

"The heart of the controversy concerning in-state tuition for illegal immigrants is a conflict between pragmatism, compassion and fairness" (<http://www.finaid.org/otheraid/undocumented.phtml>)

PROPOSAL FOR A LWVNJ STUDY

In 1982, the Supreme Court in *Plyler v. Doe* held that foreign-born children of immigrants who could not establish that they had been legally admitted into the United States could not be denied a free public education under the Equal Protection Clause of the Fourteenth Amendment. Justice William J. Brennan wrote that any statute denying access to public education "*imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. These children can neither affect their parents' conduct nor their own undocumented status.*"

However, access to higher education was not addressed by this decision. In fact, there are significant differences of opinion on the issue of tuition for unauthorized¹ immigrant students attending public institutions of higher learning -- should these students be charged in-state tuition rates or out-of-state rates?

New Jersey law states that regardless of immigration status, all children between the ages of five and 20 are eligible to attend public school. It does not address eligibility for higher education. Currently most New Jersey public institutions of higher learning admit unauthorized immigrant students, but these students pay out-of-state tuition². Given the recognized importance of and great value placed on higher education, we propose that the League of Women Voters of New Jersey study the issue of allowing unauthorized post-secondary students who are residents of New Jersey to pay in-state tuition when attending New Jersey institutions of higher learning (community colleges, state colleges, state universities). After examining the topic, the NJLWV would determine whether to support the right of unauthorized immigrant residents of New Jersey to attend our public institutions of higher learning at in-state rates.

CONTEXT

LWVUS Immigration Position

¹ The terms "undocumented immigrant", "illegal immigrant" and "unauthorized immigrant" are often seen as equivalents. The LWVUS's national position uses "unauthorized" and we have used it as well.

² Except at those community colleges that do not have a different charge for out-of-state tuition.

The LWVUS immigration position does not address the issue of in-state tuition, but envisions a process by which our unauthorized immigrants become legal. Would promoting access to higher education for immigrants be sensible given this stance? The LWVUS position states.

Comment [TAT1]: Move to discussion questions.

"In transition to a reformed system, the League supports provisions for unauthorized immigrants already in the country to earn legal status"

And

"In achieving overall policy goals, the League supports a system for unauthorized immigrants already in the country to earn legal status, including citizenship, by paying taxes, learning English, studying civics and meeting other relevant criteria. While policy reforms, including a path to legal status, remain unachieved, the League does not support deporting unauthorized immigrants who have no history of criminal activity. "

Unauthorized Immigrant Students - the New Jersey Situation

- Unauthorized immigrant residents are admitted to New Jersey public colleges and universities, but pay out-of-state tuition rates.
- There are proposed bills in the NJ General Assembly and Senate that would grant in-state tuition to unauthorized immigrant students: **A194** (introduced on 1/8/2008, referred to Assembly Higher Education Committee) and **S1035** (introduced on 1/28/2008 in the Senate and referred to Senate Budget and Appropriations Committee). Both versions propose that unauthorized immigrant students *"pay in-state tuition at the State's public institutions of higher education if he meets the following criteria: attended a high school in this State for three years or more; graduated from a high school in this State or attained the equivalent of a high school diploma in the State; registers as an entering student or is currently enrolled in a public institution of higher education not earlier than the fall semester of the 2008-09 academic year; and files an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status or will file an application as soon as he is eligible to do so."*

The report of Governor Corzine's Blue Ribbon Panel on Immigration Policy regarding the in-state tuition question recommends in-state tuition and Corzine has supported this recommendation in principle.

Comment [TAT2]: Insert quote from report.

Comment [TAT3]: Look for Shirley Turner on panel report.

Unauthorized Immigrant Students - Across the Nation

- **CURRENT FEDERAL LEGISLATION: Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.** Congress tried to clarify the status of undocumented immigrants in higher education in the IIRIRA. But states have tried to find the loopholes in IIRIRA with some success.

Section 505 of IIRIRA, 8 U.S.C § 1623, states:

Notwithstanding any other provision of law, 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.

- Since this provision was adopted, ten states in the Union have adopted laws that permit an unauthorized student, under specific circumstances, to pay in-state tuition. The IIRIRA provision has not been interpreted by the Supreme Court, or indeed by any state supreme court or federal court of appeals, and is not currently being enforced assiduously by the federal government. The state laws which are intended to get around the IIRIRA provision by imposing requirements in addition to residence for unauthorized immigrants seeking to pay in-state tuition have been tested only in Kansas and California. The Kansas case, brought by out-of-state citizens alleging a private right of action under IIRIRA, was dismissed for lack of standing; the California trial judge's decision upholding the California law has recently been reversed by a California appellate court³.

The state laws generally seek to provide that payment of in-state tuition by resident unauthorized immigrants bypasses the IIRIRA-based legal objections since, for instance, enrollment in and graduation from a state high school is required for in-state tuition, in addition to residency.

- **PENDING FEDERAL LEGISLATION -- THE *DREAM ACT*:** *The Development, Relief, and Education for Alien Minors Act* was reintroduced on March 25, 2009, for the 5th time, with bipartisan sponsorship. It would create a path to legal residency for unauthorized immigrant young adults raised in the United States. It empowers, but does not require, states to offer in-state tuition and financial aid to unauthorized aliens. The bill would repeal

³ See *Day v. Bond*, 500 F. 3d 1127 (10th Cir. 2007); *Martinez v. Regents of the University of California*, 2009 Cal. Lexis 646 (Cal. App. 2009).

section 505 of IIRIRA, Under the DREAM Act, students would be eligible for federal loans and work study, but not Pell Grants. ⁱ It was first introduced in 2001 (10^{7th} Congress) and exists with some differences in Senate and in House versions. Specifically: the DREAM act would apply to those who arrived in the U.S. at age **15 or younger**, resided here at **least 5 years**, and have good moral character. Upon graduation from high school, the youth can apply for conditional immigration status that would allow 6 more years of legal residency. During this 6-year period, the student must perform one of the following: (1) graduate from a 2-year college; (2) complete 2 years towards a 4-year degree; (3) serve in the U.S. military for at least 2 years. The House version of the Act (not the Senate), eliminates the federal provision that discourages states from granting in-state tuition rates to residents who are unauthorized immigrants. At the end of the 6-year period, students of good moral character who fulfilled at least one of the 3 educational/service requirements would be granted permanent residency.

ADMISSION POLICIES: It is not illegal under Federal law to admit undocumented immigrants to colleges and universities. Federal law does not require higher education institutions to demand disclosure and proof of immigration status and/or citizenship for admission, as employers must for employment.

FINANCIAL AID: Undocumented students cannot receive federal financial aid for education and rarely receive state financial aid. There are some private scholarships and loans available for unauthorized immigrant students, but federal grants are only given to U.S. citizens or eligible non-citizens. The financial application form (FAFSA, Free Application for Federal Student Aid) requires a social security number and that the student is a U.S. citizen, U.S. national or an eligible non-citizen. Eligible non-citizens include: U.S. permanent residents, refugees, and asylees. Federal student loans, such as the Federal Direct Subsidized or Unsubsidized Loans, are not available to undocumented students.

- **STATES WITH IN-STATE TUITION:** 10 states allow certain undocumented students to pay in-state tuition rates at public colleges and universities: Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, New Mexico, and Nebraska. In addition to these ten, other states are considering making in-state tuition available; some of the states that have in-state tuition laws are considering repeal.
- **WHO ARE THE UNDOCUMENTED STUDENTS?**
They are students who may have any or all of these characteristics:
 - Came to the U.S. at a young age, often with their parents.

- Entered the U.S. without legal documentation or were brought with a visa that was allowed to expire.
- Raised in the US either since childhood or for many years, and (in part because of travel restrictions and lack of acquaintance with their countries of origin) consider the US "home"
- Approximately 28,000 unauthorized students currently pay out-of-state rates at American public institutionsⁱⁱ.
- An Urban Institute study of 2003ⁱⁱⁱ estimates that for unauthorized students who have lived in the U.S. at least 5 years.
 - i. 80,000 unauthorized alien children annually turn 18
 - ii. About one-sixth to one-fifth of these children do not complete high school
 - iii. Roughly 65,000 unauthorized immigrants graduate from high school each year.
 - iv. Annually, between 7,000 and 13,000 unauthorized immigrant high school graduates enroll in institutions of higher education.

Roughly 2,000 unauthorized immigrants graduate from New Jersey high schools each year. Estimates of the number of such students who would actually use in-state tuition are highly variable, ranging from 50 to 500 per year. None would be eligible for federal financial aid or student loans.

PRO AND CON ARGUMENTS

Arguments favoring in-state tuition

- Failure to promote education increases future social costs of unemployment, welfare, and crime that results from low educational levels
- A young adult should not be punished for the previous illegal actions of a parent.
- It is quite possible that unauthorized immigrants will someday become legal residents or even citizens, either due to marriage or changes in federal law. Denying or impeding a higher education degrades a person's future earning power and increases the risk of remaining forever in the lower socioeconomic class
- Unauthorized persons have the same moral and ethical worth as the 'documented' and should receive the similar benefits, opportunities, and protections. Remember, many unauthorized pay taxes and work - in construction, restaurants, hotels, and small business. We see them every day.
- While some children of undocumented immigrant parents were born in this country and are full citizens of the United States, their brothers and sisters may have been born abroad and are in the United States illegally. It's discriminatory for children in the same family to be charged different costs for higher education.
- .

- New Jersey benefits from the higher productivity and earning power of all its residents – citizen and noncitizen. Education increases tax revenues.
- It is inconsistent to provide all students, regardless of immigrant status, with a free public elementary and secondary school education, yet then impede access to public postsecondary education for unauthorized immigrants.
- Supporters for in-state tuition include The **American Association of State Colleges and Universities** (AASCU). AASCU “will continue to strongly support passage of federal legislation to clarify existing immigration law by allowing states to regulate the tuition rate eligibility status of undocumented students. This is a clear matter of states’ authority over tuition policy that must be preserved and respected. Moreover, AASCU encourages states to offer in-state tuition to qualified unauthorized immigrants. The nation as a whole gains when the college pipeline is strengthened for all.”

Arguments against in-state tuition

- Unauthorized young adults should not be allowed the same educational opportunities given to citizens. Citizenship bestows rights that the noncitizen lacks.
- Unauthorized immigrants take seats in colleges away from citizens who are residents of New Jersey.
- Whether one agrees or disagrees with Section 505 of IIRIRA, it is a valid Federal law at present. State legislatures should not casually ignore Federal law.
- Allowing unauthorized students to pay in-state tuition at universities or community colleges rewards them for illegal actions.
- New Jersey taxpayers will be subsidizing the education of unauthorized students. Benefits are a limited resource only available to citizens and documented residents.
- Allowing students to attend our universities and community colleges will send the wrong signal and lead to additional illegal immigrants in our schools.
- Undocumented immigrants don’t pay any taxes and should not attend a tax-supported education institution
- In-state tuition benefits adult, or nearly adult, young people, not “children” Should taxpayer money be used to support the actions of illegal immigrants who bring their children illegally?
- Opponents to in-state tuition include **The Federation for American Immigration Reform** (FAIR),
FAIR states “*States that offer in-state tuition rates to illegal aliens are actively working against the federal government’s effort to combat illegal immigration, harming citizens and legal immigrants, and opening themselves up to substantial costs and criminal liability*”^{iv}

Comment [TAT4]: Need capacity information.

DISCUSSION POINTS

1. Is in-state tuition a “fairness” issue? If so, why? If not, why not?
2. When should the state act to reduce barriers to higher education?

3. If a person is unauthorized but grew up principally in the United States, can he or she reasonably be expected to return to his or her country of origin?
4. What is the state's responsibility to make higher education available for its residents? Does this differ if the resident is an unauthorized immigrant.?
5. Do we (citizens) benefit from a better educated population?
6. According to the Rutgers University website (Undergraduate admissions – Tuition and Fees), the difference between in-state and out-of state tuition for the 2008-09 school year is about \$10,200 per student. Do you think it is appropriate for the New Jersey taxpayer to be subsidizing that amount for each unauthorized immigrant student?

Comment [TAT5]: Revise based on appendix to Blue Ribbon Panel report to address more colleges.

TERMS AND IMPORTANT LEGAL MILESTONES

Alien: a person who is not a U.S. citizen.

Unauthorized or undocumented or illegal Immigrant – Individuals who enter the U.S. illegally, without a visa or proper authorization and documents, are considered unauthorized. These individuals may be able to obtain immigration status, but only in very rare cases.

An unauthorized or undocumented or illegal immigrant student: a foreign national who: (1) entered the United States without inspection or with fraudulent documents; or (2) entered legally as a non-immigrant but then violated the terms of his or her visa and remained in the United States without authorization. Therefore, this term also applies to overstays.

Permanent Resident

("Immigrant") Any person who is not a citizen of the United States and who lives in the U.S. under lawfully recognized and legally recorded permanent residence as an immigrant. A permanent resident is also referred to as a Permanent Resident Alien, Resident Alien Permit Holder, and Green Card Holder.

Dream Act (Development, Relief, and Education for Alien Minors Act)

First introduced in the Senate in 2001 and later attached to the Senate's Comprehensive Immigration Reform Acts of 2006 and 2007, the DREAM Act would provide a path for undocumented immigrant children to obtain legal status and allow, but not mandate, states to offer them in-state tuition and financial aid. Affected students would be eligible for federal loans and work study, but not Pell Grants. In technical terms, the bill would repeal section 505 of IIRIRA, effectively assuring states' option to determine residency for higher-education purposes

Plyler V. Doe

In 1975 the Texas State legislature revised state education laws to withhold state funds from local school districts that enrolled illegal immigrants. The legislature authorized local school districts to deny enrollment in public schools to children not "legally admitted" to the country.

Two years later, a class-action lawsuit was filed on behalf of school-aged Mexican children in the Tyler Independent School District in Smith County, Texas. The District Court and Court of Appeals for the Fifth Circuit both ruled

that the State legislature's actions violated the Equal Protection Clause of the 14th Amendment which states "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

In the 1982 case of Plyler v. Doe, the U.S. Supreme Court, in a 5-4 decision, upheld these lower courts' decisions, ruling that although illegal immigrants and their children are not "citizens," they are people "in any ordinary sense of the term," and so are protected under the 14th Amendment of the U.S. Constitution. In effect, the Court ruled that a state does not have the right to deny a free public education to undocumented immigrant children.

DOCUMENT#1

Role of immigrants important for state economy, says report

Gloucester County Times - Tuesday, December 23, 2008 - By Trish G. Graber

TRENTON New Jersey's economy is dependent upon the contribution of immigrants, according to a report released Monday showing that foreign-born people make up 28 percent of the state's workforce. These same immigrants bring in almost a quarter of the earnings statewide and own nearly 20 percent of the state's businesses.

In a nutshell: Immigrants make New Jersey run, according to the report.

"Immigrants in New Jersey are a key part of our economy and it's impossible to imagine our economy functioning without them," said Rutgers University Economics Professor Ira N. Gang, who co-authored the report with his colleague Anne Morrison Piehl.

The 20-page report, released by the Rutgers Eagleton Institute of Politics Program on Immigration and Democracy, comes as a panel created by Gov. Jon S. Corzine prepares to release recommendations to better incorporate the state's 1.7 million immigrants into the larger community. As the state moves to make changes, the report authors say officials must look at the factors that distinguish the Garden State and its immigrants from others across the country.

"Simple extrapolation of the national debate would not be appropriate for setting policy in New Jersey," said Piehl.

For example, New Jersey's foreign-born workers tend to be highly-educated more than in other states and the specialized skills they hold make immigrants "indispensible" to the state's reputation as a center of innovation and technology, the authors wrote.

Shai Goldstein, **New Jersey Immigration Policy** Network executive director, attended the Statehouse event in which the report was released Monday. He pointed to the health care industry as an example of the contribution made by foreign-born workers. At least 40 percent of physicians, nursing aides, orderlies and attendants are immigrants, according to the report.

"The entire range of health care in this state is dependent upon immigrants," Goldstein said. "Without immigrants, our health care system would be in great danger."

While the state's foreign born workers make up 40 percent of the advanced degree holders statewide, they are also "overrepresented" among people without specialized skills or education, according to the report. Still, the report found that low-skilled immigrants help to drive up demand for native workers in lower-skill industries that have language skills and local knowledge to supervise the foreign-born workers.

Immigrants also appear to pay enough tax to offset their use of services, the study said, and have no negative impact on the states' economy. According to the report, immigrants are less likely than natives to be incarcerated or to rely on government programs such as social security, food stamps and Medicaid, largely because federal law prohibits new immigrants beginning in 1996 from accessing the programs.

Bruce Davidson, director of the Lutheran Office of Governmental Ministry in New Jersey, who also attended the report's release, said the information debunks an argument that he often hears in the immigration discussion.

"One of the largest fallacies and questions that I run into when I talk about immigration...is the idea that somehow people are here, they get a free ride, free education, they don't pay taxes, they don't do anything except take out of our economy," Davidson said.

The report also found:

- While immigrants make up 28 percent of the workforce, the state's 1.7 million foreign born represent 21 percent of the state's population. Because immigrants are more likely to be of working age, they are a larger fraction of the workforce.
- Over 40 percent of the state's scientists and engineers with higher degrees are foreign born.
- Foreign-born business owners generate nearly one-fifth of the business income statewide.
- New Jersey's immigrants are from nearly 100 nations and speak more than 165 languages.

State Public Advocate Ron Chen, chair of the governor's Blue Ribbon Advisory Panel on Immigration Policy, said the Rutgers study findings solidify the underlying assumptions the 35-member commission used when considering recommendations for better incorporating immigrants into New Jersey's overall community.

Most notably, he said, the report reinforces the importance of working to better integrate immigrants into the workforce.

"Immigrants are such a vital part of our economy and our workforce we really have no choice for the good of the state but to take whatever steps are necessary," Chen said.

Immigrants historically were exclusively located in the northern part of the state; Hudson, Union, Passaic, Bergen, Essex and Middlesex counties still maintain the highest proportion of foreign born residents, according to the report.

However, between 1990 and 2000, the proportion of immigrants to native-born residents increased in 18 of New Jersey's 21 counties. Middlesex County had the most significant increase, from 14 percent to 24 percent. In Gloucester County, the percentage of foreign born residents remained flat at 3 percent; Cumberland County's grew from 4 percent to 6 percent, and Salem County's rose from 2 percent to 3 percent.

In 2007, 450,000 undocumented immigrants were living in New Jersey, according to Department of Homeland Security estimates, placing the state in the top five nationally. However, the rate of growth is slowing down. Between 2000 and 2007, the state's undocumented population grew by 32 percent while the average growth across states was 39 percent.

The Blue Ribbon Panel on Immigration Policy was formed in 2007 to study issues affecting the foreign born population in New Jersey, from education to citizenship status and health care to employment and workforce training. Chen, the panel chair, said recommendations to better integrate into the economic, social, cultural and educational fabric of the state will be released in the coming weeks.

DOCUMENT #2

Legislators seek lower tuition for N.J. illegals

Atlantic City com- Published: Monday, January 12, 2009)

A child goes to school in New Jersey for his entire academic life, graduates from high school, maybe is even an honor student, but under current law may not be able to attend college here, or can do so only at a much higher cost, because he is living in the country illegally.

The issue of allowing undocumented students to attend state colleges as New Jersey residents seems to have very little middle ground in the court of public opinion. People either support it or are vehemently opposed.

A bill introduced by Assemblyman Gordon H. Johnson and Assemblywoman Valerie Vainieri Huttie, both D-Bergen, aims to establish that middle ground by allowing some undocumented students to pay in-state tuition at state colleges under very specific circumstances.

The bill would require the students to attend high school in the state for at least three years and have a New Jersey-endorsed diploma. The students also would have to have filed or be ready to file an application to become a legal resident.

Huttie said she sponsored the bill because there are cases in which children have lived in New Jersey virtually all of their lives, attended school here, and even applied for legal status but are still denied. The backlog to gain legal status can be years, and she said she does not believe those students should be penalized.

"We are penalizing good New Jersey students who are on the road to success," she said.

Undocumented students can attend some colleges, but often must do so as international students at a much higher cost.

Atlantic Cape Community College, for example, will accept international students, who pay \$353.60 per credit for the first 24 credits. If they live in Atlantic County, they can then continue at the \$88.40 per credit rate paid by county residents.

Since undocumented families do not have Social Security numbers or green cards, they cannot apply for financial aid or state-sponsored scholarships, so they likely would have to pay the full cost of college themselves.

The controversy is not limited to New Jersey. The federal DREAM Act would support state efforts to offer in-state tuition, but Congress has repeatedly rejected it. About 10 states have passed laws similar to the one proposed in the Garden State, but

some are facing legal challenges. Other states have barred undocumented students from enrolling in college at all, even as international students. The American Association of State Colleges and Universities wants more federal guidance and has undocumented students listed among its top 10 higher education issues for 2009.

Gov. Jon S. Corzine's Blue Ribbon Panel on Immigration Policy approved recommendations last week that reportedly include support for an in-state tuition proposal. The governor still must review the report, which will not be made public for a couple of weeks. The Johnson-Huttle bill has been languishing in committee. Huttle said she hopes the new interest, even if it is controversial, will at least jump-start the discussion.

"We're going to be pushing it over the next couple of weeks," she said. "These students are New Jersey residents, on their way to becoming citizens. I feel we do have a responsibility to them."

DOCUMENT#3

Connors, Rumpf & Van Pelt to Governor: No Driver Licenses or In-State Tuition for Undocumented Immigrants

Senator Christopher J. Connors, Assemblyman Brian E. Rumpf and Assemblyman Daniel M. Van Pelt, all R-9th District (Ocean, Burlington and Atlantic) today called on the Governor to reject any recommendation to offer driver identification cards or in-state tuition to undocumented immigrants in New Jersey.

In a letter sent to Governor Corzine, the 9th District Delegation made the following remarks:

"According to recent media reports, the report issued by your Blue Ribbon Advisory Panel on Immigration Policy may include recommendations to allow undocumented aliens to legally drive in our state as well as to provide in-state tuition rates for these individuals. If this is in fact the case, our Delegation urges you in the strongest terms to reject these recommendations in whatever form they are offered.

"Already, security experts are conveying their deep concerns over the prospect of creating a separate driver's license or identity card. We wholeheartedly agree that this proposal would negatively impact our state's security efforts and pose an unnecessary risk to public safety. Furthermore, the cost of higher education in New Jersey is already too expensive for many families to afford. How can the state contemplate such a proposal at a time when it wrongfully cut the NJ STARS program by reducing the number of hardworking students who can achieve scholarships at county colleges?

"The resources of the state's Motor Vehicle Commission (MVC) should be completely dedicated to servicing legal residents. As you are well aware, for security purposes our state instituted a strict six-point ID process for residents to obtain driver's licenses. When instituted, this process created significant hardships for residents, most especially senior citizens and veterans, who were unable to locate decades-old documents to prove their identities. It would be a slap in the face to these individuals, many of whom lived in New Jersey their entire lives yet were forced to

endure this nightmarish bureaucratic process for reasons of security, only to see their state provide undocumented immigrants with drivers' licenses.

"Lastly, you may be interested to know that our Delegation has introduced legislation, S-81/A-290, to exclude illegal aliens from receiving workers' compensation and temporary disability benefits. The 9th District Delegation has sponsored this measure for several Sessions but it has yet to be considered in Committee. Accordingly, we are respectfully requesting your support as a means of getting this legislation posted by the Labor Committees of the respective Houses to which they have been referred. Enactment of this legislation would ensure that workers' compensation and temporary disability benefits would be provided only to legal workers, for whom this benefit was intended to assist."

The 9th District Delegation led the effort against an attempt to advance a legislative initiative introduced several years ago to provide undocumented aliens with state driver's licenses. Additionally, they are the primary sponsors of legislation to bar companies found to knowingly hire illegal immigrants from receiving State contracts or state tax incentives.

Link to Post: <http://www.senatenj.com/index.php/district9/connors-rumpf-van-pelt-to-governor-no-driver-licenses-or-in-state-tuition-for-undocumented-immigrants/2034>

DOCUMENT#4

The US Constitution: 14th Amendment, Section 1

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of life, liberty, or property, without due process of law**; nor deny to **any person within its jurisdiction the equal protection of the laws**.

DOCUMENT#5

Unauthorized Youths and Higher Education: The Ongoing Debate

By Dawn Konet (Migration Policy Institute, September 2007)

<http://www.migrationinformation.org/Feature/display.cfm?ID=642>

When policymakers discuss the unauthorized population in the United States, the focus is mainly on immigrants who crossed the border as adults. Less frequently discussed are the children brought into the country illegally.

The presence of unauthorized children creates a unique set of policy problems, mainly because of their numbers. These children make up a large portion of the unauthorized population — 16 percent (2 million individuals) of the estimated 12 million unauthorized, according to analysis by the Pew Hispanic Center of US Census Bureau data.

The Urban Institute has reported that 65,000 of these unauthorized students are graduating from US high schools each year (based on estimates of the unauthorized population from the 2000 census).

These numbers and the country's emphasis on higher education make it difficult, if not impossible, for policymakers to avoid the debate on whether these students should be granted access to publicly funded higher-learning institutions.

Various state legislatures have proposed, adopted, or rejected measures to grant or deny access. In general, these bills mandate that a determination of a student's immigration status must be made before they are permitted to participate in public higher education programs. Some bills provide in-state tuition for immigrants who meet certain qualifications; other bills bar unauthorized immigrants from qualifying for in-state rates.

On the federal level, recent immigration-reform proposals in Congress have included provisions to regularize immigrant students that meet certain criteria.

Background

The federal government first addressed the issue of unauthorized students and their access to education in the 1982 Supreme Court case *Plyler v. Doe*. In a 5-4 decision, the Supreme Court ruled unconstitutional a Texas statute that authorized local school districts to deny enrollment to children who were not legally admitted to the country. The court found that the statute violated the Equal Protection Clause of the Fourteenth Amendment.

In his opinion for the court, Justice William J. Brennan wrote that the statute "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. These children can neither affect their parents' conduct nor their own undocumented status."

However, this ruling applied only to unauthorized children enrolled in kindergarten through 12th grade; it did not address public education beyond the 12th grade.

Fourteen years later, Congress included post-high school education in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Specifically, Section 505 of IIRIRA mandates that unauthorized immigrants "shall not be eligible on the basis of residence within a State for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit without regard to whether the citizen or national is such a resident."

While Section 505 does not explicitly prohibit states from offering unauthorized students in-state tuition, only 10 states have chosen not to apply the IIRIRA provision to tuition rates at public colleges and universities (see Table

1).

Some analysts see Section 505 as problematic because it sets a federal mandate for state residency requirements, a determination states typically make. Thus, some critics view Section 505 as an infringement on states' rights.

Furthermore, public colleges and universities generally use graduation from an in-state high school as the main criteria for residency. This is one way that the 10 states who do not apply the IIRIRA provision defend their policies to grant admission and in-state tuition to unauthorized students.

In addition, "granting" states maintain that their policies are not discriminatory or in violation of federal law because individuals from other states are also eligible for the tuition benefit once they meet the residency requirements. Many public colleges and universities simply do not determine residency based on a student's immigration status.

States that do not permit access or in-state tuition argue that unauthorized students are residents of another country, per federal law, and are ineligible to receive postsecondary education benefits based on state residence. Institutions in these states typically require students who seek resident tuition to provide evidence of US citizenship or legal immigration status. Students whose eligibility cannot be verified are classified as nonresidents for tuition purposes.

Some "denying" states, such as Arizona, also claim that, in contrast to out-of-state students, students eligible for in-state tuition do not pay the full cost of their education, which taxpayers must in turn subsidize. These states argue that US citizens should receive taxpayer subsidies before unauthorized students who are violating federal law.

Either type of law, whether its purpose is to grant or deny in-state tuition, is enforceable because both focus on legitimate arguments within the debate. "Granting" states often cite their state's residency requirements to qualify their laws; "denying" states cite Section 505 to support their policies.

These varied interpretations have resulted in discrepancies and conflicts within states and between federal and state laws. In recent years, cases on the legality of the in-state tuition issue were brought before courts in Kansas and California, both "granting" states. The Kansas federal district court and the California state court upheld the legality of each state's law. However, both cases are awaiting decision on appeal.

The Debate

At the heart of the state- and national-level debate is a conflict between pragmatism, compassion, and fairness. Most of the students in question have lived in the United States for a number of years. In nearly all cases, it was not their decision to come to the United States illegally. Yet, once they arrive, they adapt to American life, and most become fluent in English. Sociologist Richard Alba has found that English dominates among all immigrant groups by the third generation (see [Bilingualism Persists, But English Still Dominates](#)).

As graduation nears, those who want to attend state colleges or universities find they must overcome many obstacles. According to The College Board, a nonprofit membership association of education institutions, the current average cost for in-state tuition and fees at a four-year public university is \$5,836; the average cost for an out-of-state resident is \$9,947. In some cases, the out-of-state tuition rate is three times higher than the in-state rate.

Due to rising tuition costs, two-thirds of all college students graduate with student loan debt. Unauthorized students, however, are not eligible for federal and state loans, grants, or federal work study, and cannot legally work to support themselves while in college.

On one side of the issue are those who believe students should be permitted to attend at the in-state rate despite their status, provided they meet certain criteria. On the other side are those who actively seek to prevent unauthorized immigrants from receiving in-state tuition or attending public higher-learning institutions.

Colleges and universities generally do not take stances on political issues, but the American Association of State Colleges and Universities, an association representing over 400 public colleges, universities, and systems of higher

education throughout the United States, believes that states' authority over tuition policy must be preserved and respected; the association encourages states to offer in-state tuition to qualified unauthorized students.

Other proponents of in-state tuition believe that everyone should have access to public education and access to in-state tuition if they meet residency requirements, regardless of their immigration status.

This group, which includes organizations such as the Center for Community Change and the National Council of La Raza, often argues that it is inconsistent to educate unauthorized immigrants through high school, only to deny them access to a higher education that can lead to greater social and economic mobility. They also argue that unauthorized students may be less inclined to complete high school if they believe that post-secondary education is not a feasible option.

Opponents of in-state tuition, such as the Federation for American Immigration Reform (FAIR), hold the view that tax dollars should not be used to support those in the country illegally, and argue that unauthorized immigrants should not have access to any publicly funded benefit, including higher education. Opponents also claim that granting in-state tuition encourages more illegal immigration, incurs costs to individual states, and takes enrollment slots away from citizens and legal residents.

In some "granting" states, the debates include a third side: those who do not want state and school personnel to be forced into the role of "immigration police." Some opponents of Arizona's Proposition 300 used this reason to justify their position. Proposition 300, which Arizona voters approved in November 2006, denies in-state tuition to the unauthorized.

Analyzing Arguments on Both Sides

Those who support granting in-state tuition benefits to the unauthorized believe that doing so can lead to greater social and economic mobility for this group. The available data back up this argument.

Earnings increase significantly as a worker's level of education rises. According to the US Census Bureau, people with a bachelor's degree earn nearly twice as much on average than those with only a high school diploma.

Based on estimates by the Census Bureau's Current Population Survey 2007 *Annual Social and Economic Supplement*, college graduates (those with a bachelor's degree and higher) in 2006 earned an average of 263 percent more than high school graduates. The median annual earnings for college graduates (bachelor's degree and higher) in 2006 were \$66,828, compared to \$27,384 for high school graduates.

In addition, the Department of Labor's Bureau of Labor Statistics reports that the unemployment rate among people who hold professional degrees is significantly lower than that of people with only a high school diploma. In 2006, the average unemployment rate was 4.3 percent for high school graduates and 2.3 percent for those with a bachelor's degree.

The primary barrier to higher education is the cost. Unauthorized students who do not have the financial means (or permission) to attend college are left with few career options. It is likely that many eventually join the workforce as unauthorized workers (see the Pew Hispanic Center's report "[The Size and Characteristics of the Unauthorized Migrant Population in the U.S.](#)").

Those who oppose granting in-state tuition benefits to unauthorized students contend that doing so costs state schools too much. Yet, for a number of reasons, it is difficult to determine the cost to public colleges and universities of educating unauthorized students.

First, because of their unauthorized status, it is virtually impossible to determine a precise figure for the unauthorized immigrant population, including those who are students.

Second, many schools tend to lump noncitizen students into one category that encompasses both authorized and unauthorized noncitizens. This practice does not allow schools or states to separate unauthorized students for the purpose of calculating costs of their education.

Third, because tuition costs at public institutions vary across the country and within individual states, it is

impossible to determine an "average" cost of educating unauthorized students, even if colleges and universities were to keep figures on these students specifically.

State Action

The "granting" states generally require unauthorized immigrants to establish residency by attending a local high school for two to four years (with most requiring three), graduating or earning a high-school equivalency in that state, and signing an affidavit promising to legalize their immigration status as soon as they are eligible. Nebraska was the most recent state to enact such legislation, passing a measure in late 2006.

According to the National Conference of State Legislatures, several states have recently considered or are considering bills to grant in-state tuition for immigrants who meet certain qualifications, while others would bar unauthorized immigrants from receiving in-state tuition (see Table 1). In late August 2007, Republican state legislators in Virginia introduced a bill that would prohibit Virginia's public colleges and universities from admitting unauthorized immigrants altogether, even if they attended a public high school.

Since Proposition 300 passed, unauthorized students in Arizona are no longer eligible for in-state tuition rates and are barred from accessing state-subsidized programs for adult education. As of December 2006, Arizona's public college and university students seeking in-state tuition rates must prove they are citizens or legal residents through a verification process.

Table 1. Unauthorized Students and the 50 States: Who Grants and Who Denies In-State Tuition?

State	Grants	Denies	Pending Action ¹	State	Grants	Denies	Pending Action ¹
Alabama				Montana		X	
Alaska		X		Nebraska	X		
Arizona		X		Nevada		X	
Arkansas		X	L	New Hampshire		X	
California	X		C, L	New Jersey		X	L
Colorado		X		New Mexico	X		L
Connecticut		X	L	New York	X		L
Delaware		X		North Carolina		X	L
District of		X		North		X	L

Columbia				Dakota			
Florida		X	L	Ohio		X	
Georgia		X		Oklahoma	X		
Hawaii		X		Oregon		X	L
Idaho		X	L	Pennsylvania		X	L
Illinois	X		L	Rhode Island		X	L
Indiana		X	L	South Carolina		X	L
Iowa		X	L	South Dakota		X	
Kansas	X		C, L	Tennessee		X	L
Kentucky		X		Texas	X		L
Louisiana		X		Utah	X		L
Maine		X		Vermont		X	
Maryland		X	L	Virginia		X	L
Massachusetts		X	L	Washington	X		L
Michigan		X	L	West Virginia		X	L
Minnesota		X	L	Wisconsin		X	L
Mississippi		X	L	Wyoming		X	
Missouri		X	L				

Note: "Grant" indicates pending legislation would grant access or in-state tuition, "deny" indicates pending legislation would deny access or in-state tuition.
1. L indicates legislation is pending, C indicates a court case is pending.
Source: National Conference of State Legislatures, www.ncsl.org.

Federal Action

Repealing Section 505 of IIRIRA would restore the rights of states to determine residency for public education benefits and allow them to decide whether to offer resident tuition rates to unauthorized students.

The Development, Relief, and Education of Alien Minors (DREAM) Act, introduced in Congress several times since 2005, would repeal Section 505. It would also provide immigration relief to unauthorized students by permitting adjustment to lawful permanent resident (LPR) status "certain long-term residents who entered the United States as children" (prior to the age 16), provided they meet the criteria.

According to analysis by the Migration Policy Institute, 715,000 youth between the ages of 5 and 17, as well as 360,000 high school graduates ages 18 to 24, would become eligible for adjustment of status sometime in the future under the Dream Act. In fact, most immigrant students who have grown up and graduated from US high schools would be eligible.

Adjustment to LPR status, in addition to placing students on a path to citizenship, would make these students eligible for resident tuition benefits (provided they meet the state's residency requirements) and federal financial aid. This would include Pell grants, Stafford education loans, federal work study, and other entitlements that fall under the Higher Education Act of 1965.

The Dream Act of 2007 was reintroduced in the Senate earlier this year by Senator Richard Durbin (D-IL), one of the provision's original sponsors, and was incorporated into the Comprehensive Immigration Reform Act of 2007 (see Table 2). Since the Senate was unable to reach consensus, the bill died on the Senate floor in June. Subsequent attempts to attach the Dream Act to pending legislation also failed; no further debate on the Dream Act is currently scheduled in the Senate.

Members of the House of Representatives have also included Dream Act provisions in House proposals, such as the Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act, the Education Access for Rightful Noncitizens (EARN) Act, and the American Dream Act. All three proposals were referred to the appropriate committees. The House is unlikely to bring the Strive Act to a floor debate; the other bills with Dream Act provisions currently remain in committee and await further action.

Dream Act opponents do not want the government to grant a public benefit to a group that violated federal law. The terrorist attacks of 9/11, as well as the federal government's perceived inability to secure the border and reach a consensus on comprehensive immigration reform, have created considerable anti-immigrant sentiment throughout the country, particularly toward unauthorized immigrants. This is apparent from an increase in unauthorized immigrant-targeted proposals throughout the country.

Supporters of Dream Act proposals argue that, without in-state tuition rates, talented students will not be able to pursue the American dream. These supporters contend that for most unauthorized students, in-state tuition is the only affordable way to attend college, and since many of these students could eventually gain legal residency, it makes sense to allow them to further their education in the interim.

Some supporters, including the National Association for College Admission Counseling, argue that the Dream Act would provide a powerful incentive for unauthorized students to stay in school, since the tuition and citizenship benefits would only be available to high school graduates.

Table 2. Bills with Dream Act Provisions in the 110th Congress*

Senate	House
S 774 Development, Relief, and Education for Alien Minors (DREAM) Act	HR 1221 Education Access for Rightful Noncitizens (EARN) Act
S 1639 Unaccompanied Alien Child Protection Act	HR 1275 American Dream Act
S 1348 Comprehensive Immigration Reform Act	HR 1645 Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act

*Proposals include language that would:
1) amend the IIRIRA to permit states to determine state residency for higher education purposes, and
2) authorize the cancellation of removal and adjustment of status of certain unauthorized students who are long-term US residents and entered the United States as children.
Source: The Library of Congress THOMAS.

Looking Ahead

The Supreme Court in *Plyler* established a precedent that unauthorized youths should not be held accountable for their status, nor do they have the means to affect their status. The question is whether college-aged youths should be granted access to higher education under the same precedent.

Passage of the Dream Act would put eligible unauthorized students on a path to legal residency, which would in many cases negate the resident/nonresident argument.

However, it is likely that, if the Dream Act passed, individual states and public education institutions within those states would still determine the residency requirements that a student must meet in order to receive resident tuition.

If a Dream Act provision is not passed, state legislatures will likely continue to propose legislation to grant or deny in-state tuition to unauthorized students, and the federal-versus-state power struggle will remain unresolved

DOCUMENT #6

Taxpayers Should Not Subsidize College for Illegal Aliens

(May 2003)

http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters6be3

Efforts are under way in several states to allow illegal aliens to pay steeply discounted in-state tuition at public colleges and universities—rates not available to American citizens from other states. As state universities across the country increasingly limit enrollment, increasing the intake of illegal aliens into these schools will mean fewer opportunities and less aid for U.S. citizens and legal immigrants.

States that offer in-state tuition rates to illegal aliens are actively working against the federal government's effort to combat illegal immigration, harming citizens and legal immigrants, and opening themselves up to substantial costs and criminal liability.

Virginia's Attorney General studied the issue of in-state tuition for illegal alien students and came to the conclusion that the expenditure of state resources for that purpose is illegal

Competition for Scarce Resources

State universities across the country are increasingly limiting enrollment; increasing the intake of illegal aliens into these schools will necessarily deny opportunities to U.S. citizens and legal residents.

With the cost of a college education skyrocketing, slots at state-subsidized universities are becoming the only hope of a higher education for many American families. With a finite number of seats and amount of aid available, when public universities admit an illegal immigrant and provide subsidized tuition, some other student who is also deserving is denied an opportunity. Admitting and subsidizing

illegal aliens, in effect, punishes citizens and legal residents who have done nothing wrong themselves.

Expensive Burden on Taxpayers

Post-secondary public education is heavily subsidized by state taxpayers. It is unlikely that a majority of a state's taxpayers would approve having their tax dollars spent on educating illegal aliens, if they were asked to approve such a policy.

Before California's current in-state tuition law was passed, a previous one was vetoed by the state's governor on the basis that it would impose an unmanageable financial burden on the state's higher education system. "Based on Fall 1998 enrollment figures at the [U. of Cal. and Cal. State U.] alone, this legislation could result in a revenue loss of over \$63.7 million to the state," according to the governor in 2000.¹

States that give in-state tuition to illegal aliens:

California, New York, Texas, and Utah

It's Illegal

Not only is giving in-state tuition rates to illegal aliens expensive, it's illegal. When Virginia's Attorney General studied the issue of in-state tuition for illegal alien students, he came to the conclusion that the expenditure of state resources for that purpose is illegal. This conclusion is based in part on the immigration reform act of 1996, which specified: "Notwithstanding any other provision of law, 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 amount, duration, and scope) without regard to whether the citizen or national is such a resident."²

The existence of the Section 505 provision clearly puts states that provide illegal aliens in-state tuition rates at risk. It opens them up to lawsuits challenging the conferral of in-state tuition on illegal aliens if it is not similarly made available to U.S. citizens and legal residents from elsewhere in the country.

Promoting Illegal Immigration

State policies that offer the benefit of in-state tuition to illegal aliens are likely to attract illegal alien families to move to those states. Because of the costs of illegal immigration, the citizens of those states may rightly protest that such a policy is contrary to the best interests of the citizens of that state.

Unfair and Illogical

If aliens are illegally residing in the United States, they cannot be legal residents of the state in which they are applying for admission to a state university. Furthermore, illegal aliens may not legally hold a job in the United States. Therefore, it makes no sense to expend tax dollars on their higher education, rather than on students who can legally work here.

Apologists for illegal immigration claim that illegal aliens do work that Americans will not do. But their argument for in-state tuition is that these illegal aliens should not be forced by lack of education to do unskilled work. Which is it?

During Illinois' debate over in-state tuition for illegal aliens, the Chicago Tribune editorialized on the idea's unfairness: "First, it makes cities and states usurpers of the prerogative granted by the Constitution to Congress 'to establish an [sic] uniform Rule of Naturalization' In other words, it's Congress that decides who becomes a citizen and how, and it is not for any other unit of government—federal, state, or local—to modify it or set it aside. Second, it deprives citizens—of the nation and the states—of what they have a reasonable right to expect: that all the activities of their various governments will be conducted within a framework of law, the most basic element of which is a definition of citizenship and its rights and responsibilities."³

1. Governor's Veto Message to the Assembly on AB 1197, September 29, 2000.
2. Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) (PL 104-208; 110 Stat 3009-672; 8 U.S.C. 1623). Referring to this provision, House conference Report 104-828 reads "this section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education."
3. Chicago Tribune, March 31, 2003.

Updated 5/03

DOCUMENT#7

LETTER FROM SEN SHIRLY TURNER (2/26/2009) (Email to Karen Siracusa)

Dear Ms. Siracusa:

Please allow me to acknowledge your e-mail regarding S1036, which allows certain undocumented aliens to qualify for in-state tuition rates at public institutions of higher education. The bill is currently pending in the Senate Budget and Appropriations Committee. I do not know the likelihood that it will be posted for a vote.

I have a number of concerns, which will prevent me from supporting the bill. I understand that our country depends on a better educated population, and as a career educator, I have always promoted policies that make higher education accessible to all students. Nevertheless, in this case, it is unfair to ask our state taxpayers, who are overburdened as it is, to subsidize the education costs of those who are in our country illegally when they cannot legally work in the United States after they graduate. New Jersey is one of three states with the highest number of illegal residents, and there is no way to measure the fiscal impact that such a policy would have on our taxpayers. Unfortunately, the state is facing a huge deficit and cannot afford to meet the current costs of higher education. The Governor has called for cuts to our state colleges and universities every budget year. The enrollment demand at New Jersey's colleges and universities already exceeds capacity, and I believe it would be unfair to further limit enrollment opportunities for legal residents of this state.

The issue of illegal immigration must be addressed at the federal level before New Jersey can consider any policy that allows additional benefits to illegal residents. A combination of unfunded mandates, tax shifting, and unaddressed social issues have already left our state with billions in shortfalls, and in-state tuition rates for illegal residents is just one more cost that our state's residents cannot afford. I sympathize with those students who were brought to this country by their families, and I sincerely want them to have every opportunity that they have come to expect

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living in this country. I strongly believe that the federal government must provide a path to citizenship and better secure our borders.

Thank you for contacting me on this issue. If you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

Shirley K. Turner

Senator - 15th District

SKT:mlo

Letter from Sen Frank Lautenberg to Karen Siracusa (email) from 3/20/2009

Dear Ms. Siracusa:

Thank you for contacting me about education opportunities for immigrants in the United States. I appreciate hearing from you on this important issue.

During the previous session of Congress, Senator Dick Durbin (D-IL) introduced the "Development, Relief, and Education for Alien Minors (DREAM) Act" (S. 774). The "DREAM Act" would authorize conditional permanent resident status for immigrants who entered the U.S. before their sixteenth birthday, have lived here for at least five years, have graduated from high school and been admitted to college, and have not committed any crimes. This legislation would also permit States to determine State residency for higher education purposes, allowing affected students to pay in-state tuition rates at public institutions.

The "DREAM Act" was not passed into law before the 110th congressional session concluded on January 2, 2009. Therefore, the bill will need to be reintroduced in the 111th Congress in order to receive further consideration. Please be assured that I will keep your views in mind if Congress revisits this issue in the future.

Thank you again for contacting me.

Sincerely,

A handwritten signature in blue ink that reads "Frank R. Lautenberg". The signature is written in a cursive, flowing style with a large initial "F".

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FRL:kmk

ⁱ Russell, Alene. In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity. http://www.aascu.org/policy_matters/pdf/in-state_tuition07.pdf, August 2007

ⁱⁱ Anastasia R. Mann, "The Faces of Immigration in Mercer County", *New Jersey Policy Perspectives*, June 2008

ⁱⁱⁱ Passel, Jeffrey S. 2003, "Further Demographic Information Relating to the DREAM Act.", Washington, Dc. The Urban Institute, October 2003

^{iv} Taxpayers Should Not Subsidize College for Illegal Aliens FAIR website
http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters6be3