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# Congress Considers Bill to Provide In-State Tuition to Immigrant Children

*John Anderson*

In the past year two bills have been introduced into Congress to allow states to provide in-state tuition to children of illegal immigrants. In 1996 Congress enacted a law that restricted the states' ability to provide illegal immigrants in-state tuition at public post-secondary schools.<sup>1</sup> In the last few years states have sought ways around this provision of the 1996 law and recently members of Congress have shown their own interest in amending the law by introducing into the House the Student Adjustment Act of 2003 and into the Senate the DREAM Act of 2003.<sup>2</sup> These bills intend to remove barriers to states determining their own requirements for in-state tuition rates.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) is primarily concerned with controlling illegal immigration and providing stricter enforcement of immigration laws. IIRIRA limits legal and illegal immigrants' access to state and federal benefits, but does not completely prohibit in-state tuition. Section 505 of the Act, codified as 8 USC § 1623, requires states that allow illegal immigrants to obtain in-state tuition based on residency to offer in-state tuition to U.S. residents of other states as well. This provision made it impractical for states to offer in-state tuition to illegal immigrants based on residency. As a result, illegal immigrant students were faced with paying out of state tuition, which is prohibitively expensive for many of these students.

The Student Adjustment Act and the DREAM Act would repeal section 505 of IIRIRA. Repealing section 505 will allow states to determine once again their own residency requirements for in-state tuition. The Student Adjustment Act of 2003 requires that an immigrant student must be under the age of twenty-one, have resided in the United States for at least five years, be of "good moral character," and be at least in the seventh grade to qualify. In introducing the bill, Rep. Cannon stated, "The Student Adjustment Act will allow states to free these students for their dreams and fully contribute to the community they live in."<sup>3</sup>

Senator Orrin Hatch (R-Utah) introduced into the Senate on July 31, 2003 a companion piece of legislation, the Development, Relief, and Education for Alien Minors Act of 2003 (DREAM Act).<sup>4</sup> Sen. Dick Durbin (D-Illinois) co-sponsored the bill. The Dream Act is intended to amend IIRIRA to permit states to determine state residency for higher education purposes and allows for adjustment of the status of qualified alien students who are long-term U.S. residents. Recognizing the legal barriers to higher education that many illegal immigrants face, Sen. Hatch stated, "We can choose either to keep these talented young people underground, or we can choose to give them a chance to contribute to the United States. I believe that our laws should not discourage those with bright young minds from pursuing higher education... The DREAM Act

makes productive citizens out of young people who are already living in our country, which benefits all of us."<sup>5</sup>

As of 1995, 2.3 million foreign born children were attending school in the U.S.<sup>6</sup> Six states account for almost three-quarters of all immigrant children: California, Texas, New York, Florida, Illinois, and New Jersey. Approximately 50,000 to 65,000 illegal immigrant children graduate from American high schools each year.<sup>7</sup> These students cannot be denied education at a public school based upon their immigration status, according to the 1982 U.S. Supreme Court decision *Plyer v. Doe*.<sup>8</sup>

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However, *Plyer* indicates that undocumented immigrant children are merely entitled to a K-12 public education.

Supporters of initiatives to allow illegal immigrants to receive in-state tuition point to social, states'

## FEATURES

rights, and economic reasons for changing the law. Network, a Catholic social justice lobby, believes the consequences of IIRIRA are unfair to children and amending the 1996 law would result in social and economic benefits to the U.S.<sup>9</sup> Rep. Chris Cannon (R- Utah), who introduced the Student Adjustment Act into the House in April, also noted that most of these students had no choice in their illegal entry into the U.S. Rep. Cannon's bill would leave the decision whether to provide in-state tuition to undocumented immigrants up to the states. Advocates argue that most of these students would remain in the US regardless of the law, and allowing them to attend institutes of higher education results in a more professionally trained workforce, which is more productive and increases the tax base.

Immigrant advocates have commended the introduction of both bills. Commenting on the introduction of the DREAM Act of 2003, Palma Yanni, President of the American Immigration Lawyers Association said, "These children were raised in the U.S., have integrated into their communities, and have graduated from high school, yet are now unable to continue their education without a change in federal law. Such a change is long overdue."<sup>10</sup> Fred Tsao of the Illinois Coalition for Immigrant and Refugee Rights believes these bills have such strong bipartisan support because of the constituency these issues affect.<sup>11</sup> Members of Congress recognize that the students who will benefit from passage of the Student Adjustment Act and DREAM Act are intelligent and motivated and in general contribute to society. Tsao added that these bills would assist students in "fully developing and using their talents."

Critics of allowing undocumented immigrants to receive in-state tuition contend that it takes away

scarce resources from U.S. citizens. According to the Federation of American Immigration Reform, "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."<sup>12</sup>

Some critics of the proposed legislation argue that the bills' sponsors are motivated only by political concerns and are ignoring the impact of over-immigration. Dave Gorak, the Executive Director of the Midwest Coalition to Reduce Immigration contends that the legislation, "is nothing more than political pandering that its sponsors hope will produce new votes in the future."<sup>13</sup> Additionally, Gorak said that the bills' sponsors are "immigration anarchists because they show the same contempt for our laws as do those who break them with impunity."

Despite some criticism of the change on a federal level, many states have already begun to fashion their own avenues around the act. Since 1996, several states, including Illinois, have explored means by which to enable illegal immigrants to qualify for in-state tuition. Several states, beginning with Texas and California, enacted laws to grant in-state tuition to qualified immigrants who have lived in the state illegally but attended and graduated from high school.<sup>14</sup>

On May 18th of this year, Governor Rod Blagojevich signed into law House Bill 60, which allows in-state tuition rates for illegal immigrants in Illinois at public post-secondary schools.<sup>15</sup> The bill had strong bipartisan support, passing 178-5. The law allows students who have graduated from an Illinois high school and have attended school in the state for at least three years to pay the in-state tuition rate for state colleges and uni-

versities.<sup>16</sup> Commenting on the significance of the new law in a letter to the Chicago Tribune, Joshua Hoyt, Executive Director of the Illinois Coalition for Immigrant and Refugee Rights, observed that regardless of their access to higher education, the majority of illegal immigrant students are likely to remain in the United States.<sup>17</sup> "It is in the state's best economic and fiscal interest to promote-secondary education to immigrant students in order to increase their contribution to economic growth."

Proposals and laws to help illegal immigrants obtain in-state tuition have come under criticism due to concerns about constitutional issues, the economy, excessive immigration, and the September 11 attacks. Critics of state initiatives point to the language of IIRIRA's section 505 as precluding states from offering in-state tuition to undocumented immigrants. The contention is whether Congress has acted in a way to preempt states from extending in-state tuition rates to illegal immigrants.<sup>18</sup> IIRIRA and the Constitution's express grant giving the Federal government the responsibility to regulate immigration support this. U.S. Supreme Court cases involving state regulation of the field of immigration, such as *Hines v. Davidowitz* and *Takahashi v. Fish and Game Commission*, have found state laws are preempted.<sup>19</sup>

States that have passed laws to allow illegal immigrants to obtain in-state tuition rates have carefully drafted the language of the laws in hopes of not violating IIRIRA. The new state laws either do not have residency requirements or set a higher standard for illegal immigrants to qualify for in-state tuition. According to Tsao, "these laws are specifically created to avoid conflict with section 505."

As states continue to debate whether to offer tuition benefits to undocumented immigrants, it appears that the best bet to insure affordable

access to higher education for undocumented immigrants is through federal law. Neither bill is yet scheduled for a full vote, but the Student Adjustment Act and DREAM Act are sure to draw more attention from immigrant advocates and immigration reformers alike.<sup>20</sup>

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## Chicago City Council Opposes Patriot Act

*Andrew Dougherty*

On October 1, 2003, the city of Chicago became the largest city in the country to pass a resolution condemning certain portions of the USA Patriot Act. Passed shortly after the attacks of September 11, 2001, the Patriot Act expanded the power of law enforcement agencies in an effort to help them respond to future threats of terrorist action and to shore up homeland security.<sup>1</sup>

The Patriot Act has come under sharp criticism for its potential to violate the civil liberties of both

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U.S. citizens and the citizens of other nations residing in the United States. Since the Patriot Act's inception into law in October 2001, 190 cities, towns, and communities across the United States have passed resolutions stating an open and formal opposition to the Patriot Act.<sup>2</sup> They are joined by Alaska, Hawaii, and Vermont, all of which have passed statewide resolutions opposing certain sections of the

Patriot Act.

The city of Chicago's resolution was co-sponsored by Aldermen Joe Moore (49th Ward), Helen Schiller (46th Ward), Freddrenna Lyle (6th Ward), and Ricardo Munoz (22nd Ward). The resolution stated that certain provisions of the Patriot Act "fundamentally alter our civil liberties without increasing our security."<sup>3</sup> The resolution specifically condemned, among others, the provisions of the Act which allow law enforcement agencies to: obtain 'sneak and peak' search warrants with greater ease; detain citizens of foreign states indefinitely; deport citizens of foreign states even if they have not been found to have committed a crime; view an individual's health, medical, financial, and library records; and the power of law enforcement agencies to listen to otherwise confidential conversations between lawyers and their clients in federal custody.

The resolution was met with heavy criticism by Patrick J. Fitzgerald, the United States attorney for the Northern District of Illinois. In an open letter published in the Chicago Tribune the day before the City Council meeting, Fitzgerald decried that the current opposition to the Patriot Act was largely based on misinformation.<sup>4</sup> Fitzgerald argued that the fundamental point of the Patriot Act was to allow various law enforcement agencies to share information pertaining to terrorist investigations. He further argued that the