



## Instate Tuition Equity Bill

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### Legality of Instate Tuition for Non-Citizens

#### Law challenged:

##### **Section 505: Illegal Immigration Reform and Immigration Responsibility Act 1996**

- Title 8, Chapter 14, Sec. 1623(a))
- "An alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident."
- Prohibits states from providing any higher education benefit based on residency to undocumented immigrants unless they provide the same benefit to U.S. citizens in the same circumstances, regardless of their residence.

#### State Court Cases:

##### **Texas – Plyler v. Doe 1982**

- Decision declaring all children have a right to education
- Court determined that unauthorized immigrants are entitled to protection under the Equal Protection Clause of the Fourteenth Amendment.
  - No state shall "deny to any person within its jurisdiction the equal protection of the law."
- Court ruled that the state's interest in enacting the statute were not legitimately furthered by the legislation.
  - Statute: enacted to conserve the state's education resources, to prevent an influx of illegal immigrants, and to maintain high-quality public education

##### **Virginia – Goodhard v. Board of Visitors 2006**

- District Court for the Western District of Virginia ruled that a state had a legitimate interest in protecting the right of its bona fide residents to attend its colleges and universities on a preferential basis.
  - "Preferential tuition rates serve not just legitimate, but important, state interests."
- Decision upheld resolution by the University of Virginia not to grant instate tuition to a student from Georgia who had moved there for higher education.

##### **California – Martinez v. Regents (No. CV 05-2064) 2010**

- Students paying out-of-state tuition attending California schools claimed that education officials violated the IIRIRA by offering in-state tuition to undocumented immigrant students.
  - The defendants argue that undocumented immigrants are able to qualify for reduced tuition not because of their residence in the State but rather because they attended high school in California.
- Complaint was filed against the University of California, California State University, and state community college systems
  - Were offering in-state tuition to undocumented immigrants following Assembly Bill 540,
- The Yolo County Superior Court upheld the school's decision. In 2008 California appeals reinstated the lawsuit to be considered by the Yolo County Superior Court.
- In November 2010, the highest court in California ruled that the State of California could offer in-state tuition to undocumented students, without offering it to out-of-state students.

##### **Kansas – Day v. Sibelius (No. 04-4085) /Day v. Bond (No. 07-1193)**

- Claim brought to district court by a Missouri resident who was denied in-state tuition while unauthorized immigrant students granted in-state tuition.
  - Argued it violated IIRIRA
  - Kansas District Court dismissed the claim for lack of standing. The U.S. Court of Appeals for the Tenth Circuit affirmed.