

A recent [court order](#), freezing UC Berkeley's student enrollment at 2021-22 levels, has earned [some press attention](#) and notoriety. Commentators on Twitter have accused the lead plaintiffs (residents in the Berkeley area) [of being exclusionary NIMBYs](#). The court's decision was premised on violations by UC Berkeley of the California Environmental Quality Act (CEQA), a law that has long been a lightning rod for controversy in the state. In this series of blog posts, I want to closely examine the analysis undertaken by the courts in this case, because I think it has significant implications for how we understand the ways that CEQA works (and doesn't work), and indeed for environmental review more broadly. I also want to examine the broader policy implications of the case.

Today's first post will cover the basic background over the case and the issues it raises. Tomorrow I'll talk about how the case highlights a real problem for environmental review statutes seeking to address the influence of many small-scale, individual decisions - a key problem going forward as we address climate change. In the third post, I'll talk about how the case also raises the possibility of expanding environmental review to consider socioeconomic impacts of projects, and whether that would be an improvement on current law. Finally, I'll talk about the policy implications of using CEQA to freeze enrollment at UC Berkeley.

The basic conflict is over UC Berkeley's enrollment numbers - enrollment at the Berkeley campus has steadily increased over the past 15 years, even though capacity in University dorms has (until recently) not increased significantly. That gap between enrollment and on-campus housing capacity can have real effects on the surrounding community and on students themselves. An alarming number of Berkeley students face housing insecurity, and neighbors [have complained about the impacts of students](#) crowding into housing in nearby residential neighborhoods.

The legal hook under CEQA here is a campus planning process in 2005. In that process, UC Berkeley planned for future infrastructure needs through 2020, based in part on an assumption that campus enrollment at the time would remain roughly flat. The campus undertook an environmental impact report (EIR) - the most stringent form of environmental review possible under CEQA. CEQA generally requires a thorough review of the significant environmental impacts of a project proposed by a state agency, and where feasible, mitigation of those significant environmental impacts. An EIR is required when there is a fair argument that the impacts of a project will be significant.

Plaintiffs in the lawsuit contend that UC Berkeley is in violation of CEQA because it has never examined the impacts of the increase in campus enrollment since the 2005 EIR. To force the university to undertake that assessment, the plaintiffs first challenged the failure

to analyze the increased enrollment directly, and then also in a related lawsuit challenged a housing project that UC Berkeley proposed to build on the north side of campus, a project that would have provided housing for both faculty and graduate students. The city of Berkeley also sued to challenge the housing project, relying on similar arguments. The city settled its component of the lawsuit eventually in return in part for greater financial support from the university for impacts on public services from students.

The first key ruling in the case was a court of appeal ruling in the first case (the direct challenge to UC Berkeley's enrollment numbers) that CEQA does apply to enrollment decisions by a public university in California, even where that increase in enrollment was not connected to a specific physical infrastructure project - the university had argued to the contrary. The second key ruling in the second case (the challenge to the housing project) where the superior (trial) court held that the university had failed to analyze significant environmental impacts related to enrollment increases, such as the possibility that students might displace residents from city housing - and that this failure warranted a remedy freezing the university's enrollment at 2021-22 levels.

To my mind, these are the three key elements in this litigation - whether enrollment decisions are projects under CEQA; whether enrollment increases cause significant environmental impacts; and the freezing of UC Berkeley's enrollment. All three of these are potentially groundbreaking, and all three implicate deep questions about CEQA and environmental review, and its role in addressing housing, opportunity, and equity in California. I'll take each point in turn in my subsequent posts.