same support services that are provided to all other students living on the UNM campus. (19 RP 4674; 21 RP 5326-27 (¶¶ 7.6, 7.7).) Students are subject to the University’s code of conduct and other relevant policies and to the University’s judicial process procedures. (17 RP 4148-49, at 83:22-86:1; 19 RP 4677-78; 21 RP 5329 (¶ 8.2.2).) By dictating that the same policies applied to the Facilities as to other student housing, the Regents intended students to have a “seamless”

residential experience, regardless of whether they were living in University-managed or ACC-managed housing. (17 RP 4259, at 384:5-7.)

In the leases, ACC acknowledges that the Facilities are intended to serve as “an academically oriented student housing community that provides [University students] with an opportunity to study, socialize and recreate through the implementation of a sound residence life program.” (19 RP 4679; 21 RP 5331 (¶ 9.1.2.2).) A residential life program combines social, recreational, and academic programming to help students succeed in their college careers. It is a critical aspect of student housing that contributes to student retention and academic success. (17 RP 4142, at 59:2-9; 17 RP 4149, at 88:3-13; *see also* 17 RP 4175, at 192:14-21; 17 RP 4179, at 207:25-208:12.)

The University required that ACC’s residential life program comply with UNM guidelines. (19 RP 4680; 21 RP 5332 (¶ 9.3.1.4(c)).) The University created a model for residential life programming that it refers to as the Zia model, which aims to promote students’ academic, social, and emotional development. (17 RP 4238, at 298:7-299:16; 22 RP 5634-36.) ACC implemented “absolutely the same” model for its employed resident assistants to follow in managing the Facilities. (17 RP 4238, at 299:17-23; *see also* 17 RP 4261, at 389:3-390:25.) ACC presents residential life programs at Lobo Village and Casas del Rio based on the Zia model (17 RP 4261, at 391:1-392:17; 17 RP 4266, at 409:2-410:23; *see* 24

RP 6201-05, 6221-29) and has established Living Learning Communities at each facility that support the University's academic mission (17 RP 4263-64, at 399:6-401:14; 17 RP 4266, at 411:2-11; 24 RP 6191-6200, 6218-20.)

Notwithstanding ACC's involvement, it is the University that dictated how each facility was to be planned, designed, developed, constructed, financed, leased, managed, maintained, and operated. (17 RP 4158, at 124:16-20; 17 RP 4181-82, at 216:17-217:3.)

The New Facilities Allow UNM to Implement an On-Campus Residence Requirement to Improve Academic Outcomes

In 2016, the University conducted a study culminating in a recommendation that UNM implement a policy requiring that freshmen, with some exceptions, live on campus. (17 RP 4235, at 286:21-288:4; 22 RP 5605, 5617-18.) The University implemented the proposed policy in the fall of 2018. (17 RP 4237-38, at 296:25-297:18.) The additional beds provided by ACC's development of the Facilities gave UNM the housing capacity needed to put the policy in place. (17 RP 4237, at 293:9-294:4; 22 RP 5611.)

On-campus residence is beneficial to students. (17 RP 4235, at 286:8-20; 20 RP 5111.) Students who reside on campus demonstrate a higher degree of academic success as measured by academic performance, retention, completion of degrees, and grade point average than students who live elsewhere. (17 RP 4237, at 294:8-295:12; 22 RP 5607.) Data compiled by the University after the campus

residence requirement was implemented shows that the retention rate for students living on campus was 10 percentage points higher than for students living off campus. (17 RP 4238, at 297:19-298:6.)

ACC was instrumental in carrying out the Lobo Village and Casas del Rio projects. ACC provided capital and expertise to construct the facilities and integrate them into the University's student housing and residential life program. The University could not have achieved its goal of creating new, high-quality, academically oriented student housing and improving the academic success of students without ACC's involvement. (17 RP 4158-59, at 125:5-126:1; 17 RP 4162, at 137:1-22.)

The Assessor Provides Assurance That the New Student Residences Would Be Exempt from Property Tax Based on the University's Ownership

From the outset, UNM and ACC were jointly concerned over the availability of a constitutional property tax exemption for the Facilities. Both believed and intended that the Facilities would be exempt from taxation. (17 RP 4145, at 70:17-71:23; 17 RP 4154, at 108:1-12; 17 RP 4176, at 194:9-195:7; 17 RP 4225, at 245:8-22.) Subjecting the Facilities to property tax would result in either an increase in rents for students or a reduction in the scope or quality of the project. Either consequence would compromise the University's goal of providing modern, affordable, high-quality housing for its students. (17 RP 4147, at 79:7-18; 17 RP 4222, at 233:11-235:8.)

Under the approach to the project contemplated by UNM and ACC, the University was to own the Facilities and the underlying land. (17 RP 4145, at 71:21-23.) When the University constructed buildings that it owned on University-owned land, it never applied for a tax exemption, because it was understood that the constitutional exemption for state-owned property applied. Under the same rationale, the University did not apply for an exemption for the UNM-owned Facilities constructed on the University's land in this case. (See 17 RP 4145-46, at 72:18-73:19; 17 RP 4155, at 109:15-110:5.) Additionally, both the University and ACC understood that the Facilities were being devoted to an educational use under ACC's management as the leases of the Facilities required. (*Id.*)

In June 2010, after the Lobo Village lease had been executed and work on the Lobo Village project was just beginning, a representative of the Assessor's office named Anthony Garcia left a message for the University's director of real estate, Kim Murphy, regarding the tax-exempt status of the property. (17 RP 4170, at 170:17-172:21; 22 RP 5437.) Mr. Murphy returned the call to the Assessor's office – he was “pretty certain” he spoke directly with Mr. Garcia – and recounted the interaction in an email sent to a project manager at ACC. (17 RP 4171, at 172:22-174:18; 22 RP 5438.) Mr. Murphy explained the project and told the person he spoke with in the Assessor's office that under the terms of the lease agreement the improvements were owned by UNM. As reported by Mr. Murphy

to ACC, the Assessor’s representative “said that as long as the improvements are owned by UNM, he’s fine with them being exempt. . . . He said that he would report our conversation and would get back if anything else was needed.” (*Id.*) No one from the Assessor’s office requested anything further or followed up on this conversation. (17 RP 4171, at 174:19-22.) Nor did the Assessor’s position change; as late as January 2020, the Assessor responded to an inquiry from a member of the public regarding the tax status of the Facilities by stating that if the Facilities were owned by the University they were tax-exempt. (17 RP 4337, at 544:4-546:25.)

The Assessor Places the Facilities on the Tax Rolls and Assesses ACC for Back Taxes and Ongoing Taxes

The Facilities were not placed on the tax rolls when Lobo Village began operating in 2012 or when Casas del Rio commenced operations in 2013. (17 RP 4102 ¶¶ 2.7, 3.1.) In 2020, however, after eight years during which no taxes were assessed, the Assessor then in office determined that the Facilities should be taxed to ACC. (17 RP 4339, at 551:20-554:15.) The Assessor sent a letter to ACC stating that, although the Facilities had previously been treated as non-taxable based on the University’s ownership, the Assessor was “correct[ing] the valuation records . . . [by] adding improvements not previously assessed.” (29 RP 7166.) The letter advised ACC that it would receive amended tax bills for each of the years the Facilities had been in operation. (*Id.*) The Assessor sent ACC bills for

tax years 2012 through 2020 totaling more than \$6,000,000. (*See* 19 RP 4765-74; 20 RP 5260-77.)

The Assessor subsequently assessed ACC for property taxes on the Facilities for tax years 2021, 2022, and 2023 (relevant to the present appeal) and continues to assess property taxes on the Facilities.

ACC and UNM Protest the Assessments and Claim an Exemption from Taxation Based on Educational Use, Which the Valuation Protests Board Denies

- The 2020 Protest (Tax Years 2012-2020)

The Assessor's letter informing ACC that it would be assessed back taxes for the Facilities also stated that if ACC "disagree[d] with the assessed value," it could "file . . . a protest before the Bernalillo County Valuation Protests Board." (29 RP 7166.) *See* NMSA 1978, § 7-38-25 (1997). After receiving the tax bills for 2012 through 2020, ACC filed a "timely and conforming protest petition," as the Assessor had advised it to do. (17 RP 4101 ¶ 1.8; 29 RP 7168-74.) ACC did not file a separate claim of exemption at that time. The University intervened in the protest to support ACC's position. (17 RP 4100 ¶ 1.4; 29 RP 7168.) The Board conducted a multi-day protest hearing. (17 RP 4127-4422.)

The facts relating to the Facilities, as set forth above, were not seriously disputed, but the parties differed as to the legal significance of those facts. ACC and UNM argued that the Facilities were built and operated at the University's direction on land dedicated by the University to meet its need for student housing

and to further its educational mission, and they therefore qualified as an educational use under the reasoning of *Alumnae Association*. (31 RP 8085-91.) The Assessor interpreted *Alumnae Association* as establishing that property used for student housing cannot constitute an educational use. (*Id.* at 8028-31.) The Assessor also contended that ACC was not entitled to an educational use exemption for 2012 through 2020 because ACC never had applied for such an exemption. (*Id.* at 8018-21, 8095-96.) In the Assessor's view, even if the Facilities were owned by the University, ACC was subject to taxation of its leasehold interest in the Facilities as a fractional interest of a nonexempt entity (ACC) in the real property of an exempt entity (UNM). (*Id.* at 8021-28.) See NMSA 1978, § 7-36-4(B) (1998). ACC and UNM responded to the Assessor's argument that no claim for an educational exemption had been made by arguing that the Assessor was equitably estopped from requiring ACC to apply for an educational exemption based on its earlier communications with the University indicating that the University's ownership of the Facilities was a sufficient basis for an exemption. (See 17 RP 4110-13 ¶¶ 4.2.34-40.)

The Board denied ACC's protest. (17 RP 4100.) It agreed with the Assessor that ACC was not entitled to a tax exemption for 2012 through 2020 because it had not applied for one. (*Id.* at 4109-10 ¶¶ 4.2.25-26, 4.2.32-33.) The Board took note of ACC's estoppel argument, commenting that the Assessor had

“work[ed] a feint on Taxpayer” in that

several years before completion of [the Facilities], the Taxpayer received guidance from the Assessor, on which the Taxpayer could reasonably have relied, representing that [the Facilities] would be exempt due to ownership. Therefore, there would have been no need for the Taxpayer to file an application for exemption for educational purposes.

(*Id.* at 4110-12 ¶¶ 4.2.34, 4.2.39.) But the Board left “[a]ny determination of the legal effect of this situation” to the courts. (*Id.* at 4112 ¶ 4.2.40.) The Board agreed that ACC could be taxed for its fractional interest in the Facilities. (*Id.* at 4123-26 ¶¶ 7.1-16.) The Board’s disposition of the protest did not require it to reach the question whether use of the Facilities as student residences per the University’s directives constituted an educational use.

- The 2021-2022 Protest and 2022 Claim of Exemption

For tax years 2021 and 2022, the Assessor billed ACC for property taxes and ACC filed protests as in 2020. The parties stipulated that the record compiled in connection with the protest for tax years 2012 through 2020 would comprise the record for the 2021 and 2022 protests. Additionally, in response to the Board’s ruling that ACC was required to apply for an educational use exemption in order to obtain one, ACC submitted a claim of exemption for 2022. In lieu of a second hearing, the parties stipulated that the record from the 2012 through 2020 protest, as supplemented by affidavits filed by both sides, would be the record on which the 2022 claim of exemption would be decided. (*See* RP (04349) 3-5.)

The Assessor submitted supplemental affidavits from two employees of the Assessor's office, Juanita Chavez (32 RP 8214) and Clyde Ward (*id.* at 8325). Neither affidavit addressed the factors that UNM and ACC contended were determinative of educational use under *Alumnae Association*. Ms. Chavez observed that the study rooms in Casas del Rio "represent a very small fraction of the total living space" and concluded that "the primary and substantial use of the Casas del Rio complex is residential." (*Id.* at 8216-17 ¶¶ 12 & 17.) She observed that the apartment-style residences at Lobo Village contained "no study rooms [or] classrooms" (*id.* at 8218 ¶ 26) and concluded that the apartment units "are used primarily and substantially, and apparently exclusively, for residential purposes and not for educational purposes." (*Id.* ¶ 28.) Mr. Ward's affidavit stated his view that "[a]ll of the residential apartment buildings at Lobo Village are used primarily, substantially, and exclusively as residences, with no educational use at all Similarly, the overwhelming majority of the premises at Casas del Rio are residential facilities." (*Id.* at 8327 ¶¶ 13-14.)

ACC and UNM submitted an affidavit from an expert witness, Dr. Chris Heasley, responding to the affidavits of Ms. Chavez and Mr. Ward. (*Id.* at 8344.) Dr. Heasley had testified at the earlier protest hearing. (*See* 17 RP 4314, at 454:20.) His areas of study include student housing and public-private partnerships. (*Id.* at 8345 ¶ 6.) In his affidavit, Dr. Heasley discussed the design

and operation of the Facilities and the social environment they created for the student residents. He concluded that the Facilities are “residential facilities which are used for educational purposes.” (32 RP 8347 ¶ 11(F).)

In a consolidated decision based on the 2012-2020 record, the Board summarily denied ACC’s 2021 and 2022 protests in view of the result reached for the 2012-2020 protest. (RP (04349) 21 ¶¶ 67-68.) It engaged in a more extensive analysis in denying the 2022 claim of exemption. The Board rejected ACC’s argument that the directed use of the University’s own property to provide on-campus student housing could be an educational use in itself. The Board did not consider *Alumnae Association* persuasive because, in its view, the sorority chapter house as described in *Alumnae Association* and the Facilities exhibited “notable similarities,” and this Court did not recognize the use of the sorority home as educational. (*Id.* at 15 ¶ 40.) Instead, the Board followed a line of authority that had developed independently of *Alumnae Association*, under which a use qualifying as educational must be a “direct, immediate, primary, and substantial” use that “embraces systematic instruction” in some branch of learning. (*Id.* at 5 ¶ 14.) See *NRA Special Contribution Fund v. Bd. of Cnty. Comm’rs*, 1978-NMCA-096, 92 N.M. 541. The board concluded that the use of the facilities “is residential” and that the *NRA* requirements had not been met. (RP (04349) 21 ¶ 65.)

- The 2023 Protest and Claim of Exemption

For the 2023 tax year, ACC again protested the tax assessed on the Facilities and filed a claim of exemption based on educational use. The parties adopted the same stipulation they had adopted for the previous year; the Board therefore considered the 2023 protest and 2023 claim of exemption under the previously compiled record and supplemental affidavits. (*See* RP (08882) 3-4.) Based on its prior decisions, the Board summarily denied both the protest and the claim of exemption. (*Id.* at 4 ¶ 6.)

The District Court Affirms the Board in a Consolidated Appeal

ACC and the University timely appealed the Board's decisions for 2012-2020, 2021-2022, and 2023 to the district court pursuant to NMSA 1978, §§ 7-38-28(A) (2015) and 39-3-1.1 (1999). (32 RP 8444 (2012-2020); RP (04349) 1 (2021-2022); RP (08882) 1 (2023).) The parties fully briefed the 2012-2020 appeal (32 RP 8125, 8157, 8184), submitted supplemental briefing for the 2021-22 appeal (33 RP 8376, 8397, 8410), and waived further briefing for the 2023 appeal, which the parties stipulated would be controlled by the results of the 2021-2022 appeal (33 RP 8423, 8429). The district court consolidated the three appeals and decided them in a single opinion. (33 RP 8432.)

ACC and UNM argued two main points: first, that the Facilities were used for educational purposes under the analysis employed in *Alumnae Association* and,

second, that the Assessor was equitably estopped from denying an educational use exemption for tax years 2012 through 2020 on the ground that ACC had not applied for such an exemption. (32 RP 8142, 8148.) The Assessor, relying on *NRA*, argued that “the direct, immediate, primary and substantial use of the property . . . is controlling, and that use is plainly residential.” (*Id.* at 8168; *see also id.* at 8172 (“The vast majority of Casas Del Rio is residential space. . . . Lobo Village . . . is entirely residential.”)) The Assessor dismissed the *Alumnae Association* analysis as “dicta” and “hypothetical.” (*Id.* at 8173.)

The district court rejected the ACC/UNM position and upheld the Board’s decision based on the *NRA* criteria. The court held that substantial evidence supported the Board’s determination that the use of the Facilities was “primarily residential.” (33 RP 8436.) The court considered the reasoning expressed in *Alumnae Association* to be “dicta addressing a hypothetical situation” that was not “persuasive or controlling.” (*Id.* at 8439.) The district court did not apply equitable estoppel because it determined that the Facilities did not qualify for an educational use exemption in the first place. (*Id.* at 8441-42.)

The Court of Appeals Affirms the District Court

On appeal by ACC and UNM, the Court of Appeals affirmed. *Am. Campus Cmtys., Inc v. Regents of Univ. of N.M.*, 2026-NMCA-031, 585 P.3d 557, *cert. granted*, 2026-NMCERT-002, __ P.3d __. The court declined to follow the

reasoning in *Alumnae Association* as guiding precedent because it considered the facts in the present case to be “nearly indistinguishable” from those in *Alumnae Association*, in that both the Facilities and the sorority house in *Alumnae Association* served to house students, and the sorority house was denied an exemption. *Id.* ¶¶ 12-13. Instead, like the district court, it applied the test for educational use developed in *NRA*, noting that this Court itself had used that test in another case. *Id.* ¶ 10; see *CAVU Co. v. Martinez*, 2014-NMSC-029, 332 P.3d 287. Relying on the *NRA* criteria, the court concluded that “the direct, immediate, primary, and substantial use of [the Facilities] is residential,” any academic activity occurring there “merely is incidental and secondary to its primary function as dormitories,” and any benefit to students resulting from the use is “remote.” 2026-NMCA-031, ¶ 14. The court also concluded that Dr. Heasley’s affidavit did not establish that “systematic instruction” occurred in the Facilities or that use of the Facilities “further[ed] an educational purpose.” *Id.* ¶ 16. It expressed concern that the approach advocated by UNM and ACC would promote broad and “seemingly standardless . . . determinations” of exemptions and would “impl[y] that fraternity and sorority houses on the UNM campus should too be tax exempt,” contrary to the result reached for the sorority house in *Alumnae Association*, *id.* ¶¶ 18-19.

The court recognized that it had no need to reach the estoppel issue, given its view that the Facilities did not qualify for exemption. *Id.* ¶ 27. But it also held

that estoppel was not warranted because, “[d]espite its communications with the Assessor . . . ACC was required to report the [p]roperties to the Assessor’s office and apply for the exemption.” *Id.* ¶ 26.

This Court granted certiorari to consider whether the Board and lower courts erred in applying the *NRA* test, rather than the rationale of *Alumnae Association*, to determine educational use in this case involving an educational institution’s dedication of its own property to a public-private partnership for a use that advances the institution’s educational mission under its direction and control. The Court also granted certiorari to review whether equitable estoppel bars the Assessor from relying on ACC’s failure to claim an educational-use exemption for certain years as a basis for denying the exemption for those years.

The Court should reverse the Court of Appeals. While *NRA* provides a viable test for constitutionally tax-exempt educational use in the typical case of privately owned property, it is by no means exclusive. *Alumnae Association* applies to instances in which an educational institution devotes its own property to a use that it determines is necessary to further its educational mission, as occurred here through the University’s public-private partnership with ACC, and it retains its vitality and relevance today. Furthermore, the Board’s finding that ACC could reasonably rely on the Assessor’s representation that it was not necessary to apply for an educational use exemption equitably estops the Assessor from denying an

exemption for the years that ACC did not apply for one.

Argument

I. The University’s Dedication of Its Property Specifically to Student Housing, in Support of the University’s Educational Mission and Subject to Its Direction and Control Through the Mechanism of Its Public-Private Partnership with ACC, Establishes an Educational Use Under *Alumnae Association*.

The Board, district court, and Court of Appeals analyzed ACC’s claim to a constitutional educational-use exemption under the *NRA* criteria, rejecting the argument of ACC and UNM that *Alumnae Association* provides the proper analysis. This Court reviews issues concerning the correct legal standard to apply to questions of constitutional law de novo. *State v. Sena*, 2020-NMSC-011, ¶ 15, 470 P.3d 227. This issue was preserved by ACC’s and UNM’s argument for an exemption based on *Alumnae Association* made before the Board and the lower courts. *See supra* pp. 13-14, 18-20.

A. Property that meets the criteria for educational use under the New Mexico Constitution is exempt from taxation.

Revenue is the lifeblood of government. It supplies the means through which government provides essential services to the public. Consequently, in cases involving claims of exemption from taxation, including the present case, New Mexico courts have invoked the maxim that “[p]roperty is presumed to be subject to taxation.” *E.g., Am. Campus Cmty.*, 2026-NMCA-031, ¶ 9 (internal quotation marks & citation omitted). But that presumption runs squarely up

against the constitutional mandate that “all property used for educational . . . purposes,” along with property put to charitable uses, “shall be exempt from taxation.” N.M. Const. art. VIII, § 3. The reason for such exemptions is that the exempt use itself results in public benefits that the government otherwise would have to provide. *See CAVU Co.*, 2014-NMSC-029, ¶ 30.

In deciding claims of a constitutional tax exemption, New Mexico courts must engage in “a severe task of interpretation” that is highly fact-dependent to determine whether a basis for the claimed exemption exists. *Id.* ¶ 16. By failing to apply the correct legal analysis under *Alumnae Association* to ACC’s claim of educational use and instead relying on the inapplicable test from *NRA*, the Board and the courts below failed in that task.

B. *Alumnae Association* determines when an educational institution’s use of its own property in partnership with a private entity constitutes an educational use.

As noted at the outset, *supra* p. 2, in *Alumnae Association* the Court considered a claim that a sorority chapter house owned by an association of sorority alumnae and used as a home for sorority members attending the University was covered by the educational-use exemption. The district court decided against the association’s claim. On appeal, this Court held that the sorority house was not being put to an educational use.

The essence of the Court’s reasoning is captured by a central passage in its

opinion:

It is urged that, where the educational institution itself affords to its students these facilities – dormitories, dining halls, study halls, recreation halls – the uses are educational; as much so as in the case of classrooms, lecture halls and laboratories. Authorities support the contention, and we do not question it.

It does not necessarily follow that, where the educational institution itself has failed to furnish these facilities and adjuncts to education, or has inadequately furnished them, the same exemption will attach to property devoted to the same purposes by the students themselves, or by some independent agency. The contention that it does follow is not without force, since use, not ownership, is the test. Yet there is this difference: The very fact that an educational institution has devoted property to a use reasonably related to its general purposes, stamps that use as educational in the opinion of those intrusted with the responsibility for adopting educational policy. Every use of property by the institution bears a relation to every other use. The whole of its activities is necessarily its educational plan.

1933-NMSC-011, ¶¶ 17-18.

Alumnae Association anticipates the facts here and sets out the applicable educational-use analysis. In the quoted passage explaining the basis for its ruling, the Court draws a critical distinction between “adjuncts to education” that are furnished by “some independent agency” and instances in which an educational institution itself “has devoted property to a use reasonably related to its general purposes” as determined by the institution’s policymakers. The Court’s citations to precedent also demonstrate the Court’s focus on that distinction. *Compare Kappa Gamma Rho v. Marion Cnty.*, 279 P. 555, 558 (Or. 1929) (cited in paragraph 25 of *Alumnae Association*: “The chapter-houses of college fraternities

being independent as regards their ownership, occupation, and control from the colleges at which they are located and used chiefly as homes or club houses for their members are not exempt from taxation.” (internal quotation marks & citation omitted)) *with City of Chicago v. Univ. of Chicago*, 81 N.E. 1138, 1139 (Ill. 1907) (cited in paragraph 25 of *Alumnae Association*: “[T]he courts have uniformly held that buildings used by colleges exclusively as dormitories and dining halls for its students . . . are devoted to the purposes for which such institutions are organized.”).

Looking to the institution’s commitment of its property to a use that furthers its educational purpose as the factor that “stamps that use as educational,” as the Court did in *Alumnae Association*, provides a standard ideally suited to determining entitlement to a constitutional tax exemption based on educational use. The Court’s approach in *Alumnae Association* prevents opportunistic private owners of property from taking advantage of a tax exemption by claiming that their use of the property somehow benefits an educational institution, without giving the institution any say in the matter. This would be a wholly different case if ACC had exercised its own initiative to acquire property near the UNM campus and erect apartments to rent to students. But here the impetus for the construction of the Facilities came entirely from the University, driven by its urgent need to improve the quality of student housing and its inability to finance the necessary

improvements. In planning the Lobo Village and Casas del Rio residences, the University issued public requests for proposals and selected ACC from among the responding developers as its private-enterprise partner. The University specified the locations on campus where the Facilities were to be built, prescribed their use exclusively as student residences, and dictated requirements for their construction as well as for their management and operation. *Supra* pp. 4-9. When “those intrusted with the responsibility for adopting educational policy” on behalf of an educational institution have determined how institutional property should be used to further the institution’s purposes, that decision has been made by those most informed and qualified to make it, and the use can properly be deemed to be educational in the constitutional sense.

Where the institution at issue is the University of New Mexico, the foregoing analysis is particularly apt. The educational-use exemption is created by the state Constitution. N.M. Const. art. VIII, § 3. The University also is constitutionally established. *Id.* art. XII, § 11. The Constitution vests in the Regents responsibility “for the control and management of the [U]niversity.” *Id.* art. XII, §13(D). These constitutional provisions are appropriately read *in pari materia*, each in light of the others. *Cf. State v. Sandoval*, 1980-NMSC-139, ¶ 8, 95 N.M. 254 (stating that two provisions of United States Constitution “are in *pari-materia* and should be read together and harmonized in their application if

possible”).

“The proper focus of any inquiry into the propriety of an exemption is whether the use of the property furthers exempt purposes.” *CAVU Co.*, 2014-NMSC-029, ¶ 21 (internal quotation marks & citation omitted) (alteration omitted). In cases like the present one that involve the dedication of property by an educational institution to a use that those responsible for institutional governance have determined will advance the institution’s educational mission, the appropriate inquiry is the one marked out by this Court’s analysis in *Alumnae Association*.

C. The Board and the lower courts erred in failing to follow *Alumnae Association*.

The Assessor has consistently argued that this appeal presents merely an evidentiary dispute about whether the Facilities are residential or educational in character – i.e., whether they are more like apartments or more like classrooms. But the fact that the Facilities provide housing for UNM students, and are residential in that sense, never has been disputed. The question posed by this case is more fundamental: whether *Alumnae Association* or *NRA* provides the precedent under which to determine whether the use of the Facilities, in constitutional terms, is “educational.” *Alumnae Association* is the controlling precedent here, *see supra* Point I(B), and by rejecting its analysis the lower courts erred as a matter of law.

Because the lower courts mistakenly applied the *NRA* criteria to determine educational use, the substantial evidence approach taken by the district court,

which focused on the fact that students resided in the Facilities, was misdirected. Similarly, the Court of Appeals’ nitpicking critique of Dr. Heasley’s affidavit testimony had no bearing on the factors actually pertinent to educational use in this case. In attaching controlling significance to the Facilities’ function as residences rather than as academic venues, both courts failed to apprehend that the facts that are relevant here are those relevant to educational use under *Alumnae Association* – the University’s dedication of its own property to be used to house students as a part of achieving the University’s educational mission. Those facts lead, under *Alumnae Association*, to the conclusion that use of the Facilities as student residences is educational to the same degree as it is for academic facilities such as “classrooms, lecture halls and laboratories.” 1933-NMSC-011, ¶ 17.

The district court dismissed the analysis in *Alumnae Association* as dicta that could be freely disregarded – effectively treating *Alumnae Association* as inapplicable to a situation the Court in that case actually anticipated and addressed. *See supra* p. 19. But this Court has rejected the holding-versus-dicta distinction as too malleable and imprecise to define the precedential scope of the Court’s opinions. *State v. Mares*, 2024-NMSC-002, ¶¶ 38-39, 543 P.3d 1198. “Legal opinions can set forth important doctrines, synthesize new analytical frameworks, and establish procedural rules which are not strictly necessary to the decision in the case, but which nonetheless provide legal guidance that should be understood as

binding. . . . Thus the applied reasoning of an opinion, not only its narrow results, creates precedent.” *Id.* ¶ 40. The analytical distinction the Court drew in *Alumnae Association* between the private use of private property for a private purpose and the institutional use of institutional property to further an institutional purpose is central to the result the Court reached in that case. *Alumnae Association* speaks dispositively to both sides of the question – when property is not tax-exempt, but also when it is.

To the extent they acknowledged *Alumnae Association* at all, both lower courts erred in treating the result reached in that case, rather than the reasoning underlying that result, as determinative. Although the Facilities here and the sorority house in *Alumnae Association* both provide living quarters for University students, *see supra* p. 20, the Court’s rationale in *Alumnae Association* highlights the critical distinguishing factor that is operative in this case – between property that “an educational institution has devoted . . . to a use” and property “devoted to the same purposes . . . by some independent agency.” 1933-NMSC-011, ¶ 18.

The Court of Appeals raised no valid reason for failing to apply *Alumnae Association*’s rationale. It is not overly broad or standardless, *see* 2026-NMCA-031, ¶ 18; the requirements for educational use under *Alumnae Association* could hardly be narrower or more specific. And the approach does not logically imply that privately owned fraternity and sorority houses on campus should be tax-

exempt, *see id.* ¶ 19; *Alumnae Association* requires the University’s commitment of its own property to meet the needs of its educational mission.

The *NRA* test, useful in its proper sphere, is not the sole path to an educational-use exemption. *See CAVU Co.*, 2014-NMSC-029, ¶¶ 18 & 20 (noting that *NRA* test “is by no means inflexible” and eschewing adherence to “a mechanical test” for educational use). This Court has recognized that the inquiry into educational use must be conducted “reasonably and flexibly,” guided by “equity and common sense.” *Id.* ¶¶ 21-22. *Alumnae Association* provides a basis for a constitutional tax exemption, independent of *NRA*, that is fully justified in the circumstances involving an educational institution’s use of institutional property as the Court described in its opinion. Because those circumstances are present here in the public-private partnership established between UNM and ACC, the district court and Court of Appeals erred in failing to apply the rationale of *Alumni Association* to the present case.

D. Use of the Facilities for student housing in the circumstances of this case is a use for educational purposes.

Under *Alumnae Association*, use of the Facilities for student housing through the public-private partnership between UNM and ACC is an educational use and should be recognized as such. The University engaged ACC to construct Lobo Village and Casas del Rio on University land located on the main and south campus, which the University devoted to the specific purpose of improving the

quality and capacity of its on-campus student residences. The Facilities also became the property of UNM. *Supra* pp. 4-5. In its lease of the property to ACC, the University specified that the property was to be used exclusively for student housing. *Supra* pp. 6-7.

The University structured its relationship with ACC so as to maintain substantial control over the design, construction, and operation of the Facilities. UNM imposed requirements on and approved the construction plans. The leases to ACC specify minimum standards ACC must meet in operating the Facilities. UNM representatives serve on an advisory committee that guides ACC's management of the Facilities. The University sought to provide students living in the Facilities with the same residential experience as students residing in UNM-managed housing. UNM's code of conduct and policies apply to students residing in the Facilities. The leases require ACC to operate an academically oriented student community with a residential life program that meets University guidelines. *Supra* pp. 6-9.

Use of the Facilities for on-campus student housing in fact advances the University's educational mission. The Facilities provide additional residential capacity that enabled the University to implement its on-campus residence requirement for first-year students. And students who live on campus fare significantly better academically than those who do not. *Supra* pp. 9-10. Taxing

the Facilities, in contrast, would add an operating expense that would work directly against the University's goal of providing its students with modern, high-quality, housing options at rents that students can afford. *Supra* p. 10.

Maintaining the vitality of *Alumnae Association* in the present day is important to the viability of public-private partnerships involving New Mexico's educational institutions, such as the one here between the University and ACC, in which the availability of a property tax exemption is a material economic consideration in the success of the project. This Court should reaffirm that when an educational institution dedicates its own property to the furtherance of its educational mission by providing residences for its students, as much as by providing facilities for academic instruction, as described in *Alumnae Association* and as occurred here, the property is, *ipso facto*, "used for . . . educational purposes" within the meaning of Article VIII, Section 3 of the state Constitution and therefore is tax exempt. The Assessor should not be permitted to chip away at mandatory and beneficial constitutional exemptions that this Court has described as "affirmative and self-executing." *Temple Lodge No. 6, A. F. & A. M., v. Tierney*, 1933-NMSC-013, ¶ 29, 37 N.M. 178. Whether an educational institution's use of its own property exempts the property from taxation should depend upon decisions made by the individuals best suited to determine how the property can most effectively be put to the service of institutional needs.

For the foregoing reasons, the Court should conclude that the rationale underlying *Alumnae Association* provides the controlling precedent in the circumstances of this case and that, under the public-private partnership established between UNM and ACC, the Facilities are “used for . . . educational purposes” within the meaning of Article VIII, Section 3 of the New Mexico Constitution.

II. The Assessor Should Be Equitably Estopped, as a Matter of “Right and Justice,” from Denying an Educational Use Exemption for Certain Years on the Ground That ACC Did Not Apply for an Exemption.

Presented with evidence regarding the Assessor’s representations relating to the tax-exempt status of the Facilities, *see supra* pp. 10-12, the Valuation Protests Board found that ACC “could reasonably have relied” on the representations and have understood that there was no need to apply for an educational-use exemption for the years it failed to do so, *supra* pp. 14-15. The Assessor did not cross-appeal and is bound by the Board’s findings. *Castle v. McKnight*, 1993-NMSC-076, ¶ 5, 116 N.M. 595.

ACC and UNM argued that on the basis of those facts the Assessor should be equitably estopped from denying an educational-use exemption for the years prior to 2022 based on ACC’s failure to claim an exemption for those years. *Supra* p. 14. The Board determined that only a court could decide whether equitable estoppel applies to this case. *Supra* p. 15. The district court did not reach the issue of equitable estoppel in light of its disposition of the educational-use issue. *Supra*

p. 19. The Court of Appeals similarly found no need to address the issue but nonetheless held that equitable estoppel would not apply. *Supra* pp. 20-21.

This Court “review[s] the . . . application of equitable estoppel under an abuse of discretion standard.” *Continental Potash, Inc. v. Freeport-McMoran, Inc.*, 1993-NMSC-039, ¶ 26, 115 N.M. 690. A court abuses its discretion “when its decision is contrary to logic and reason.” *Roselli v. Rio Communities Serv. Station*, 1990-NMSC-018, ¶ 11, 109 N.M. 509. Additionally, “[a] misapprehension of the law constitutes an abuse of discretion.” *New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 4, 149 N.M. 42. This issue was preserved by arguments made to the Board, the district court, and the Court of Appeals by UNM and ACC. *Supra* pp. 14, 19, 20-21.

Although “equitable estoppel is . . . not generally used against the state,” it “will be applied against the state where right and justice demand it.” *Green v. N.M. Human Servs. Dep’t*, 1988-NMCA-083, ¶ 3, 107 N.M. 628. In *AA Oilfield Service, Inc. v. N.M. State Corporation Commission*, 1994-NMSC-085, 118 N.M. 273, the Court held that “right and justice” called for the application of equitable estoppel in circumstances much like those of the present case. 1994-NMSC-085, ¶ 22. The owner of an oilfield service business applied to the State Corporation Commission to transfer its operating certificate to another company. The Commission suspended the certificate and a Commission official advised the

service business that there was no time limit on the suspension while the business attempted to transfer the certificate. *Id.* ¶¶ 1-6. A statute required that a business seeking to transfer a certificate must maintain reasonably continuous service prior to applying for the transfer. The service business did not meet this requirement. An opponent of the transfer argued that the Commission had to deny the transfer because it was bound by the statutory requirement of continuous service. The Commission allowed the transfer. *Id.* ¶¶ 7, 15-17.

The Court rejected the opponent's appeal, holding that while the Commission should have followed the statute, a reviewing court could bar the Commission from applying the statute under the doctrine of equitable estoppel. *Id.* ¶¶ 18-20. The Commission official who provided advice to the service business had special knowledge of the relevant statute, as compared to the business owner. The owner of the business relied on that advice and failed to take steps to meet the reasonably continuous service requirement. Applying the statutory requirement would leave the business liable for a substantial debt. *Id.* ¶¶ 21-23.

In the present case, denying an educational-use exemption to ACC because it had not applied for an exemption would leave ACC liable for millions of dollars in property taxes accruing over the years before it submitted a claim of exemption in 2022. ACC relied on authoritative advice from the Assessor's office leading it reasonably to believe that it was not necessary to apply for an educational-use

exemption because the Facilities were owned by UNM and exempt as state property. *Supra* pp. 11-12, 14-15. The Assessor maintained that position through January of 2020 and did not advise UNM or ACC otherwise until it sent ACC a bill for eight years of back taxes. *Supra* p. 12. Not until the protest hearing did the Assessor assert that ACC was not entitled to an exemption because it had not filed an application for exemption based on educational use. *Supra* p. 14. When the Assessor initially notified ACC that it would be assessed for back taxes, the Assessor's letter stated that ACC could file a protest if it disagreed with the assessment; the letter did not inform ACC that if it did not also file a claim of exemption the protest would be denied. *Supra* p. 13. On these facts, the Assessor is equitably estopped from pointing to ACC's failure to apply for an exemption as a reason for denying it. *See State ex rel. State Highway Dep't v. Shaw*, 1977-NMSC-041, ¶ 8, 90 N.M. 485 (stating that estoppel may result from misrepresentation by government representative "even though made innocently or by mistake").

The Court of Appeals held that estoppel does not apply because, regardless of any communications with the Assessor, "ACC was required to report the [p]roperties to the Assessor's office and apply for the exemption." *Id.* ¶ 26; *see supra* p. 21. The court's explanation for this ruling is defective. The fact that the University and the Assessor discussed the tax-exempt status of the Facilities

demonstrates that the Assessor was well aware of the properties whether or not they were formally reported to the Assessor's office. The Court of Appeals rejected equitable estoppel based on a technicality – ACC's non-performance of an unnecessary act – rather than applying principles of right and justice. And the court's reasoning begs the question: it assumes in advance that estoppel does not apply, whereas estoppel, if applicable, would excuse ACC's failure to seek an exemption.

Based on the Board's unchallenged finding that ACC could reasonably rely on the Assessor's representations, equitable estoppel bars the Assessor from denying ACC an educational-use exemption for the years before ACC claimed the exemption. This Court should hold that the Facilities are exempt from taxation and that the exemption applies to all of the years for which an educational-use exemption was denied.

Conclusion

For the reasons set forth above, this Court should hold that the Facilities are tax-exempt for all the years at issue as property used for educational purposes pursuant to *Alumnae Association*, in light of the University's dedication of the property to student residential use through its public-private partnership with ACC. The Court should reverse the Valuation Protests Board and the lower courts and order that ACC's protests and claims of exemption for the years 2012 through

2023 should be allowed.

Statement Regarding Oral Argument

This appeal presents a question of constitutional dimension that is critical to the ability of the University to fulfill its educational function. Petitioners therefore request oral argument.

The Court's order setting the briefing schedule (filed March 26, 2026) states that oral argument shall be heard after all briefs are filed.

Respectfully submitted,

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C E R T I F I C A T E O F S E R V I C E

We certify that the foregoing pleading was filed through the Odyssey File-and-Serve electronic filing system, which caused a copy to be served automatically on all counsel of record this 27th day of April, 2026.

RODEY, DICKASON, SLOAN, AKIN &
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s/ Edward Ricco

By _____
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