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IN OR OUT: STATES OFFER DIFFERENT TUITION RATES BASED ON CITIZENSHIP

by MICHAEL J. LORDEN

Wendy Ruiz is an American citizen, born to undocumented immigrant parents in Florida.¹ After high school, Wendy was accepted to Miami Dade College, but discovered that Florida law required her to pay out-of-state tuition.² Even as a live-long resident of Florida, Ruiz was required to pay out-of-state tuition, \$6,500 more per year, solely because her parents lacked legal immigration status.³

According to a study published by the Pew Hispanic Center in 2012, a non-partisan research group in Washington, roughly 340,000 children are born each year to at least one parent of undocumented immigration status.⁴

As a result of state budget cuts, college tuition rose at an average rate of 15% nationally between 2008 and 2010.⁵ Just in 2012, tuition rose an additional 4%.⁶ Struggling with how to resolve their budget crises, several states are looking to further increase state college tuition costs, specifically for those with undocumented immigration status.⁷

STATE LAWS SHIFT FOR CITIZEN-STUDENTS WITH UNDOCUMENTED PARENTS

In 2007, California officials ended policies that denied in-state tuition to American students with undocumented parents.⁸ That decision was challenged and ultimately upheld by the California Supreme Court.⁹ The court held that in-state tuition must be given to any United States citizen, lawful alien or unlawful alien that met California's requirements for in-state tuition.¹⁰

On August 8, 2012, New Jersey followed California's lead. Anonymous petitioner, known as A.Z., a U.S. citizen born to an undocumented mother, had been accepted to a four-year college.¹¹ A state agency denied her tuition aid because she lacked residency under New Jersey law.¹² The Superior Court of New Jersey, Appellate Division, held that the agency inappropriately based A.Z.'s residency on her mother's status.¹³

Additionally, in five Florida residents, all of whom are U.S. citizens with undocumented parents, brought suit when they were denied in-state tuition rates.¹⁴ Like Wendy Ruiz's case, the schools were complying with a regulation issued by the State Board of Education that required residents with undocumented parents to pay out-of-state tuition.¹⁵ However, on August 31, 2012, a U.S. district judge ruled that the State Board of Education's regulation violated the Equal Protection Clause.¹⁶ While this ruling could cost Florida approximately \$200 million of annual revenue, The ruling is poised to impact between 9,000 and 12,000 students who would have previously been charged,¹⁷ but could cost Florida around \$200 million annually.¹⁸

California, New Jersey, and Florida ended policies that charged American citizens higher tuition rates based on their parents' status. Courts appear unwilling to attribute the parents' status to the student, but what if the student is undocumented?

THE NEXT BATTLE: UNDOCUMENTED STUDENTS

A growing controversy also surrounds charging America's 11 million undocumented immigrants¹⁹ out-of-state tuition even if they reside in the state for the requisite period. For example, three of Michigan's largest universities charge undocumented students out-of-state tuition, even if they went to a Michigan high school.²⁰

However, this issue has gained attention as student groups have protested this policy at the University of Michigan and Eastern Michigan University.²¹ The Board of Regents at Eastern Michigan University upheld their policy of denying in-state tuition to all undocumented students.²² "Undocumented students pay sales tax, and between half and two-thirds pay state and federal income tax. These are people that grew up in the state of Michigan and are very likely to contribute to the state of Michigan after they earn their degrees," said Sanjay Jolly of the Coalition for Tuition Equality.²³

Currently, thirteen states have some form of a policy that offers in-state tuition to undocumented students.²⁴ In other states, such as Michigan and Colorado, the decision is made on a school-by-school basis. Metro State University of Denver recently allowed undocumented residents of Colorado to pay tuition rates that are close to in-state tuition by offering a third category of tuition for undocumented students who attended at least three years of high school in Colorado and graduated or obtained a GED.²⁵

Former Congressman Tom Tancredo currently seeks plaintiffs to challenge Metro State's policy.²⁶ Tancredo stated, "If you're not legally present in the country, and therefore in violation of national law, you get a special law, and that's certainly unfair."²⁷ He further said, "Somebody's going to pick up the tab here, and those somebodies are the taxpayers of the State of Colorado."²⁸

Maryland voters will soon decide whether to give in-state tuition to undocumented students.²⁹ One study showed that this population could eventually generate \$66 million a year for the state and businesses if they receive access to higher education.³⁰ However, some opposition to this proposal exists. Kristen Williamson of the Federation for American Immigration Reform said of the proposed law, "It rewards law breaking, it invites future law breaking and it is fundamentally unfair to those who have played by the rules."³¹

GOING FORWARD

While it is unclear whether other states will attempt to deny in-state tuition to American citizens with undocumented parents, the recent decision in California, New Jersey, and Florida suggest that there is a strong potential that other state courts will curb such action by their state universities.

Undocumented students, on the other hand, may not be entitled to in-state tuition rates. Various states feel justified to impose a separate tuition rate for this group of students. Given the controversy surrounding such a decision, litigation is likely on the horizon. One fact remains clear, however - the continuing rise of tuition rates makes the classification of in- or out-of-state that much more important for all parties involved.

NOTES

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3 *Id.*

4 Julia Preston, *Births to Illegal Immigrants Are Studied*, N.Y. TIMES (Aug. 10, 2010), http://www.nytimes.com/2010/08/12/us/12babies.html?_r=0.

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8 *Id.*

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10 *Id.* at 864.

11 Preston, *supra* note 7.

12 *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Auth.*, 48 A.3d 1151, 1153 (N.J. Super. Ct. App. Div. 2012); N.J. STAT. ANN. 18:71B-2(b) and (c).

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16 *Id.* at 10.

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- 23 Interview with Sanjay Jolly, Coalition for Tuition Equality (Oct. 19, 2012).
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