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**September 4, 2007**

**IN LIGHT OF APPEALS COURT RULING,  
WLF CALLS ON DHS TO ENFORCE BAN ON  
IN-STATE TUITION FOR ILLEGAL ALIENS  
(*Day v. Bond*, U.S. Court of Appeals for the 10th Circuit, No. 05-3309)**

The Washington Legal Foundation (WLF) today called on the U.S. Department of Homeland Security (DHS) to begin enforcing the 1996 federal law that prohibits States from offering preferential in-state college tuition rates to illegal aliens. WLF's demand, in the form of a letter to senior DHS officials, was made in the wake of a federal appeals court decision last Thursday that individual citizens lack "standing" to challenge States that are defying federal law by offering in-state tuition rates.

"At least nine States are openly defying a federal statute that prohibits them from offering in-state tuition rates to illegal aliens without offering those same rates to U.S. citizens who lived outside the State at the time they began attending college," said WLF Chief Counsel Richard A. Samp. "The federal appeals court ruled this week that individual citizens are not permitted to enforce that prohibition. Thus, unless DHS begins cracking down on these scofflaws, there will be no way to prevent the continued widespread violation of federal law by the States," Samp said.

This week's ruling in *Day v. Bond* was issued by the U.S. Court of Appeals for the Tenth Circuit in Denver. It declined to reinstate a challenge to a Kansas statute that, WLF charges, violates the civil rights of 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 decision was a setback for WLF, which file a brief in the case, arguing that the Kansas law violates a 1996 federal statute, 8 U.S.C. § 1623, that prohibits States from granting more favorable tuition rates to illegal aliens than they grant to citizens. A federal district court dismissed the suit in 2005 on procedural grounds; the appeals court's ruling 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 has been living for the past five years in Lawrence, Kansas while attending the University of Kansas. But Kansas has 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 been paying 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.

In 2005, WLF filed formal complaints with DHS against two other states that discriminate against out-of-state residents, Texas and New York. DHS -- the federal agency charged with enforcing the federal ban on discriminatory tuition rules -- has not yet acted on WLF's complaints.

Section 1623 unequivocally provides that States may not afford less favorable treatment to U.S. citizens, with respect to postsecondary education benefits, than that afforded to illegal aliens physically present in the State. Section 1623 includes one significant qualifier: the prohibition on discrimination against nonresident citizens is limited to discrimination "on the basis of residence." Thus, WLF argued in its DHS complaints, Texas and New York are free to offer football scholarships to athletically talented illegal aliens without offering similar scholarships to less athletically talented nonresident U.S. citizens. But Kansas, Texas, and New York quite clearly *are* discriminating "on the basis of residence," WLF argued: they provide in-state tuition only to those illegal aliens who live in Kansas/Texas/New York and graduated from a local high school.

"Unless DHS shows a willingness to stop those violations, immigration-rights groups may be emboldened to encourage yet other States to flout federal law," said WLF's 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.

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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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. Copies of the brief WLF filed with the appeals court, as well as the formal complaints it filed with DHS against Texas and New York, are posted on its web site, [www.wlf.org](http://www.wlf.org).