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Harris County, Texas

IMMIGRATION REFORM COALITION §
OF TEXAS (IRCOT), §
Plaintiff, §
v. §
TEXAS, §
SUSAN COMBS, Comptroller, §
UNIVERSITY OF HOUSTON SYSTEM, §
RENU KHATOR, Chancellor, §
HOUSTON COMMUNITY COLLEGE SYSTEM, §
MARY SPANGLER, Chancellor, §
LONE STAR COLLEGE SYSTEM, & §
RICHARD CARPENTER, Chancellor, §
Defendants. §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

281 JUDICIAL DISTRICT

ORIGINAL PETITION, REQUEST FOR DISCLOSURE, AND REQUEST FOR PRODUCTION

1. In violation of federal law, at least 8,000 illegal aliens attending Texas colleges and universities are classified as Texas residents under state law and allowed to pay discounted in-state tuition and/or receive state student financial aid. For example, illegal aliens attending community colleges in Harris County are paying resident tuition and receiving grants under the Texas Educational Opportunity Grant Program, illegal aliens attending state-supported universities in Harris County are paying resident tuition and receiving grants under the Toward Excellence, Access, & Success Grant Program, and illegal aliens attending private universities in Harris County are receiving grants under the Tuition Equalization Grant Program.

2. Illegal aliens are ineligible to complete the federal government's "Free Application for Federal Student Aid." Therefore, Texas provides illegal aliens with its "Texas Application for State Financial Aid." (The 2009-2010 English version of that document is attached hereto as Exhibit A and incorporated herein for all purposes).

EDUCATION TREATISES

3. A national treatise states:

[Federal law] does, however, permit states to make undocumented aliens eligible for postsecondary benefits (and other state and local benefits) for which they are otherwise ineligible under Section 1621(a), but only if states do so "through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility" (8 U.S.C. § 1621(d)). Another provision of [federal law] limits this state authority, specifically with respect to "postsecondary education benefit(s)," by providing that states may not provide greater benefits to undocumented aliens than it provides to United States citizens who are not residents of the state (8 U.S.C. § 1623).

THE LAW OF HIGHER EDUCATION, Vol. I at 840 (2006).

4. Another national treatise states:

Federal law does not actually deny undocumented immigrants access to post-secondary schools. However, it does not permit those students to attend at in-state tuition rates unless out-of-state students are permitted to do so as well and further denies federal financial aid to those students. Some states have disregarded this restriction and have passed legislation to provide in-state tuition rates to illegal aliens.

EDUCATION LAW, Vol. 1 at 5-96 (2006).

FEDERAL LAW

5. Title 8 U.S.C. section 1601(6) provides:

It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

6. Title 8 U.S.C. section 1621 provides:

(a) IN GENERAL. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—(1) a qualified alien (as defined in section 1641 of this title), (2) a nonimmigrant under the Immigration and Nationality Act, or (3) an alien who is paroled into the United States under section 212(d) (5)

of such Act for less than one year, is not eligible for any State or local public benefit (as defined in subsection (c) of this section)....

(c) "STATE OR LOCAL PUBLIC BENEFIT" DEFINED. (1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government....

(d) STATE AUTHORITY TO PROVIDE FOR ELIGIBILITY OF **ILLEGAL ALIENS** FOR STATE AND LOCAL PUBLIC BENEFITS. **A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.**

7. Authoritative legislative history provides that: "Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act, that references this provision, will meet the requirements of this section. The phrase 'affirmatively provides for such eligibility' means that the State law enacted must specify that illegal aliens are eligible for State or local benefits." House Conference Report No. 104-725, p. 383 (1996). See also Tex. Att'y Gen. Op. No. JC-0394 (2001) at 4 ("An enactment that 'affirmatively provides for such eligibility' would expressly state the legislature's intent that undocumented aliens are to be eligible for certain public benefits.").

8. Title 8 U.S.C. section 1623(a) provides:

IN GENERAL. 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.

9. Authoritative legislative history provides that: "This section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." House Conference Report No. 104-828, § 507 (1996).

10. Title 8 U.S.C. section 1625 provides:

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.

STATE LAW

11. Section 54.0501, Texas Education Code provides:

(6) "Residence" means a person's home or other dwelling place.

(7) "Resident tuition" means the amount of tuition paid by a person who is a resident of this state.

12. Section 54.051(m), Texas Education Code provides:

Unless the student establishes residency or is entitled or permitted to pay resident tuition as provided by this subchapter, tuition for a student who is a citizen of any country other than the United States of America is the same as the tuition required of other nonresident students.

13. Section 54.052, Texas Education Code provides:

DETERMINATION OF **RESIDENT** STATUS. (a) Subject to the other applicable provisions of this subchapter governing the determination of **resident** status, the following persons are considered **residents** of this state for purposes of this title:

(1) a person who: (A) established a domicile in this state not later than one year before the census date of the academic term in which the person is enrolled in an institution of higher education; and (B) maintained that domicile continuously for the year preceding that census date;

(2) a dependent whose parent: (A) established a domicile in this state not later than one year before the census date of the academic term in which the dependent is enrolled in an institution of higher education; and (B) maintained that domicile continuously for the year preceding that census date; and

(3) a person who: (A) graduated from a public or private high school in this state or received the equivalent of a high school diploma in this state; and (B) maintained a **residence** continuously in this state for: (i) the three years preceding the date of graduation or receipt of the diploma equivalent, as applicable; and (ii) the year preceding the census date of the academic term in which the person is enrolled in an institution of higher education.

(b) For purposes of this section, the domicile of a dependent's parent is presumed to be the domicile of the dependent unless the person establishes eligibility for **resident** status under Subsection (a) (3).

14. Section 54.053, Texas Education Code provides:

INFORMATION REQUIRED TO ESTABLISH **RESIDENT** STATUS. A person shall submit the following information to an institution of higher education to establish **resident** status under this subchapter:

(1) if the person applies for **resident** status under Section 54.052(a) (1): (A) a statement of the dates and length of time the person has **resided** in this state, as relevant to establish **resident** status under this subchapter; and (B) a statement by the person that the person's presence in this

state for that period was for a purpose of establishing and maintaining a domicile;

(2) if the person applies for **resident** status under Section 54.052(a)(2): (A) a statement of the dates and length of time any parent of the person has **resided** in this state, as relevant to establish **resident** status under this subchapter; and (B) a statement by the parent or, if the parent is unable or unwilling to provide the statement, a statement by the person that the parent's presence in this state for that period was for a purpose of establishing and maintaining a domicile; or

(3) if the person applies for **resident** status under Section 54.052(a)(3): (A) a statement of the dates and length of time the person has **resided** in this state, as relevant to establish **resident** status under this subchapter; and (B) if the person is not a citizen or permanent resident of the United States, an affidavit stating that the person will apply to become a permanent resident of the United States as soon as the person becomes eligible to apply.

15. The Texas Higher Education Coordinating Board (THECB) adopted the following administrative rule regarding resident status:

DETERMINATION OF **RESIDENT** STATUS. (a) The following persons shall be classified as Texas **residents** and entitled to pay **resident** tuition at all institutions of higher education: (1) a person who: (A) graduated from a public or accredited private high school in this state or, as an alternative to high school graduation, received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education; and (B) maintained a **residence** continuously in this state for: (i) the thirty-six months immediately preceding the date of graduation or receipt of the diploma equivalent, as applicable; and (ii) the 12 months preceding the census date of the academic semester in which the person enrolls in an institution.

19 T.A.C. § 21.24(a)(1) (located in Chapter 21, Subchapter B).

16. Section 56.302(a), Texas Education Code provides:

[T]he student financial assistance program authorized by this subchapter is known as the Toward EXcellence, Access, &

Success (TEXAS) grant program, and an individual grant awarded under this subchapter is known as a TEXAS grant.

17. Section 56.304(a)(1), Texas Education Code provides:

To be eligible initially for a TEXAS grant, a person must [] be a **resident** of this state as determined by coordinating board rules.

18. In its rules concerning the TEXAS grant program (see 19 T.A.C. §§ 22.225-22.240), the THECB defines "Resident of Texas" as follows:

A **resident** of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of **Resident** Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

19. Section 56.402(a), Texas Education Code provides:

The student financial assistance program authorized by this subchapter is known as the Texas Educational Opportunity Grant Program.

20. Section 56.404(a)(1), Texas Education Code provides:

To be eligible initially for a grant under the grant program, a person must [] be a **resident** of this state as determined by coordinating board rules.

21. In its rules concerning the Texas Educational Opportunity Grant Program (see 19 T.A.C. §§ 22.253-22.263), the THECB defines "Resident of Texas" as follows:

A **resident** of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of **Resident** Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

22. Section 61.221, Texas Education Code provides:

In order to provide the maximum possible utilization of existing educational resources and facilities within this state, both public and private, the coordinating board is authorized to provide tuition equalization grants to Texas **residents** enrolled in any approved private Texas college or university, based on student financial need, but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

23. Section 61.2251(b)(1), Texas Education Code provides:

To be eligible for a tuition equalization grant in the first academic year in which the person receives the grant, a person must [] be a Texas **resident** as defined by the coordinating board and meet, at a minimum, the **resident** requirements defined by law for Texas **resident** tuition in fully state-supported institutions of higher education.

24. In its rules concerning the Tuition Equalization Grant Program (see 19 T.A.C. §§ 22.21-22.33), the THECB defines "Resident of Texas" as follows:

A **resident** of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining **Residence** Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

SECTION 1621 ANALYSIS

25. Under the general rule stated in title 8 U.S.C. section 1621(a), an illegal alien "is not eligible for" postsecondary education benefits such as resident tuition and state financial aid.

26. Under Texas law, an illegal alien is eligible for resident tuition and state financial aid. See, e.g., OVERVIEW: Residency and In-State Tuition (Texas Higher Education Coordinating Board 09/2008) ("House Bill 1403 granted certain non-immigrant students, including

undocumented students, access to in-state tuition rates at Texas public institutions of higher education and state financial aid.")

27. However, the Texas Legislature has never affirmatively provided for such eligibility through the enactment of a state law. See House Bill 1403 (enrolled version attached hereto as Exhibit B) and Senate Bill 1528 (enrolled version attached hereto as Exhibit C).

28. No Texas statute enacted before or after August 22, 1996 specifies that an illegal alien, illegal immigrant, undocumented alien, undocumented immigrant, or "alien who is not lawfully present in the United States" is eligible for resident tuition or state financial aid.

29. Federal law forces a state that wants to provide postsecondary education benefits to illegal aliens to expressly state that intent in a statute. Doing so places the public on actual notice that their tax dollars are being used to support illegal aliens. It is a matter of democratic accountability, forcing state elected officials to take public responsibility for their actions.

30. Under the Supremacy Clause, federal law prevails over state law. Therefore, in Texas, an illegal alien is not eligible for discounted in-state tuition or any form of state student financial aid. Cf. Tex. Att'y Gen. Op. No. JC-0394 (2001) at 8 (concluding that title 8 U.S.C. § 1621 "prohibits the Harris County Hospital District from providing free or discounted nonemergency health care to undocumented aliens, even if they reside within the district's boundaries").

SECTION 1623 ANALYSIS

31. The term "residence" means "[t]he act or fact of living in a given place for some time." See BLACK'S LAW DICTIONARY (9th ed. 2009).

32. In title 8 U.S.C. section 1623, the phrase "on the basis of residence within a State" means based on the fact that an illegal alien resided in a state for some time.

33. In Texas, an illegal alien is eligible on the basis of residence within the state for certain postsecondary education benefits (e.g., to be eligible for a TEXAS grant, an illegal alien must have "maintained a residence continuously in this state for [] the 12 months preceding the census date of the academic semester in which the person enrolls in an institution").

34. However, a citizen or national of the United States is not eligible for those same postsecondary education benefits without regard to whether he or she is a Texas resident (e.g., a citizen of the United States who resided in Oklahoma immediately prior to enrolling in a Texas college or university is not eligible for a TEXAS grant):

35. The United States Supreme Court has held:

[S]tate law is pre-empted under the Supremacy Clause, U.S. Const, Art. VI, cl. 2, in three circumstances....

Finally, state law is pre-empted to the extent that it actually conflicts with federal law. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements, or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

English v. General Electric Co., 496 U.S. 72, 78-79 (1990).

36. In enacting title 8 U.S.C. section 1623, which is entitled "Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits," Congress sought to prohibit a state acting under title 8 U.S.C. section 1621(d) from being more generous to illegal aliens who reside in the state than it is to United States citizens and nationals who do not reside in the state with regard to the provision of postsecondary education benefits.

37. Texas law, which allows illegal aliens to qualify as Texas residents for purposes of tuition and financial aid but denies resident tuition and state financial aid to nonresident students, conflicts with both the plain language and the stated purpose of title 8 U.S.C. section 1623. Therefore, the provisions of Texas law that allow an illegal alien to qualify as a Texas resident for purposes of discounted in-state tuition and state student financial aid are preempted, void, and of no effect.

PLAINTIFF

38. Plaintiff Immigration Reform Coalition of Texas (IRCOT) is a non-profit corporation.

39. One or more members of plaintiff IRCOT are state and local taxpayers who reside in Harris County, Texas.

DEFENDANTS

40. Defendant Texas is one of the United States of America. Defendant Susan Combs is Texas Comptroller (she is sued in her official and individual capacities).

41. Defendant University of Houston System (UHS) is a political subdivision of Texas. Defendant Renu Khator is UHS Chancellor (she is sued in her official and individual capacities).

42. Defendant Houston Community College System (HCCS) is a political subdivision of Texas. Defendant Mary Spangler is HCCS Chancellor (she is sued in her official and individual capacities).

43. Defendant Lone Star College System (LSCS) is a political subdivision of Texas. Defendant Richard Carpenter is LSCS Chancellor (he is sued in his official and individual capacities).

CAUSE OF ACTION

44. This is a taxpayers' suit seeking declaratory and injunctive relief.

DECLARATORY RELIEF

45. The plaintiff requests a judicial declaration that, in Texas, an illegal alien is not eligible for discounted in-state tuition or any form of state student financial aid.

46. The plaintiff requests a judicial declaration that the provisions of Texas law that allow an illegal alien to qualify as a Texas resident for purposes of discounted in-state tuition and state student financial aid are preempted, void, and of no effect.

47. The plaintiff requests attorney fees and expenses under the Texas Uniform Declaratory Judgments Act.

INJUNCTIVE RELIEF

48. The plaintiff seeks an order enjoining the defendants from making, approving, or forwarding a monetary grant to an illegal alien under the Texas Educational Opportunity Grant Program, the Toward Excellence, Access, & Success Grant Program, or the Tuition Equalization Grant Program.

DISCOVERY REQUESTS

49. Pursuant to Texas Rule of Civil Procedure 194, the plaintiff requests that the defendants, within fifty days of the service of this document, disclose the information and material described in Rule 194.2.

50. Pursuant to Texas Rule of Civil Procedure 196, the plaintiff requests that defendants Houston Community College System, Mary Spangler, Lone Star College System, and Richard Carpenter, within fifty days of the service of this document, produce for inspection and copying the following documents:

a) documents (including documents regarding recruitment, resident status, admission, tuition, fees, financial aid, attendance, instruction, retention, and/or graduation) that reference, concern, or relate to illegal aliens, illegal immigrants, undocumented aliens, undocumented immigrants, or aliens who are not lawfully present in the United States;

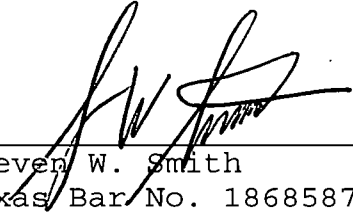
b) documents submitted by currently enrolled students to establish resident status under Section 54.052(a)(3), Texas Education Code (including affidavits stating that the person will apply to become a permanent resident); and

c) Texas Applications for State Financial Aid (or similar applications) submitted by currently enrolled students.

REQUEST FOR RELIEF

51. Based on the foregoing, the plaintiff requests that it have judgment against the defendants for declaratory relief, injunctive relief, attorney fees, costs of suit, and all other relief, in law and in equity, to which it may be entitled.

Respectfully submitted,



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