



June 24, 2008

COURT DECLINES TO REINSTATE CHALLENGE TO IN-STATE TUITION FOR ILLEGAL ALIENS

(Day v. Bond)

The U.S. Supreme Court yesterday declined to review a federal appeals court ruling that dismissed a challenge to a Kansas statute that discriminates against U.S. citizens who live outside the State. The statute grants illegal aliens the right to attend Kansas universities at in-state rates but denies that same right to U.S. citizens who live outside of Kansas.

The one-sentence order declining review was a setback for the Washington Legal Foundation (WLF), which filed a brief urging the Court to grant review in the case, *Day v. Bond*. WLF argued that the Kansas law violates a 1996 federal statute that prohibits States from granting more favorable tuition rates to illegal aliens than they grant to citizens. A federal district court dismissed the suit on the ground that the plaintiffs lacked standing to challenge the Kansas law. The U.S. Court of Appeals for the Tenth Circuit upheld that dismissal.

WLF filed its brief on behalf of Brigette Brennan and her parents. Brennan attended and graduated from a Kansas high school and lived for five years in Lawrence, Kansas while attending the University of Kansas. But Kansas refused to offer her in-state tuition rates because she lived in Kansas City, Missouri while attending high school. The result is that she has paid considerably higher tuition than illegal aliens who lived in Kansas illegally while attending high school and whose presence in this country continues to be illegal. WLF also filed its brief on behalf of itself and the Allied Educational Foundation.

"Kansas and nine other states are in clear violation of federal law by offering in-state tuition to illegal aliens. Unless the courts show a willingness to stop those violations, immigration-rights groups may be emboldened to encourage yet other States to flout federal law," said WLF Chief Counsel Richard Samp. "Reasonable people can disagree on the issue of whether States should favor illegal aliens over non-resident U.S. citizens in the award of in-state tuition rates. But Congress has already decided the issue and has determined that no such favoritism is permissible," Samp said. Samp

noted that ongoing litigation challenges laws from other States that are similar to the Kansas law.

The federal statute at issue, 8 U.S.C. § 1623, was adopted in 1996 and is designed to ensure that any State that offers discounted, in-state tuition rates to illegal aliens on the basis of their residence in the State must offer the same discounted rates to *all* U.S. citizens. In 2004, Kansas adopted a law that allows illegal aliens to attend public universities at in-state rates, but it has refused to extend that same opportunity to U.S. citizens living outside the State. Similar laws have been adopted in at least nine other States, including Texas, California, New York, Utah, Illinois, Washington, Oklahoma, and New Mexico.

The district court dismissed the lawsuit on a technical ground: it held that Congress had not intended that § 1623 be enforced by lawsuits filed by individuals. Rather, the court held, the statute can only be enforced by federal immigration officials. The district court also dismissed the plaintiffs' claims that Kansas's policy violated their rights under the Constitution's Equal Protection Clause. The court held that the plaintiffs lacked "standing" to raise that claim. On appeal, the Tenth Circuit ruled that the plaintiffs lacked standing to raise either claim. The Supreme Court order issued yesterday declined to review the Tenth Circuit's ruling.

WLF's brief argued that the Tenth Circuit's narrow view of standing conflicts with decisions both from the Supreme Court and from at least four other federal appeals courts. WLF urged the Supreme Court to review the case in order to resolve those conflicts. WLF argued that the plaintiffs -- all students being forced to pay higher tuition -- have established each of the prerequisites of standing. They have shown that their injuries are directly traceable to the Kansas policy of which they complain, and that a ruling in their favor would redress their injuries.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to protecting the constitutional and civil rights of individuals. WLF also regularly litigates in support of efforts to enforce the nation's immigration laws and to ensure that public funds are used solely for the benefit of those lawfully present in this country.

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A copy of WLF's brief is posted on its web site, www.wlf.org.