

Effective: September 30, 1996

8 U.S.C.A. § 1623

§ 1623. Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits

Currentness

(a) 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.

(b) Effective date

This section shall apply to benefits provided on or after July 1, 1998.

Credits

(Pub.L. 104-208, Div. C, Title V, § 505, Sept. 30, 1996, 110 Stat. 3009-672.)

8 U.S.C.A. § 1623 (West)

Review Granted

Previously published at: 166 Cal.App.4th 1121
(Cal.Const. art. 6, s 12; Cal. Rules of
Court, Rules 8.500, 8.1105 and 8.1110,
8.1115, 8.1120 and 8.1125)
Court of Appeal, Third District, California.

Robert MARTINEZ et al., Plaintiffs and Appellants,

v.

REGENTS OF the UNIVERSITY OF CALIFORNIA
et al., Defendants and Respondents.

No. C054124. | Sept. 15, 2008. | Certified for
Partial Publication. * | As Modified on Denial of
Rehearing Oct. 7, 2008. | Review Granted Dec.
23, 2008. | See 117 Cal.Rptr.3d 359, 241 P.3d 855.

Synopsis

Background: United States citizens paying nonresident tuition at state colleges and universities brought action challenging state statute allowing certain illegal aliens to pay less-expensive resident tuition. The Superior Court, Yolo County, No. CV052064, Thomas Edward Warriner, J., entered judgment of dismissal. Citizens appealed.

Holdings: The Court of Appeal, Sims, Acting P.J., held that:
[1] state statute making illegal aliens eligible for less-expensive resident tuition was preempted by federal statute precluding illegal aliens from preferential treatment on the basis of residence for postsecondary education benefits, and
[2] state statute was preempted by federal statute precluding illegal aliens from eligibility for State benefits unless State law affirmatively provides for such eligibility.

Reversed.

West Codenotes

Preempted

West's Ann.Cal.Educ. Code § 68130.5

Attorneys and Law Firms

*521 Immigration Reform Law Institute and Kris W. Kobach; Ropers, Majeski, Kohn & Bentley and Michael J. Brady, Redwood City, for Plaintiffs and Appellants.

Sharon L. Browne and Ralph W. Kasarda, Sacramento, for Pacific Legal Foundation, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Charles F. Robinson and Christopher M. Patti, Oakland; Howard Rice Nemerovski Canady Falk & Rabkin, Ethan P. Schulman and Robert D. Hallman, San Francisco, for Defendants and Respondents.

Munger, Tolles & Olson, Bradley S. Phillips, Fred A. Rowley, Jr., Gabriel P. Sanchez, Mark R. Yohalem, Los Angeles; Lawyers' Committee for Civil Rights, Robert Rubin, San Francisco; Mexican American Legal Defense and Educational Fund, Cynthia Valenzuela, Nicholas Espiritu and Kristina Campbell, for Alicia A., Gloria A., Marcos A., Mildred A., Enrique Boca, Nicole Doe, Collin Campbell, Alex Ortiz, Linda Lin Qian, Cesar Rivadeneyra, Jennifer Seidenberg, Improving Dreams, Equality, Access and Success at U.C. Davis, Improving Dreams, Equality, Access and Success of UCLA and National Immigration Law Center as Amici Curiae on behalf of Defendants and Respondents.

Opinion

SIMS, Acting P.J.

United States citizens who pay *nonresident* tuition for enrollment at California's public universities/colleges brought a lawsuit attacking a state statute (Ed.Code, § 68130.5¹) which allows certain illegal *522 aliens² to pay the less-expensive *resident* tuition to attend these universities/colleges. Plaintiffs³ filed a class action lawsuit against defendants Regents (Regents) of the University of California (UC), Trustees (Trustees) of the California State University System (CSU), Board of Governors (Board) of the California Community Colleges (CCC), UC President Robert C. Dynes (Dynes), CSU Chancellor Charles B. Reed (Reed), and CCC Chancellor Marshall Drummond (Drummond). Plaintiffs label their pleading as a class action complaint for damages; injunctive relief; declaratory relief; federal preemption; and

v.

Kathleen SEBELIUS, personally and in her official capacity as Governor of Kansas, et al., Defendants.

No. 04-4085-RDR.

July 5, 2005.

No standing by students

Synopsis

Background: State university students and parents sued Governor of Kansas, Kansas officials, and state universities, challenging constitutionality, and legality under federal law, of statute allowing undocumented or illegal aliens to attend Kansas universities and pay resident or in-state tuition. Groups representing interests of Hispanics intervened. Defendants and intervenors moved to dismiss, and plaintiffs moved to dismiss intervenors.

Holdings: The District Court, Rogers, J., held that:

- 1 intervenors were not required to show standing;
- 2 Governor did not meet *Ex parte Young* exception to Eleventh Amendment immunity;
- 3 students and parents lacked standing under federal statute prohibiting states from offering in-state tuition to illegal aliens;
- 4 no private right of action was created by statute limiting illegal aliens' eligibility for higher education benefits based on residence; and
- 5 students and parents lacked standing under Equal Protection Clause.

Day v. Sebelius, 376 F. Supp. 2d 1022 (D. Kan. 2005) aff'd sub nom. Day v. Bond, 500 F.3d 1127 (10th Cir. 2007)

50 Cal.4th 1277

Supreme Court of California

Robert MARTINEZ et al., Plaintiffs and Appellants,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al.,
Defendants and Respondents.

No. S167791.

Nov. 15, 2010.

students have standing

Synopsis

Background: United States citizens paying nonresident tuition at state colleges and universities brought action challenging state statute exempting certain nonresidents including unlawful aliens from paying nonresident tuition. The Superior Court, Yolo County, No. CV052064, Thomas Edward Warriner, J., entered judgment of dismissal. Citizens appealed. The Court of Appeal reversed. Plaintiffs and defendants petitioned for review. The Supreme Court denied plaintiffs' petition but granted defendants' petition, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Chin, J., held that:

- 1 exemption from nonresident tuition did not violate statute prohibiting education benefits to unlawful aliens on basis of residence;

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 47. Fraud and False Statements (Refs & Annos)

Effective: March 9, 2006

18 U.S.C.A. § 1028

§ 1028. Fraud and related activity in connection with
identification documents, authentication features, and
information ¹

Currentness

(a) Whoever, in a circumstance described in subsection (c)
of this section--

(1) knowingly and without lawful authority produces an
identification document, authentication feature, or a false
identification document . . .

(7) the term “means of identification” means any name or
number that may be used, alone or in conjunction with any
other information, to identify a specific individual,
including any . . . social security number . . .

(b) The punishment for an offense under subsection (a) of
this section is--

(1) except as provided in paragraphs (3) and (4), a fine
under this title or imprisonment for not more than 15 years,
or both, if the offense is . . .