Taxpayer Subsidies For Illegal College Students

by Phyllis Schlafly Aug. 4, 2004

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It's not often that a state attorney general declines to defend a state law. Kansas passed a law allowing its illegal aliens to attend its state universities at discount tuition rates, and some out-of-state citizens who have to pay higher tuition just filed a lawsuit.

Kansas Attorney General Phill Kline agrees with them. He recused himself and assigned the defense of the case to other attorneys in his office.

Kline notes that several federal statutes have tried to prevent states from undermining national immigration law by giving taxpayer-paid benefits to those who enter the United States illegally. He says the new Kansas law rewards illegal activity and therefore is likely to be held contrary to federal law.

The lawsuit was filed on behalf of students from some of the other 49 states who are attending Kansas universities but are denied the taxpayer subsidy of in-state college tuition. The lawsuit asserts that the new Kansas law, which was signed by Governor Kathleen Sebelius on May 20, makes each of these American students pay at least $10,000 more during their college years than illegal aliens pay.

The three Kansas state universities currently have more than 9,000 students enrolled who are identified as non-U.S. citizens. For just the fall 2004 term, each illegal alien undergraduate student will receive a taxpayer subsidy of a reduction in tuition of $3,181.80 at the University of Kansas, $3,504 at Kansas State University, and $3,360 at Emporia State University.

Federal law 8 U.S.C. 1623(a) expressly bars aliens who are not lawfully present in the United States from receiving "any postsecondary education benefit" unless U.S. citizens are eligible for the same benefit "in no less an amount, duration, and scope" without regard to whether the citizen is a resident of the state. But Kansas is not giving this subsidy to U.S. citizens from the other 49 states.

The intent of the federal statute, which was signed by President Clinton in 1996, is very clear. Anticipating that the states might try to get around the law, Congress specified that states may not award a college tuition subsidy to illegal aliens "on the basis of residence within a State."

The chicanery of the Kansas law is obvious. The law states that the illegal alien student "shall be deemed to be a resident of Kansas for the purpose of tuition and fees" if the illegal alien has attended a Kansas high school for three or more years or has received a GED in Kansas, and submits an affidavit stating that he will file an application to legalize his immigration status as soon as he is eligible to do so.

But this appears to require the student to do the impossible. Under federal law, illegal aliens are detainable and deportable and may be barred for ten years or more from reapplying for legal admission to the United States.

Thus, Kansas law expressly rewards aliens who have violated federal law by giving them a taxpayer subsidy that is denied to lawful aliens and U.S. citizens. Meanwhile university tuition rates continue to soar at a rate greater than inflation, and state legislatures strapped for funds are looking to their expensive state university system to absorb some of the squeeze.

Bills to grant the in-state tuition subsidy to illegal aliens have been introduced in at least 23 states and have become law in California, Texas, New York, Utah, Washington, Illinois, and Oklahoma. These bills precipitated lively debates in the state capitols, and often noisy demonstrators in the streets.

In Maryland, the bill was stalled because an amendment was added to extend the subsidy to include members of the military and their families who might be temporarily living in the state. Washington State found that after passing a state law to help illegal alien children of migrant workers to afford college, the subsidy was used mostly by foreign students with visas (an unintended consequence which indicates the opportunity for fraud).

Meanwhile, Senator Orrin Hatch is trying to repeal the federal law by passing a bill called the DREAM Act. That would be amnesty plus a cash award worth many thousands of dollars given to college students who entered our country illegally.

Some of these illegal aliens who seek to attend college at preferential tuition rates sneaked in illegally with their parents, and others simply overstayed tourist visas. Nobody is able to count how many thousands are in this country.

Despite their illegal status, these alien students have already been generously treated by U.S. taxpayers by being given free kindergarten-through-12th-grade schooling and free emergency health care. Many Americans think that giving them college tuition subsidies which American citizens can't get is just too much, especially when U.S. parents are struggling to pay their own children's college expenses.