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WLF FILES CIVIL RIGHTS COMPLAINT AGAINST STATE OF NEW YORK REGARDING BENEFITS FOR ILLEGAL ALIENS

The Washington Legal Foundation (WLF) filed a formal complaint today with the U.S. Department of Homeland Security (DHS) against the State of New York, charging that New York is violating the civil rights of U.S. citizens who live outside the State. WLF charged that New York is violating federal law by offering in-state college tuition rates to illegal aliens who live in New York, while denying those same rates to U.S. citizens who do not live in New York. WLF called on DHS to bring appropriate enforcement action against New York, including ordering New York to make refunds to students who have been charged excessive tuition.

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 2002, New York 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 eight other States: Texas, California, Utah, Illinois, Washington, Oklahoma, Kansas, and New Mexico. WLF filed a complaint against Texas last month.

WLF filed its latest complaint on behalf of members and supporters who are not New York residents and who attend or are interested in attending (or whose dependent children attend or are interested in attending) state-run universities in New York. WLF filed its complaint with DHS's Office for Civil Rights and Civil Liberties, which is charged with investigating complaints alleging violations of rights arising under federal immigration laws.

WLF's complaint stated that DHS action may be the only way that New York's illegal conduct can be enjoined. WLF noted that a group of students and their parents filed suit against Kansas's similar law, but a federal court ruled in July that Congress did not intend to permit individuals to sue to enforce § 1623. Rather, the court ruled, any enforcement action must be initiated by DHS.

"New York and eight other states are in clear violation of federal law by offering in-state tuition to illegal aliens. Unless DHS steps forward and adopts measures designed to enforce § 1623, immigration-rights groups may be emboldened to encourage yet other States to flout

federal law," said WLF Chief Counsel Richard Samp after filing WLF's complaint. "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: in adopting § 1623, it determined that no such favoritism is permissible," Samp said.

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, New York is free to offer basketball scholarships to athletically talented illegal aliens without offering similar scholarships to less athletically talented nonresident U.S. citizens. But New York quite clearly *is* discriminating "on the basis of residence," WLF argued: New York provides in-state tuition only to those illegal aliens who graduated from (and attended for at least two years) a New York high school.

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. *See, e.g., Ambros-Marcial v. United States*, 377 F. Supp. 2d 767 (D. Ariz. 2005) (opposing efforts to impose tort liability on U.S. for failing to install water stations in Arizona desert for benefit of aliens crossing into this country); *Friendly House v. Napolitano*, 2005 U.S. App. LEXIS 16600 (9th Cir. 2005) (representing intervenors seeking to uphold Arizona's Proposition 200).

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's complaint is posted on its web site, www.wlf.org.