Approved:
Date 4-2-03

MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Dwayne Umbarger at 1:36 p.m. on March 20, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Kathie Sparks, Legislative Research
Theresa Kiernan, Revisor of Statutes
Judy Steinlicht, Secretary

Conferees appearing before the committee: Susan Tully, Mid-West Director, Federation for American Immigration Reform
Carlos Urquilla, KU Law Student
John Ybarra, KS Advisory Committee on Hispanic Affairs

Others attending: See attached list

HB2145–Postsecondary educational institutions, resident tuition and fees for certain non citizen students

Susan Tully, Mid-West Director, Federation for American Immigration Reform (FAIR) testified in opposition of **HB2145.** FAIR believes that **HB2145** would provide in-state tuition for aliens who have violated federal immigration laws. Susan stated that Attorney Generals from several states have advised that such action would violate federal law, but litigation has yet to be initiated. FAIR does not believe this bill is sound policy. FAIR believes that allowing illegal immigrants into Kansas colleges would deny legal resident students entrance and it would cost the taxpayers approximately $11,000 for each illegal immigrant allowed into a Kansas college paying in-state tuition rates. FAIR believes **HB2145** would directly violate Federal law in that Federal law prohibits states or their political subdivisions from providing in-state tuition to illegal aliens without also granting the same preferential treatment to all U.S. citizens, regardless of their resident status under state law. FAIR believes the bill constitutes an illegal alien tuition scheme that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the U.S., they believe the bill forms an unconstitutional regulation of immigration that is preempted by the Supremacy Clause , and they believe the bill violates federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education. (Attachment 1)

Carlos Armando Urquilla-Diaz, KU Law Student offered testimony in support of **HB2145.** Carlos shared his life story, leaving ElSalvador in 1984 at the age of 14 to avoid being forced into the Salvadorian Army to fight a war he did not understand. He went to school in California and in 1986, California passed a law that allowed him to get a driver's license. This allowed him to work and pay his bills while finishing high school. He was accepted by UCLA and San Diego State University until they found out he was not legal and he was denied entrance into college. In 1990, he received a "green card", joined the Army and served in Desert Storm receiving medals for his service and an honorable discharge. Carlos then joined the Kansas Army National Guard and finally had the opportunity to attend college. He earned his baccalaureate degree in 32 months in 1996 and his masters degree in 1998. He was the Associate Dean of Highland College for 2 years, then Academic Dean of Brown Mackie College in Salina. He was called to active duty as a result of September 11 and his battalion was sent on an overseas mission. Upon his return to Kansas, he was promoted to 1st Lt. in the National Guard, he is the Executive Officer for C Co. 1-137 IN, and he is now a first year law student at Kansas University.

Carlos believes FAIR is incorrect in its statements. The bill is based on graduation from a high school in Kansas or GED credentials, it is not based on residence in Kansas; the bill would not induce immigrants to come to the U.S., they have been coming here for years; the bill is not unconstitutional because it does not regulate the legal immigrant status of undocumented students; this is not an immigration bill, but an education bill; the equal protection law would apply if somehow U.S. citizens and legal residents would

be denied equal access to higher education. This bill would not do that. Kansas would not be subsidizing violations of the law because these undocumented students have not committed a crime; they were brought here by their parents to give them a better life. Kansas would not educate these undocumented students over their own as they would have to meet all required standards of admissions as everyone else does. Carlos stated that he took an oath 13 years ago to defend this country. This bill is not about a threat to this state or this country. It is about education and progress. (Attachment 2)

John Ybarra, KS Advisory Committee on Hispanic Affairs, (KACHA) spoke in favor of **HB2145.** One of KACHA's main goals is to reduce the Hispanic high school drop-out rate and to motivate Hispanic students to attend academic institutions beyond high school. He finds the Hispanic youth inspiring and resilient. They have overcome challenges of adjusting to a new culture and to learn the English language, while facing racism and discrimination. They have worked hard and many have become class presidents, church and civic group leaders, community volunteers, and are good role models. Then are denied a college education. They are not asking for a free ride, just an opportunity to further their education. (Attachment 3)

Written testimony was distributed from Barb Thompson, Kansas Families United for Public Education, Johnson County (Attachment 4); Melinda Lewis, ElCentro, Kansas City (Attachment 5); Janis McMillen, The MAINstream Coalition, MAINstream Education Foundation (Attachment 6); Mike Farmer, Kansas Catholic Conference (Attachment 7); all proponents of **HB2145** and Donna Methe, Concerned Citizen (Attachment 8); as an opponent of **HB2145.**

Meeting was adjourned 2:37 p.m. The next meeting is scheduled for March 24, 2003 at 1:30 p.m. at Room 123S.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE - 3/20/03

NAME	REPRESENTING
Don Whiston	
Susan Tully	Federation American Immigration Reform
Karen Flesch	
Jim Edwards	KASB
Bill Brady	SFFF
Bob Vancrum	B Valley USD 229
Denny Gpt	U.S.A. - U.S.D #500
Melinda K. Lewis	El Centro
Jennifer Gordon	El Centro
Sister Alicia Macias HCM	EL Centro, Inc.
Karole Bradford	Inter-Faith Ministries
Peg Dunlap	Kansas NEA
TERRY FORSYTH	KNEA
David J Monical	Washburn University
Mark Sayler	visitor
K Schmidt	SELF
Hershel Poor	Citizen
Steve Noll	Visitor
Sue Storm	KS house
Stephanie Hendry	Visitor
Courtney Noll	Visitor
Jessie McMillen	KAM Advocacy Ed. Found
Jacque Oakes	SQF

SENATE EDUCATION COMMITTEE GUEST LIST

DATE - 3-20-03

NAME	REPRESENTING
Constancio Garay	T.H.S.
ANA SOSA	VISITOR
ARMANI URQUILLA	VISITOR
NELY URQUILLA	VISITOR
CARLOS URQUILLA	HALSA (HISPANIC AMERICAN law STUDENT ASS)
Fr. Raymond May	Our Lady of Guadalupe Church
K. Tyrell	CAEP
Eric Holcomb	Am 1440 KMAJ Radio
Marsha Ahlstrom	CWA of Kansas
Diane Gjerstad	Wichita Public Schools
Paul Degener	Concerned Citizen
Robert DeHoff	KACHA
John M. Ybarra	KACHA
Deni Slocomb	League of Women Voters
Monica Hashmi	USD 253 Emporia
Barbara Thompson	Kansas Families United for Public Ed.
Maria Iliakova	Computers for Abused Children Network
Mira Malivani	Klamann & Hubbard
Jessica Allen	Klamann & Hubbard, P.A.

FAIR
1666 Connecticut Ave. NW
Washington, D.C. 20009

Testimony of
Susan P. Tully
Mid-West Field Director
Federation for American Immigration Reform

Presented to

Kansas State Senate
Education Committee
Hearing on HB 2145
March 20, 2003

Chairman Umbarger and committee members, my name is Susan Tully. I am the Mid-West Field Director to the Federation for American Immigration Reform (FAIR). FAIR is a national, non-profit, membership organization of concerned citizens who share a common belief that our nation's immigration policies must be reformed to serve the national interest. FAIR believes America can and must have an immigration policy that is nondiscriminatory and is designed to serve the social, economic and environmental needs of our country. It is a policy that has the overwhelming support of the American public. FAIR has many members who are Kansas residents, whose interests we represent today.

The legislation under consideration today HB 2145, would provide in-state tuition for aliens who have violated federal immigration laws. Although the Attorney Generals of several states have advised that such action would violate federal law, litigation on this issue has yet to be initiated. FAIR has however conducted a pre-litigation analysis of the legal concerns arising from the proposed legislation.

The Attorney General of Virginia recently advised Virginia public universities and colleges that federal law precluded grants of in-state tuition to illegal aliens.[1] The Attorney General cited the leading case from the California Court of Appeals, which held that a state's legitimate interests in denying in-state tuition to undocumented aliens are "manifest and important." The Court listed nine important state interests at stake:

1. Interest in not subsidizing violations of law.
2. Interest in preferring to educate the states' own lawful residents.
3. Interest in avoiding enhancement of the employment prospects of those to whom employment is forbidden by law.

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4. Interest in conserving state fiscal resources for the benefit of its lawful residents.
5. Interest in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories.
6. Interest in not subsidizing the university education of those who may be deported.
7. Interest in avoiding discrimination against citizens of sister states and aliens lawfully present.
8. Interest in maintaining respect for government by not subsidizing those who break the law.
9. Interest in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes.[2]

HB 2145 flunks any test of sound public policy. Kansas is enduring its worst state budget crisis in a generation, and the nation has not yet recovered from the September 11th attacks carried out by people who were living illegally in the United States under the guise of being students, yet the Kansas legislature seems prepared to offer lavish subsidies to an unrestricted number of illegal aliens.

Each illegal alien who is admitted to a University of Kansas System school in resident tuition status will be receiving approximately an $11,000 annual subsidy from Kansas taxpayers. We have public servants who offer every conceivable benefit to people who violate our immigration laws, and then wonder how it is that we have an estimated 10 million illegal aliens living in our country. A place at one of our leading public universities is certainly a very nice benefit for people who break the law.

The policy of admitting and subsidizing illegal aliens punishes citizens and legal residents who have done nothing wrong themselves. There are a finite number of seats on Kansas campuses and a finite amount of money available to subsidize higher education. In essence the legislature will be telling many young people whose parents played by the rules, 'We're sorry, but we've given your seat to someone who is in the country illegally and, by the way, we'd like you to help pay for it.'

♦First, let me state that illegal aliens, as a matter of law, may not establish legal domicile in Kansas.
♦HB 2145would directly violate 8 U.S.C. 1623 (IIRAIRA Section 505).
♦The proposed bill constitutes an 'illegal alien tuition scheme' that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States.
♦HB 2145 would be an unconstitutional regulation of immigration that is preempted by the Supremacy Clause.
♦Passive resistance to federal immigration law by state agencies is unlawful, violates the Supremacy Clause, and is not protected by the Eleventh Amendment.

♦The 'illegal alien tuition scheme' would violate federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education.
♦The 'illegal alien tuition scheme' would violate the Equal Protection Clause of the Fourteenth Amendment.

At the request of the Chancellor of the California State University system, in June 1984 the California Attorney General issued an opinion that the California Code did not permit undocumented aliens to establish residence for tuition purposes in public institutions of higher education.[3]

Several undocumented students then filed an action in the Superior Court of Alameda County seeking to establish that Cal. Code §68062(h) violated Article 1, Section 7 of the California Constitution, which guarantees every person equal protection of the laws.[4]

The Bradford court held that undocumented alien students were precluded from classification as state residents for tuition purposes. The University had argued that since undocumented aliens were not required by any federal statute to maintain residence abroad, they were free to establish their residence in California. The Superior Court found that "this reasoning is Daedalian but unpersuasive." Federal law forbids aliens to enter the United States without being admitted, subjects those who do to "arrest and deportation," and applies similar sanctions to aliens who procure admission by fraud or overstaying their visas. Thus it was "unremarkable" that no classification existed for illegal aliens.[5]

The Bradford court also found that denial of resident tuition to illegal aliens did not violate state or federal equal protection rights. In comparison with other fundamental political, economic, and social rights and privileges withheld from illegal aliens by state and federal law, the court said,

> "the privilege withheld here-subsidized public university education-is considerably less significant. Further, California also denies this subsidy to citizens of neighboring states and to aliens holding student visas; yet the state has substantial and legitimate reason to favor both these groups over undocumented aliens, rather than the reverse. "[6]

Notwithstanding physical presence in the state of significant duration or the "intent" to remain in the United States, an illegal alien student is detainable and deportable, and may be barred either permanently or for a minimum of 10 years from reapplying for legal admission to the United States.[7]

Carlson v. Reed. In 2001, the Ninth Circuit Court of Appeals considered the residence requirements of California Education Code Section 68062(h), and held that any alien who lacks the legal capacity to establish domicile in the United States is not eligible for classification as a state resident.[8]

Immigration law precludes establishment of a "domicile" in the United States, for purposes of Section 68062(h).[9]

HB 2145 would directly violate 8 U.S.C. 1623 (IIRAIRA Section 505).

Federal law prohibits states or their political subdivisions (such as public community colleges or private education institutions chartered by a state) from providing in-state tuition to illegal aliens without also granting the same preferential treatment to all U.S. citizens, regardless of their resident status under state law. In 1996, Congress enacted the Illegal Immigration and Immigrant Responsibility Act (IIRAIRA).[10] IIRAIRA Section 505 provides as follows:

> " (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."

The statute is clear on its face, both in scope and intent, and there appear to be no judicial or administrative cases construing it more narrowly. No federal regulations have been issued to limit the operation of this provision.

The legislative history of this provision is also clear. The House Conference Report stated, "this section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education."[11] Should the state of Kansas act to provide such a benefit to illegal aliens, a class of tens of thousands of citizens would have an immediate viable cause of action to seek injunctive relief barring implementation of the statue, or alternatively, a refund of the out-of-state tuition they have paid to study in Kansas.

The proposed bill constitutes an illegal alien tuition scheme that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States.

Immigration and Nationality Act (INA) §274(a)(1)(A)(iv) makes it a felony for any person to encourage or induce an alien to reside in the U.S. in reckless disregard of the fact that the alien's residence is in violation of law.[12]

The term "any person" in the statute is to be construed broadly, and would include a state agency or its officers.[13] There is no Eleventh Amendment immunity from the jurisdiction of federal courts for state agencies that violate federal immigration law.

The term "encourage" has been held to mean to knowingly instigate, help, or advise. "Induce" has been held to mean to knowingly bring on or about, to affect, cause, or influence an act or course of conduct.[14] "Encouraging" includes actions that permit illegal aliens to be more confident that they could continue to reside with impunity in the United States, or actions that offer illegal aliens "a chance to stand equally with all other American citizens."[15] The legislative history of HB 2145 clearly indicates an express intent to provide "equity" or "fairness" for a class of illegal aliens.

Specific actions found to constitute encouraging include counseling illegal aliens to continue working in the U.S. or assisting them to complete applications with false statements or obvious "errors."[16] Sanctuary is not a valid ground for violating the INA. The Ninth and Second Circuit Courts of Appeal have held that it is illegal for non-profit and religious organizations to knowingly assist an employer to violate employment sanctions, regardless of claims that their convictions require them to assist aliens.[17]

The First Amendment does not protect actions aiding illegal aliens to remain in the United States.[18] Likewise, there is no possible policy or humanitarian argument, absent conditions that would qualify the illegal alien for refugee or a related *nonrefoulement* status, that would negate the criminal *mens rea* of reckless disregard for the fact, expressed in the legislative history of the proposed legislation, that the aliens are present in the United States in violation of law.[19]

Illegal aliens are not a suspect class entitled to Fourteenth Amendment-based strict scrutiny of any discriminatory classification based on that status, nor are they defined by an immutable characteristic, since their status is the product of conscious unlawful action.[20] The U.S. Supreme Court has ruled that education is neither a fundamental right, nor a right protected explicitly or implicitly by the Constitution.[21] There is no case law supporting the claim by some open borders advocates that Title VII of the Civil Rights Act of 1964 bars the prohibition of undocumented aliens from attending a college or university.[22]

Identity is not a constitutionally protected privacy right, and an illegal alien has no expectation of privacy from another person's knowledge of his or her immigration status.[23]

Aggrieved private citizens may bring a civil action against officials of educational institutions under federal racketeering law (RICO) for violations of INA §274.[24]

HB 2145 forms an unconstitutional regulation of immigration that is preempted by the Supremacy Clause.

The legislation being proposed in the Kansas legislature constitutes a state statutory scheme (the "illegal alien tuition scheme") that will have a direct and substantial effect on immigration and will conflict with federal law, and would therefore be preempted on constitutional grounds. The scheme is an impermissible regulation of immigration by state statute, since it is not tied to and directly conflicts with federal standards.

Preemption Standards. A fundamental principle of the Constitution is that Congress has the power to preempt state law.[25] Even without an express provision for preemption, state law must yield to a Congressional Act in at least two circumstances:

First, when Congress intends federal law to "occupy the field," state law in that area is preempted.[26] The power to regulate immigration is unquestionably exclusively federal power, and any state statute that regulates immigration is unconstitutionally proscribed.[27] States can neither add to nor take from conditions lawfully imposed upon the admission or residence of aliens in the United States.[28]

The illegal alien tuition scheme is a comprehensive program by state agents to encourage and assist illegal aliens to remain in the state of Kansas in violation of federal law, and thus has a direct and substantial effect on immigration. The elements of the scheme are:

1. The University first admits and enrolls non-immigrant aliens as students in violation of federal law requiring that the University first verify the statutory eligibility of non-immigrant aliens and, if qualified issue Form I-20 to the U.S. Department of State before such aliens may be issued an F-1 student visa. Exceptions to this scheme for exchange visitors under 101(a)(15)(J) are not relevant for illegal aliens.
2. The University keeps records that identify such illegal aliens for internal administrative and academic purposes, but forbids its staff from reporting their presence at the University to the Department of Homeland Security to initiate their removal from the United States.
3. The University provides such illegal aliens with financial aid, reducing the amounts available to U.S. citizens and legal permanent residents.
4. The University provides such illegal aliens, as part of the admission process, access to health, recreation, job recruitment, employment, and other services.
5. The University now grants such students significant reductions in tuition fees.

Second, even if Congress had not occupied the field, state law is preempted to the extent of any conflict with a federal statute.[29] The Supreme Court will find preemption where it is impossible for a private party to comply with both state and federal law,[30] or where "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[31]

What constitutes a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects:

> " For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the Act cannot otherwise be accomplished--if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect--the state law must yield to the regulation of Congress within the sphere of its delegated power."[32]

Acts of Congress preempt state law when (1) Congress expressly provided for preemption, (2) Congress intended to "occupy the field," or (3) the state law conflicts with the congressional statute at issue.[33]

Passive resistance to federal immigration law by state agencies is unlawful and unconstitutional.

Acceptance and enrollment of illegal aliens as students by the University of Kansas System, the unlawful encouragement and inducement of such student's continued residence in Kansas by means of grants of financial aid, and the provision of in-state resident tuition to certain illegal aliens constitute a practice of unlawful state resistance to federal immigration law.

The HB 2145 illegal alien tuition scheme is explicitly intended to and in fact resist and impede the enforcement of immigration law by federal officials. The operation of HB 2145 would therefore be preempted under the Supremacy Clause of the United States Constitution.[34]

Cooperation among government authorities at all levels is essential to any effective response to the criminal and illegal alien problem. Nonetheless, in the 1980s and 1990s numerous cities and other local governments enacted laws, often referred to as refuge, sanctuary or non-cooperation laws, with the explicit intention of restricting or blocking immigration law enforcement in their jurisdictions.[35] After widespread citizen complaints, Congress enacted the 1996 welfare reform (PRWORA)[36] and illegal immigration reform (IIRIARA)[37] statutes, which make restrictions on sharing immigration or citizenship status information by any government entity or official unlawful. Under these federal laws, no federal, state, or local government agency can be prohibited from maintaining or exchanging information regarding the citizenship or immigration status of any individual with the INS.

In 1989 New York City Mayor Edward Koch issued a decree prohibiting city employees from providing federal immigration authorities with information concerning the immigration status of any alien except in limited criminal investigations initiated by federal agents.[38] Similar policies appeared in other jurisdictions with strong support from ethnic or open borders lobbies.

Immediately after Congress enacted IIRAIRA, New York City sued the federal

government, claiming the two statutes violated the Tenth Amendment and exceeded the plenary power over immigration granted to Congress.[39] New York City argued that it could elect not to participate in a federal regulatory program, and that the federal government could not disrupt the operations of local governments through legislation. The federal district court rejected New York's claims in 1997.[40]

On appeal, the Second Circuit Court of Appeal affirmed that the statutes were constitutional.[41] The Second Circuit held that the City had no right to "passive resistance," because such claims violate the Supremacy Clause of the U.S. Constitution:

> " The City's sovereignty argument asks us to turn the Tenth Amendment's shield against the federal government's using state and local governments to enact and administer federal programs into a sword allowing states and localities to engage in passive resistance that frustrates federal programs. If Congress may not forbid states from outlawing even voluntary cooperation with federal programs by state and local officials, states will at times have the power to frustrate effectuation of some programs. Absent any cooperation at all from local officials, some federal programs may fail or fall short of their goals unless federal officials resort to legal processes in every routine or trivial matter, often a practical impossibility. *For example, resistance to Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), was often in the nature of a refusal by local government to cooperate until under a court order to do so* [emphasis added]. "

The Second Circuit also noted that the city's policy was not a general rule that protected confidential information for citizens and aliens alike, but instead was intended only to obstruct federal officials, "while allowing City employees to share freely the information in question with the rest of the world."[42]

The Court then articulated the mandatory nature of state-federal cooperation in the area of immigration law enforcement:

> A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems… Without the Constitution, each sovereign could, to a degree, hold the other hostage by selectively withholding voluntary cooperation as to a particular program(s). The potential for deadlock thus inheres in dual sovereignties, but the Constitution has resolved that problem in the Supremacy Clause, which bars states from taking actions that frustrate federal laws and regulatory schemes." [43]

The proposed Kansas illegal alien tuition scheme violates federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education.

A comprehensive federal statutory and regulatory scheme prohibits the University of Kansas from concealing from the federal government the admission, attendance, or grant of public benefits to an illegal alien student.

Non-immigrant aliens who seek to enter the United States to pursue full-time academic studies at a public university are admitted only in the F-1 non-immigrant visa category.[44] Aliens who have been admitted to the U.S. as nonimmigrant visitors may not apply for a change of status to student.[45]

Degree-granting institutions of higher education must apply for approval from the INS before they may admit non-immigrant alien students on F-1 visas. The university or college must agree to report the name of every foreign student who stops attending the school.[46] Every school that recruits foreign students must have a Designated School Official (DSO) who is required to personally perform the required regulatory function.[47]

A DSO must certify, under penalty of perjury, a completed and executed Form I-20 (Certificate of Eligibility for Nonimmigrant Student Status) for every non-immigrant alien student the school has admitted, to enable them to apply for F-1 visas. The DSO must certify that he or she has personally examined the alien's application and supporting documents in the United States and that all information on the I-20 is true and correct. The educational institution must keep the required documentation until the student is no longer attending the school. The certification includes the information on the college's written application.[48] Willful false statements or "any conduct ...which does not comply with regulations" by a DSO are grounds for withdrawal of approval to enroll non-immigrant alien students.

The University of Kansas System and community colleges must keep extensive information and documentary records on each non-immigrant alien student, including documentation of the alien's immigration status.[49]

The Immigration Reform and Control Act of 1986 (IRCA) requires states and other entities to verify, through INS computer records, the immigration status of aliens applying for federal financial assistance.[50] Congress enacted this verification process, known as SAVE (Systematic Alien Verification for Entitlements), based on INS testimony that "significant numbers" of ineligible aliens are receiving assistance and that a verification procedure would result in "considerable" cost savings for the federal government.[51]

All applicants for federal, state, and university-administered educational assistance at Kansas institutions of higher education must complete OMB Form 1845-0001, the Free Application for Federal Student Aid (FAFSA).[52] Every applicant must state on the FAFSA, under penalty of federal false statements and perjury sanctions, whether they are a U.S. citizen. If the applicant states that he or she is an "eligible non-citizen", that applicant must provide a valid Alien Registration Number ('A number). Eligible non-citizens must declare that they are in a "satisfactory immigration status," and provide additional documentation showing their status. The participating state educational

institution must then verify the alien's immigration status with the INS.[53] Any state administrative or statutory relief from these requirements, including permission to apply for any financial aid using variant forms or procedures, or counseling by University representatives on methods of circumventing the standard requirements, would violate the Equal Protection clause of the Fourteenth Amendment.

No Resident Status for Illegal Aliens by Omission. American Immigration Lawyers Association spokesman Professor Stephen Yale-Loehr has asserted that, "no federal law" or "state law prohibits undocumented aliens from attending public colleges or universities."[54] However, the courts have rejected the claim that failure by Congress to designate a non-immigrant classification for illegal aliens in the INA allows states to treat them as residents.

The organized immigration bar has also argued that the immigration laws do not require a school to refuse to admit an alien who does not have lawful nonimmigrant status, and that federal regulations require only that a DSO collect and provide information on students to whom the DSO has issued an I-20. The central claims are that the law is silent on the issue, and that the DSO does not otherwise have a "duty" to report illegal aliens. Professor Yale-Loehr asserts that although INS 8 C.F.R. 214.3(g)(1) requires approved schools to keep records containing specific information and documents relating to each F-1 and M-1 student to whom it has issued a Form I-20, "no such reporting requirement exists for undocumented students," and the grounds for withdrawal by the INS of approval to issue I-20s (and thus admit foreign students) in 8 C.F.R. 214.4(a) do not include "having undocumented students on campus."[55]

The California state courts (in reasoning subsequently accepted by the federal Ninth Circuit) rejected as "Daedalian but unpersuasive" reasoning the a nearly identical "clever formal proof that [state law] does not classify undocumented aliens as nonresidents."[56] Federal law forbids aliens to enter the United States without applying for admission.[57] Aliens who nonetheless do enter illegally, or who overstay their visas, are subject to detention and deportation.[58] Similar sanctions apply to admission procured by fraud.[59] Thus, "it is unremarkable that Congress, in organizing various classifications of lawfully admitted non-immigrant aliens, reserved no classification for aliens who have entered or remained in this country unlawfully."[60]

The Kansas illegal alien tuition scheme would violate the Equal Protection Clause of the Fourteenth Amendment by denying U.S. citizens and legal permanent resident aliens the privilege of exemption from non-resident tuition that has been granted to certain illegal aliens.

The proposed Kansas illegal alien tuition scheme violates the Equal Protection clause, by granting illegal aliens the privilege of classification as residents of Kansas for admission and tuition eligibility purposes, while U.S. citizens and legal permanent residents of other states are denied such privilege. The scheme discriminates on the basis of alienage and national origin in favor of a class of illegal aliens, who are prohibited by state and federal law from establishing either legal residence or domicile in the state of Kansas by

providing such class of illegal aliens the benefits of admission to the university and classification as residents.

Classifications created by a state legislature that are based on alienage are inherently suspect, and are subject to strict judicial scrutiny.[61] This is so whether the governmental benefit at issue is a right or – as in this case – a privilege.[62]

In *Toll v. Moreno*, the U.S. Supreme Court held that a University of Maryland policy of denying in-state tuition to legal non-immigrant 'G-4' visa holders,[63] whose visa status did not prohibit them from acquiring domicile, was "a state regulation not congressionally sanctioned that *discriminates* [emphasis added] against aliens lawfully admitted to the country ...[by] impos[ing] additional burdens not contemplated by Congress."[64]

The discriminatory effect operates in two related ways. First, because the number of openings for admission to the university is limited, admission of the class of illegal aliens displaces a similar-sized class of equally qualified U.S. citizens and legal permanent residents (LPRs) of the United States.

Second, granting state resident tuition eligibility to the same class of illegal aliens, while denying such tuition to U.S. citizens and legal permanent residents who are similarly barred from establishing residence under state law, violates the equal protection rights of both citizens and LPRs. Under the strict scrutiny standard, the court may not defer to a decision by the State legislature but must independently determine whether the illegal alien tuition scheme is narrowly tailored to promote a constitutionally compelling end.[65] Maryland cannot show a compelling interest in providing large financial and social benefits to a suspect class who are statutorily barred from receiving such benefits under federal law.

A state government agency custom or policy that extends affirmative benefits to a suspect class, in this case the offer of one of a limited number of openings at a public institution of higher education and a significant preferential reduction in tuition fees, violates equal protection, where such preferences are otherwise prohibited by federal law.[66] U.S. citizen residents of the jurisdiction have been deprived of a constitutional right under color of state law.[67] This violation is by its nature ongoing.

Aggrieved citizens may sue in state or federal court to block such unlawful policies, and may sue officials and employees in their official or private capacities for violations of their rights.[68] State officials do not possess Eleventh Amendment immunity or qualified immunity when sued in their official capacity for prospective injunctive or declaratory relief to end the statutory and constitutional violations discussed in this statement.[69] Qualified immunity does not shield government officials, or private parties acting in concert with public officials, from complaints for injunctive relief.[70]

Notes:

[1] Virginia OAG, Immigration Law Compliance Update, Sept. 5, 2002 (20 pg.).

[2] *Regents of the University of Californian v. Superior Ct. of Los Angeles County*, 225 Cal. App. 3d 972, at 982 (1990).
[3] Attorney General's Opinion No. 84-101 (June 1, 1984).
[4] *Regents of University of California v. Superior Court*, *supra*. The case is popularly styled the 'Bradford decision.'
[5] *Id.*
[6] *Id.*
[7] INA §212(a)(9)(B); 8 U.S.C. 1182(a)(9)(B).
[8] *Carlson v. Reed*, 249 F.3d 876, (9th Cir. May 8, 2001).
[9] 8 C.F.R. 316.5: "Unless otherwise specified, for purposes of this chapter… an alien's residence is the same as that alien's domicile, or principal actual dwelling place, without regard to the alien's intent."
[10] Act of Sept. 30, 1996, P.L. 104-208, Division C.
[11] H. Conf. Report 104-828.
[12] 8 U.S.C. 1324(a)(1)(A)(iv).
[13] *U.S. v. Zheng, No. 01-1151 (11th Cir. Sep. 17, 2002); U.S. v. Oloyede* 982 F.2d 133 (4th Cir 1993); *Villegas-Valenzuela v. INS*, 103 F.3d 805 (9th Cir. 1996).
[14] *U.S. v. He*, 245 F.3d 954 (7th Cir. 2001).
[15] *U.S. v. Oloyede*, 982 F.2d 133, at 136 (4th Cir. 1992).
[16] *Id.*, at 137.
[17] *AFSC v. Thornburgh*, 961 F.2d 1405 (9th Cir. 1992*), Intercommunity Center for Peace and Justice v. INS*, 910 F.2d 42 (2nd Cir. 1990).
[18] *U.S. v. Merkt,* 794 F.2d 950 (5th Cir. 1986), *cert. denied* 480 US 946.
[19] See notes 21 and 22, *supra*.
[20] *Plyler v. Doe*, 457 U.S. 502, at 32-33 (1982).
[21] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, at 37 (1973): "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected… We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty, and have found those arguments unpersuasive."
[22] Prof. S. Yale-Loehr, 5 Benders Imm. Bull. 413, at 415 (May 15, 2001).
[23] *U.S. v. Rodriguez-Arreola*, 270 F.3d 611 (8th Cir. 2001).
[24] 18 U.S.C. 1961-1968. See also *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002).
[25] Art. VI, cl. 2; *Gibbons v. Ogden*, 9 Wheat. 1, at 211 (1824); *Savage v. Jones*, 225 U.S. 501, at 533 (1912); *California v. ARC America Corp.*, 490 U.S. 93, at 101 (1989).
[26] *Id.,* at 100; cf. *United States v. Locke*, 529 U.S. ---, ---, 120 S.Ct. 1135, 1151 (2000)(citing *Charleston & Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U.S. 597,at 604 (1915)).
[27] *De Canas v. Bica*, 424 U.S. 351, at 354-55 (1976).
[28] *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, at 419 (1948).
[29] *Hines v. Davidowitz*, 312 U.S. 52, at 66-67 (1941); *ARC America Corp.*, supra, at 100-101; *Locke*, supra, at ----, 120 S.Ct. at 1148.
[30] See, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, at 142-143 (1963).
[31] *Hines*, supra, at 67.
[32] *Savage*, supra, 533, 32 S.Ct. 715, quoted in *Hines*, supra, at 67, n. 20, 61 S.Ct. 399; both cited in *Crosby v. National Foreign Trade Council*, 530 U.S. 372, 120 S.Ct. 2288, 2000 WL 775550 (2000).
[33] *Crosby*, at 372; see also *English v. General Elec. Co.*, 496 U.S. 72, 79 n. 5 (1990) (recognizing that these categories are not rigidly distinct); both cited in *In Re World War II Era Japanese Forced Labor Litigation*, 164 F.Supp.2d 1160, (N.D.Cal.,2001).
[34] Art. VI Cl.2; McCulloch v. Maryland, 17 U.S. 316 (1819).

[35] Staff Testimony, Senate Permanent Subcommittee on Investigations, before the U.S. Senate Commission on Governmental Affairs (Nov. 1993).

[36] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, 110 Stat. 2105, §434: "Notwithstanding any other provision of Federal, State, or local law, no state or local government entity may be prohibited , or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

[37] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009, §642:

"(a) IN GENERAL -

Notwithstanding any other provision of Federal, State, or local law, a Federal State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES. –

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit or in any way restrict, a Federal, State, or local entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) maintaining such information.

(3) exchanging such information with any other Federal, State or local government entity."

[38] Executive Order 124, "City Policy Concerning Aliens, " August 7, 1989:

"Section 2: Confidentiality of Information Respecting Aliens.

a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.

b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime. Section 3. Availability of City Services to Aliens.

Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law."

[39] New York City claimed it had over 400,000 illegal aliens at that time, many of them living in mixed households with legal aliens and U.S. citizens, and that granting them confidential

treatment would insure that illegal aliens were not afraid to report crimes or seek treatment for contagious diseases.

[40] *City of New York v. U.S.*, 971 F.Supp 789, (S.D. NY 1997).

[41] *Id.*, 179 F.3d 29, (2nd Cir. 1999).

[42] *Id., at 36*, citing *Barnett Bank v. Nelson*, 517 U.S. 25, at 31 (1996); *Hines v. Davidowitz*, 312 U.S. 52, at 67 (1941).

[43] *Id.*, at 35. New York's petition for certiorari was denied by the U.S. Supreme Court in January 2000. 120 S. Ct. 932 (2000).

[44] 8 U.S.C.1101(a)(15)(F), INA§ 101(a)(15)(F). M and J visas (for vocational training and exchange visitors) are not available for full time undergraduate or graduate study at a university or college.

[45] 8 C.F.R. 248(c)(3).

[46] INA § 101(a)(15(F)(i).

[47] 8 CFR § 214.3(a)(1).

[48] 8 CFR § 214.3(k).

[49] (1) Data required per 8 C.F.R. 214.3(g) includes: INS admission number, Country of citizenship, Address and telephone number in the United States, Full or part-time status, Course load, Date of commencement of studies, Degree program and field of study, Expected date of completion, Non-immigrant classification, Termination date and reason, if known, Documents that show the scholastic ability and financial status on which the student's admission to the school was based, and Information specified by the INS as necessary to identify the student (such as date and place of birth), and to determine the student's (legal or illegal) immigration status).
(2) As a consequence of concerns raised by abuse of student visas by alien terrorists, Congress has mandated the collection of additional data per IIRAIRA §641(c): Identity and current address of alien, Visa classification, date of visa issuance or classification granted, Academic status of alien (full-time, part-time), Academic disciplinary actions taken against the alien due to criminal conviction.
(3) Additional data now required per the USA PATRIOT Act §416: Port of entry, Date of entry.

[50] IRCA § 121, amending the Higher Education Act of 1965 § 484.

[51] IRCA § 121(d)(1)(A). See H.R. Rep. No. 99-682 Part I, 99th Cong., 2d Sess. 67.

[52] UM Financial Aid Office website (visited March 10, 2003):
http://www.inform.umd.edu/CampusInfo/Departments/FIN/OSFA/app_fafsa_current.html .

[53] IRCA § 121(a)(3), amending §484 of the Higher Education Act of 1965 (20 U.S.C. § 1091).

[54] See e.g. Immigration Brief No. 94-11, 'F-1 Nonimmigrant Students: Law, Regulation, And Practice (1994); 5 Benders Imm. Bull. 413, 'They Can't Go Home Again: Undocumented Aliens and U.S. Higher Education' (May 15, 2000).

[55] Id., at 415.

[56] *Regents of California, supra*, at 978-79.

[57] 8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.

[58] 8 U.S.C. §§1227(a)(1) & (a)(3)(A), 1229a, 1231, 1357.

[59] 8 U.S.C. §§1227(a)(3)(B)-(D).

[60] *Regents of California, supra*, at 979.

[61] *Graham v. Richardson*, 403 U.S. 365, at 372 (1971).

[62] *Id.*, at 374.

[63] Dependents of representatives of international organizations.

[64] 458 U.S. 1, at 13-17 (1982).

[65] *Shapiro v. Thompson*, 394 U.S. 618, at 634 (1969).

[66] *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996); *Pyke v. Cuomo*, 258 F.3d 107, at 108-9 (2nd Cir. 2001).

[67] 42 U.S.C. 1983.

[68] *Yellow Freight Systems v. Donnelly*, 494 U.S. 820 (1990).
[69] *Burnham v. Ianni*, 119 F.3d 668, at 673 (8th Cir. 1997); *Ramirez v. Oklahoma Dept. of Mental Health*, 41 F.3d 584, 588-89 (10th Cir. 1994) [11thAmdt. immunity]; *Kikamura v. Hurley*, 242 F.3d 950, at 956 (10th Cir. 2001) [qualified immunity].
[70] *Wyatt v. Cole*, 504 U.S. 158 (1992).

STATEMENT of

Carlos Armando Urquilla-Diaz
1L Vice-President, University of Kansas School of Law.
1LT, Executive Officer, Kansas Army National Guard, C Co 2-137 IN

On Eligibility for In-State Tuition for Undocumented Aliens.

Before the
Senate Education Committee
Kansas Senate

Legislative Hearing on HB2145, Kansas in-state tuition for illegal aliens.

March 20, 2003

I would like to thank the committee for the invitation to discuss HB2145. My name is Carlos Armando Urquilla-Diaz. I am a first-year law student at the University of Kansas School of Law. I am also a commission Officer in the United States Army, currently serving in the Kansas Army National Guard.

I. MY PERSONAL STORY:

I was seven years old the first time I saw a human without a head and limbs. For the next seven years I saw dozens of people killed. The civil war raged on for twelve years in El Salvador. At least 70,000 people lost their lives during the war. My father, uncle, brother, cousins and friends were among the victims of the war.

I was fourteen years old when I left El Salvador. Fourteen was the age in which the Salvadorian Army or the Guerillas forced a kid into their ranks. My mother decided to send me out of the country after I escaped captured from the Salvadorian Army. I did not want to kill, be killed, or participate in a war I did not understand.

HIGH SCHOOL YEARS:

I arrived in Los Angeles California in May of 1984. I went to live with a sister who had left only months earlier. I enrolled in High School right away. At sixteen, I had to leave my sister's house because she became unemployed and could not afford to have me in the house anymore. I went to live with 4 other men in a one-bedroom apartment. I slept on a sofa for over two years.

California lawmakers passed a law in 1986, which allowed people to get a driver's license regardless of their immigration status in the state. This new law allowed me to get a driver's license; which allowed me to drive to work at McDonalds for two years. Without this drivers license I would not have been able to work. I don't know what I would have done to survive without a job. I worked most nights after school to pay my bills.

Senate Education
3-20-03
Attachment 2

During my senior year in High School (1987), I applied to UCLA and San Diego State University (my girlfriend was from San Diego and was attending UCLA). I was accepted to both institutions. Unfortunately, my counselor called me into his office and told me that he had bad news. He told me that he was unaware that I was an illegal alien and that illegal aliens could not go to college. My heart broke. I cried. I cried a lot. That was the first time I cried since I left El Salvador. My dream for a college education was gone. I felt like giving up on many occasions. I had no family other than my sister and I now felt even lonelier than before.

MILITARY YEARS:
Finally on February 11th 1990, the INS gave my mother and I a "green card." On February 13th 1990, I enlisted in the U.S. Army. By November of 1990, I had completed all of my military infantry training at Ft. Benning, Georgia. By December 15th I was in Saudi Arabia. I fought as an infantry soldier in Desert Storm with the 3rd Infantry Division. My medals include the Combat Infantry Badge, the Valorous Unit Presidential Citation for Bravery, the Liberation of Kuwait Medal (given by Kuwait), Liberation of Kuwait (given by Saudi Arabia) (Exhibit A). After the war, I was sent to Germany. From Germany I was sent to Ft. Riley, Kansas. I left active duty in September of 1993. I joined the Kansas Army National Guard the day after I was honorably discharged from active duty.

COLLEGE YEARS & OFFICER COMMISSION:
After I left active duty, I was finally able to have the opportunity to go to college. I was determined to learn and to graduate from college. I earned my baccalaureate degree in 32 months in Criminology from Kansas State University in May of 1996 (exhibit B).

After I earned my bachelors degree, I still had a thirst for more education. I completed my masters degree from Central Michigan University in May of 1998 (exhibit C).

In September of 1999, I was commission as a second lieutenant in the Kansas Army National Guard (exhibit D). I spent 9 years as an enlisted soldier prior to my commission. I achieved the rank of Staff Sergeant before receiving my commission.

LIFE AFTER COLLEGE:
After earning my masters degree, I was lucky to get several job offers. After several interviews, I was offered a position as an Associate Dean at Highland Community College in NE Kansas. I was responsible for eight counties and thirty-five regional sites (exhibit E). I became the youngest Academic Dean in the state of Kansas at twenty-eight years of age. I work at Highland Community College for two years. While at Highland Community College, I was offered a full Dean position at a private college in Kansas with a salary increase of $10,000. I accepted.

I became the Academic Dean at the Brown Mackie College in Salina, Kansas. I worked there until my battalion was called to Active duty in December of 2001 as a result of the tragic event of September 11th 2001. My battalion was sent on an overseas mission.

LAW SCHOOL & PRESENT:
I applied to the University of Kansas School of Law as I was preparing to leave Kansas. I found out that I had been accepted to KU only days before my return to Kansas. Since my return to Kansas, I have been promoted to 1LT and I am currently the Executive Officer for C co 2-137 IN. I am also currently finishing my first year in law school.

II. HOW MY STORY APPLIES TO BILL 2145

I did not have the opportunity to attend college right after high school. I had paid state, federal, and sales taxes in California for almost two years before I applied to go to college. As an illegal alien, I did not qualify for any state or federal benefits. I had spent four years of my life in high school, working nights just to make it. I never asked for a grant or even loans to attend college. I just wanted the opportunity to go to college. I intended to work to pay for my education. Unfortunately, I did not have the opportunity to prove myself. I spent many nights wondering if I would ever have the opportunity to someday go to college. I tell you senator, those nights were very dark and lonely. I spent many nights praying on my needs asking god to keep me from giving up.

This bill would help the children of immigrants who graduated from a high school in Kansas or who have earned a GED in Kansas. The parent's of these children who work have paid state, federal, and sales taxes in Kansas. The state has an interest in educating children and young adults. These undocumented students should not pay for their parent's decisions to seek a better life in America. These young kids will most likely be the future of our country. Would it be a better choice for Kansas to be educated these young students in order for them become productive Kansas's citizens? Or should we deny them the opportunity to go get an education and hope for the best in the future?

Most criminologists would agree that an educated person is less likely to commit crimes. These kids want to go to college and become productive citizens in Kansas. I had the same dreams and hopes for an education fifteen year ago.

III. KANSAS HAS ALWAYS HAD A VISION AHEAD OF ITS PEERS:

Immigrants have been coming to American for hundreds of years. In 1620 the pilgrims arrived in the new land. These immigrants brought with them, their hopes, dreams, problems, wants and needs for a better life. Today's immigrants bring similar hopes and dreams for a better future for them and their families.

Kansas became the 34th state to join the union in 1861. The union did not come without a human price tag. The Jayhawkers fought the Bushwhackers for six years. The question was whether this infant territory would choose to enter the union as a free state, or a slave state. This decision would be very important, as it would hold the balance between the north and the south. Because of the difficulty of attaining statehood, the amount of blood shed, this territory became known as "bleeding Kansas" hence the state's motto as "Ad Astra Per Asper" which is Latin for "To the Stars with Difficulty". This determination to remain a free state proved the determination and strength of Kansas people when other states of the union did not have such a vision.

Kansas gave women the right to vote in school elections in 1861. In 1912, Kansas gave women the right to vote for state and national elections. The 1912 legislation came eight years before most women in the nation won the right to vote. It did not take a constitutional amendment for the Kansas legislation to recognize women's rights.

The decisions made by your peers in 1861 and in 1912 give you the precedent from which your committee can draw its strength and visionary stand on this issue. These two decisions were made at a time of turmoil and heated debates in the house and in the senate in Kansas. You as senators are the leaders of our state. Being a leader is sometimes a lonely and difficult position to be in. You literally have the power to affect history and the future of many young kids like me. These kids have a thirst for a college education and a better tomorrow. I am not the exception of the new immigrants who arrive in America. I am the rule, and not the exception.

IV. FAIR's UNFAIR and INCORRECT STATEMENTS:

1. This bill is not based on "legal domicile in Kansas." This bill is based on graduation from a high school in Kansas or the completion of a GED in Kansas.
2. This bill would not violate 8 U.S.C. 1623 (IIRAIRA Section 505) because the decision to grant in state tuition would not be based on "state residency."
3. This bill would not encourage or induce illegal aliens to move to the United States. Immigrants have been coming to America for centuries seeking a better life for their families.
4. This bill is not an unconstitutional regulation because the bill does not regulate the legal immigrant status of the undocumented students. This is an education bill, which is quiet different than an immigration bill. Federal laws and government govern immigration laws.
5. This bill would not be violating federal laws. Simply put, this is not an immigration bill. Therefore, the 11th amendment violation argument is void. This is an education bill that only affects Kansas.
6. Once again, this bill is about education and not about immigration reform. Therefore, there is no conflict with federal laws.
7. The equal protection clause of the fourteen amendment in this case would apply if somehow U.S. citizens and legal residents would be denied equal access to higher education. This bill would not do that.

V. DISTINGUISHING THE CALIFORNIA COURT OF APPEALS ELEMENTS OF STATE INTEREST:

1. Kansas would not be subsidizing violations of law because these undocumented students have not committed a crime. Their parents brought them here to give them a better life. These students need an opportunity to go to college.
2. Kansas would not educate these undocumented students over our own lawful residents because these undocumented students would have to meet all required standards of admissions as anyone else who wants to go to college.
3. Some Kansas businesses rely on immigrant's labor to work on low paying positions.

4. State fiscal resources would still benefit lawful residents. The parents of these undocumented students pay state, federal, and sales taxes without qualifying for any state aid or benefits.
5. Kansas can avoid been accused of harboring illegal aliens in its classroom and dormitories by simply not asking the legal immigration status of college applicants. The requirements for state tuition could be determined by adding an element of having graduated from a high school in Kansas or having earned a GED in Kansas.
6. Most people who make it to America, legally or illegally will never leave our country. The chances of deportation of undocumented immigrants in Kansas are extremely low. Most of these people come to Kansas to work and provide a better life for their families and never get into any type of legal problems.
7. Kansas would not be discriminating against citizens of sister states and lawful aliens because other states have the right to pass their own laws for its own citizens.
8. Kansas has the right as a state to make decisions concerning how we are going to educate our high school and GED graduates. These young undocumented students have not committed a crime. Their parents brought them here to give them a better life. They just need an opportunity to go to college.
9. Almost all workers in Kansas pay state, federal, and sales taxes regardless of their immigration status. In fact, undocumented aliens do not qualified for any state or federal aid and benefits.

VI. CONCLUSION

FAIR is a group who is not from Kansas. They are trying to tell us how to govern ourselves in Kansas without ever having an understanding of our state needs. I took an oath thirteen years ago, to defend this country against all enemies, foreign, and domestic. If this bill somehow posed a threat to our state or country, I would be here today arguing against such bill. This bill is about education and progress. I respectfully ask you to vote in favor of this bill.

Exhibit A

CAU NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS . ADDED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle)	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NO.
URQUILLADIAZ, CARLOS ARMANDO	ARMY/ARNG/IN	621 | 18 | 6768

4.a GRADE, RATE, OR RANK	4.b PAY GRADE	5. DATE OF BIRTH (YYYYMMDD)	6. RESERVE OBLIG. TERM. DATE
2LT	O1	19700322	Year 0000 | Month 00 | Day 00

7.a PLACE OF ENTRY INTO ACTIVE DUTY	7.b HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)
SALINA, KS	PO BOX 913 OGDEN, KS 66517

8.a LAST DUTY ASSIGNMENT AND MAJOR COMMAND	8.b STATION WHERE SEPARATED
IN SCH 11 IN 2BN CO C TC	FORT BENNING, GA 31905

9. COMMAND TO WHICH TRANSFERRED	10. SGLI COVERAGE
SEE BLOCK 18.	☐ None Amount: $ 250,000.00

11. PRIMARY SPECIALTY *(List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.)*

11A 00 INFANTRY--2 YRS-6 MOS//11M FV INFANTRYMAN--2 YRS-10 MOS//11C INDIR FIRE INFANTRYMN--6 YRS-0 MOS//NOTHING FOLLOWS

12. RECORD OF SERVICE	Year(s)	Month(s)	Day(s)
a. Date entered AD This Period	2002	02	23
b. Separation Date This Period	2002	06	21
c. Net Active Service This Period	0000	03	29
d. Total Prior Active Service	0005	04	29
e. Total Prior Inactive Service	0006	01	10
f. Foreign Service	0000	00	00
g. Sea Service	0000	00	00
h. Effective Date of Pay Grade	1999	09	02

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED *(All periods of service)*

ARMY ACHIEVEMENT MEDAL (4TH AWARD)//VALOROUS UNIT AWARD//ARMY GOOD CONDUCT MEDAL//NATIONAL DEFENSE SERVICE MEDAL (2ND AWARD)//SOUTHWEST ASIA SERVICE MEDAL WITH 2 BRONZE SERVICE STAR (BSS)//SOUTHWEST ASIA SERVICE MEDAL//ARMY SERVICE RIBBON//OVERSEAS SERVICE RIBBON//KUWAIT LIBERATION MEDAL (K)//COMBAT INFANTRYMAN BADGE//NOTHING FOLLOWS

14. MILITARY EDUCATION *(Course title, number of weeks and month and year completed)*

INFANTRY OFFICER BASIC COURSE, 16 WEEKS, JUN 2002//NOTHING FOLLOWS

15.a MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN'S EDUCATIONAL ASSISTANCE PROGRAM	Yes	No	15.b HIGH SCHOOL GRADUATE OR EQUIVALENT	Yes	No	16. DAYS ACCRUED LEAVE PAID
		X		X		10.0

17. MEMBER WAS PROVIDED A COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION — Yes: | No: X

18. REMARKS

DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//SUBJECT TO ACTIVE DUTY RECALL BY THE SECRETARY OF THE ARMY//BLOCK 9: THE ADJUTANT GENERAL, KANSAS, 2800 SOUTHWEST TOPEKA BOULEVARD, TOPEKA, KS 66611-1287//NOTHING FOLLOWS

19.a MAILING ADDRESS AFTER SEPARATION (Include Zip Code)	19.b NEAREST RELATIVE (Name and address - include Zip Code)
PO BOX 913 OGDEN, KS 66517	MARIA N URQUILLA 3001 CASTLE COURT SALINA, KS 67401

20. MEMBER REQUESTS COPY 6 BE SENT TO KS DIR OF VET. AFFAIRS — Yes: X | No:

21. SIGNATURE OF MEMBER BEING SEPARATED

22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)

ROBERT S. KILLINGSWORTH, GS07, USA, CH, TSD R

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION	24. CHARACTER OF SERVICE (Include upgrades)	
RELEASE FROM ACTIVE DUTY TRAINING	HONORABLE	
25. SEPARATION AUTHORITY	**26. SEPARATION CODE**	**27. REENTRY CODE**
SELF-TERMINATING ORDER #024039 IOBC 1 FEB 02	NA	NA

28. NARRATIVE REASON FOR SEPARATION

COMPLETION OF PERIOD ACTIVE DUTY TRAINING

29. DATES OF TIME LOST DURING THIS PERIOD	30. MEMBER REQUESTS COPY 4
NONE	_____ Initials

Kansas State University

By the authority of the Board of Regents of the
State of Kansas and upon the recommendation of the Faculty
has conferred upon

Carlos A. Urquilla-Diaz

the degree of

Bachelor of Arts

with all its rights, priuileges, and responsibilities.
Given under the seal of Kansas State University
this eighteenth day of May, nineteen hundred and ninety-six.

Chairman of the Board of Regents

President of the University

Dean of the College

2-7

Exhibit D

Central Michigan University

By authority of the Board of Trustees
and upon the recommendation of the faculty confers upon

Carlos A. Urquilla-Diaz

the degree of

Master of Science in Administration
Human Resources Administration

with all the rights and honors thereto appertaining.

In Witness Whereof, the signatures of its officers are affixed
this month of August, 1998.

David A. Brandon
Chair, Board of Trustees

Leonard E. Plachta
President

Exhibit C

Exhibit D

Oaths of Office

(The Proponent Agency is NGB-ARP-PO)

PRIVACY ACT STATEMENT

AUTHORITY: Title 32, U.S.C. Section 308 and 312, and Executive Order 9397.
PRINCIPAL PURPOSE: Each person appointed as an officer of the National Guard must subscribe to an appointment oath under the provisions of Title 32, U.S.C. Section 308 and 312.
ROUTINE USES: None.
DISCLOSURE: Voluntary. However, failure to provide the SSN could result in a delay in processing the OMPF.

I. NATIONAL GUARD OFFICER

I, CARLOS (First Name) ARMANDO (Middle Name) URQUILLA-DIAZ (Last Name) 621-18-6768 (SSN)

do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State (Commonwealth, Disctrict, Territory) of KANSAS against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Govenor of the State (Commonwealth, District, Territory) of KANSAS, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the Office of SECOND LIEUTANANT (Grade), in the Army/Air National Guard of the State (Commonwealth, District, Territory) of KANSAS upon which I am about to enter, So help me God.

1st Armando Urquilla Diaz
(Signature in Full)

II. TEMPORARY FEDERAL RECOGNITION

I, _____ (First Name) _____ (Middle Name) _____ (Last Name) _____ (SSN)

having been granted temporary Federal recognition in the grade of _____ Army/Air National Guard of the State (Commonwealth, District, Territory) of _____ do solemnly swear (or affirm) that during such temporary Federal recogniion I will perform all Federal duties as if I had been appointed as a Reserve Officer of the Army/Air Force

_____
(Signature in Full)

III. AUTHENTICATION

Sworn to and subscribed before me at Topeka, Kansas

this 2nd day of September, 1999.

PROCESSED
DOPERS

Everett R Weaver
(Signature)

EVERETT R. WEAVER, COL, EN, MILPO
(Typed Name, Grade, Component, or Authorized Official Administering Oath(s))

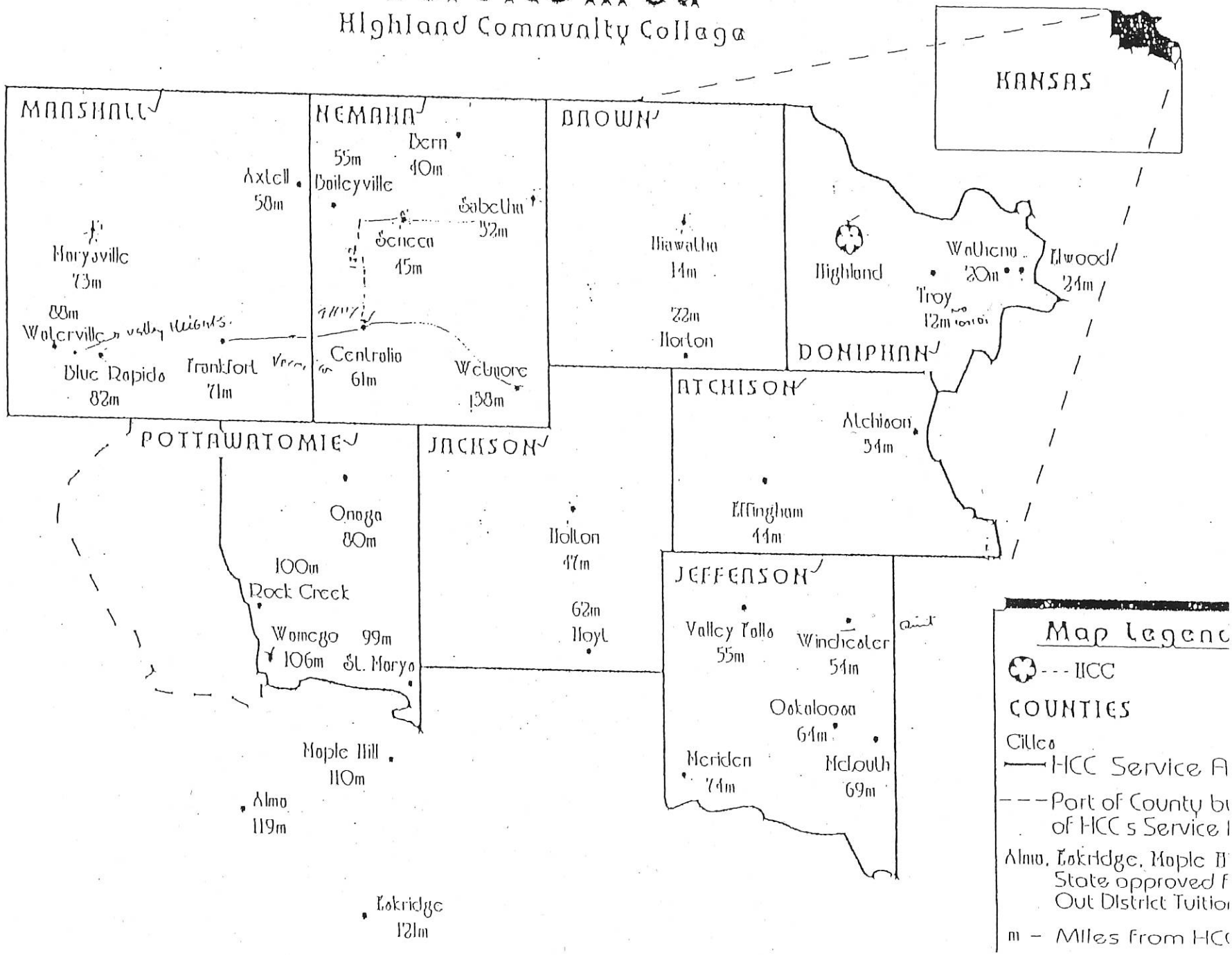
NGB FORM 337, APR 97 (EF) (JETFORM) *(Replaces NGB Form 337, 1 MAY 95, which is obsolete)*

2-9

EXHIBIT E

Service Area

Highland Community College



Map Legend

--- HCC

COUNTIES

Cities

HCC Service A

--- Part of County b
of HCC s Service

Almo, Lokridge, Maple H
State approved
Out District Tuitio

m – Miles from HC

Testimony Before the Senate Education Committee
on House Bill 2145
by John M. Ybarra
Education/Information Representative-KACHA
Kansas Department of Human Resources
Thursday, March 20 – 1:30 p.m. – Room 123-S

Chairman Umbarger, and Members of the Senate Education Committee. My name is John Ybarra, and I am the Education/Information Representative for the Kansas Advisory Committee on Hispanic Affairs, also known as KACHA. KACHA is an agency within the Kansas Department of Human Resources that provides information and outreach to the Hispanic community in Kansas. I am here to speak in favor of House Bill 2145 and to urge your support.

I have been with KACHA for about a year and a half now and have thoroughly enjoyed the opportunity to serve the citizens of Kansas – especially the Hispanic community. One of the most enjoyable aspects of my position with KACHA are the opportunities that I have to meet and interact with some very inspiring Hispanic high school students from all over our state. One of KACHA's main goals is to reduce the Hispanic high school drop-out rate and to motivate Hispanic students to attend academic institutions beyond high school.

The high school age Hispanic youth that I have come in contact with are in, my opinion, some of the brightest shining stars in our communities. The students I work with are some of the most resilient I have ever seen. They have met the challenges of adjusting to a new culture and to learning the English language, while at the same time many have faced racism and discrimination. They understand that they must work even harder than their peers if they want to succeed and be recognized for their accomplishments. Through their experiences they maintain a positive attitude and I never hear them complain, because they realize that this is a land of opportunity. One student commented to me with regard to his future success by saying, "If it is to be, then it is up to me."

These young people have persevered and continue to seek out success for themselves, their families, and for their local communities with an unmatched work ethic. If you were to get to know them, you would see that they have become class presidents, church and civic group leaders, community volunteers, and good role models for their younger siblings and fellow

Senate Education
3-30-03
Attachment 3

students. While other students seek to flee the state for more exciting venues after graduation, these students have only a desire to create a better quality of life for themselves and remain here in Kansas to bolster our workforce and economy.

And while I have seen the joy on the faces of these young men and women from their numerous successes, I have also seen the tears in their eyes from knowing that they may never be able to reach their ultimate goals. Yes, I have literally seen our young Hispanic students weep when they realize that access to college is not a possibility for them if they are undocumented.

We are not asking for a free ride for these students, but merely that they may have access to college. If this bill is passed, these students will still have to meet admission requirements and maintain a high academic standard. They will also not be eligible for financial aid and scholarships. But, as I mentioned before, the Hispanic community is accustomed to overcoming obstacles and they will rise to the challenge.

As a third generation Hispanic, my grandfather never had the opportunity to attend college – but my father did. From a young age it was instilled in me that college was where I would go after graduating from high school so that I would continue to set a high standard for my family. As generations pass, we all enjoy increased opportunities that our ancestors never had. I believe that we should afford the same opportunities to our valued Hispanic brothers and sisters. Without access to higher education, Hispanic youth will be discouraged and less motivated to achieve more if they know that at the end of high school they will have few opportunities other than low-paying jobs as unskilled workers. By placing barriers to these youth attending college, we force them to remain stagnant, unable to improve the lives of their future children and families. It pains me to see an intelligent 16-year-old Hispanic student drop out of high school to start working at a food processing plant alongside his father. Yet, this is the reality, and I have witnessed it with my own eyes.

So, I stand before you today to ask you to think about the opportunities that were presented to you personally and what your life would have been like if those opportunities were taken away from you, or if you never had them in the first place. It is my belief that we cannot afford to leave these youth behind, because we will all suffer. Allowing our undocumented Hispanic

youth to attend college at in-state tuition rates is the right move for all of us. I urge you to lend your support in passing this very important bill. Please do not let these shining stars of our community burn out.

Thank you very much your time and diligent effort in considering this bill.

Remarks in Support of House Bill 2145
March 20, 2003

Barbara Thompson, executive board member
Kansas Families United for Public Education, Inc.

I am here today representing more than 250 KFUPE members from all parts of Kansas.

The members of our group organized to fight for proper funding for public schools at the K-12 level. So why are we addressing a bill that impacts college tuition? The reason is simple: This bill represents more than just a policy decision. Thanks to political grandstanding that has taken place by some ambitious politicians who have been playing the race card for their own gain, this issue has risen to the level of a moral imperative.

Simply put, we believe our state's political leadership has a moral imperative to speak out against prejudice and bigotry when it is spouted from a seat of authority, like the one Connie Morris holds on the state board of education. Ms. Morris has made a crusade against innocent children with Hispanic backgrounds the centerpiece of her political appeal, and in the process, has brought shame to the image of Kansas in the eyes of the world.

Given this atmosphere, House Bill 2145 has become a test. It is a test of whether the good people of Kansas will stand together, put party politics aside for a moment, and send a message to the world. That message is summed up in the words of our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal."

There will be other speakers today who will address the very practical reasons why this bill should be passed. They will say that the bill recognizes that all people who live in Kansas are taxpayers, through sales taxes paid on necessities such as food and clothing, and through property taxes paid by their landlords if they are not property owners themselves. They will tell the truth, that undocumented immigrants do not, and can not, collect welfare, food stamps, housing assistance or any other form of federal or state aid. They will say that a college education makes it far more likely that these young people will contribute many times more in taxes over their lifetime than they will cost. They will say that more college graduates enhance our state's workforce and promote economic development.

All of these statements will be true. But they are secondary at a time like this. The fundamental truth is that Kansas needs to make a statement, today, that its people live in the 21st century, not the 19th. Kansas Families United for Public Education urges the Kansas Legislature to make that statement with a unanimous approval of House Bill 2145. Thank you.

Senate Education
3-20-03
Attachment 4

EL CENTRO, INC.
THE CENTER FOR CONTINUOUS FAMILY IMPROVEMENT
650 MINNESOTA AVENUE
KANSAS CITY, KS 66101

FACSIMILE TRANSMITTAL SHEET

TO: Chairman Umbarger	FROM: Melinda K. Lewis
COMPANY: Kansas Senate	DATE: 3/19/03
FAX NUMBER: 785-296-6718	TOTAL NO. OF PAGES INCLUDING COVER: 21
PHONE NUMBER:	SENDER'S FAX NUMBER: 913.362.8513
RE: HB2145 and FAIR	SENDER'S PHONE NUMBER: 913.677.0100x119

☐ PLEASE REPLY

Chairman Umbarger,

We are sending you several documents for your review. If you only have time to read the first page, it summarizes the response to the main points FAIR sent you last week. I have also made comments in the margins of her testimony. It appears that FAIR has not reviewed HB2145 fully and is unaware of how it is different from Oklahoma's law, which does base tuition eligibility on residency and is potentially problematic. I have attached that legislation for you too. Most of the points made in FAIR's testimony are unrelated to the actual provisions of Committee Substitute HB2145, so hopefully the committee will be able to proceed rather quickly through those extraneous issues and begin working the bill. We will share these questions with some of the other committee members, and we'll see you tomorrow. Thank you for your attention to this issue and for your efforts to fully understand and, we hope, find a way to support, HB2145.

Melinda K. Lewis
Special Projects Coordinator
El Centro, Inc.
650 Minnesota Avenue
Kansas City, KS 66101
913.677.0100 ext. 119

El Centro Inc.
The Center for Continuous Family Improvement

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3-20-03
Attachment 5

March 20, 2003

The Federation for American Immigration Reform (FAIR)'s arguments against HB2145 are a combination of:

- Misunderstandings of the actual language and scope of HB2145,
- Intentional misrepresentation of the proposal's provisions,
- Unfamiliarity with Kansas' system of higher education, and
- Inaccurate assertions about federal immigration law.

FAIR says: "Illegal aliens, as a matter of law, may not establish legal domicile in Kansas."

• This is true, which is why HB2145 bases eligibility for instate tuition not on residency but on attendance at a Kansas secondary school and graduation or its equivalent from the same.

FAIR says: "HB2145 would directly violate 8 U.S.C. 1623 (IIRAIRA Section 505).

• Because HB2145 does not condition eligibility for instate tuition on residence in the state, it is not in violation of Section 505.

FAIR says: "The proposed bill constitutes an 'illegal alien tuition scheme' that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States."

• HB2145 only applies to students who have been attending school in Kansas for three or more years; therefore, these students, by definition, have already entered the United States (legally or illegally).

FAIR says: "HB2145 would be an unconstitutional regulation of immigration that is preempted by the Supremacy Clause."

• HB2145 does not confer any immigration benefit, change an individual's immigration status, or interfere with federal responsibilities to regulate immigration.

FAIR says: "Passive resistance to federal immigration law by state agencies is unlawful, violates the Supremacy Clause, and is not protected by the Eleventh Amendment."

• HB2145 is not a sanctuary or refuge program, as FAIR suggests. It does not circumvent nor oppose immigration law.

FAIR says: "The 'illegal alien tuition scheme' would violate federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education."

• FAIR's concerns here relate to non-immigrants who entered the country to study with a student visa and who are subject to certain registration and reporting guidelines. These students are exempted from the provisions of HB2145, and nothing within this bill excuses universities from their responsibilities to cooperate with the Department of Homeland Security.

FAIR says: "The 'illegal alien tuition scheme' would violate the Equal Protection Clause of the Fourteenth Amendment."

• HB2145 does not show preference to non-citizens over citizens. In fact, citizens will be able much easier and earlier to qualify for in-state tuition by establishing residency through the ordinary rules.

March 20, 2003

The Federation for American Immigration Reform (FAIR)'s arguments against HB2145 are a combination of:

- Misunderstandings of the actual language and scope of HB2145,
- Intentional misrepresentation of the proposal's provisions,
- Unfamiliarity with Kansas' system of higher education, and
- Inaccurate assertions about federal immigration law.

FAIR says: "Illegal aliens, as a matter of law, may not establish legal domicile in Kansas."

• **This is true, which is why HB2145 bases eligibility for instate tuition not on residency but on attendance at a Kansas secondary school and graduation or its equivalent from the same.** Individuals are "deemed" residents for tuition purposes, but it is not based on residency. Therefore, HB2145 does not conflict with Section 505 of the IIRAIRA. They are allowed to attend at the in-state rate. It is an exception to the ordinary rules for eligibility for in-state tuition through residency status. This makes Kansas' law distinct from Oklahoma's proposal, which does base eligibility for instate tuition on years of residence in the state, making it questionably in conflict with federal law.

FAIR says: "HB2145 would directly violate 8 U.S.C. 1623 (IIRAIRA Section 505).

• HB2145 was drafted, with the consultation of the Kansas Board of Regents, to avoid any conflict with this provision, which says:

[A]n 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. 8 U.S.C. § 1623.

Because HB2145 does not condition eligibility for instate tuition on residence in the state, it is not in violation of Section 505. Furthermore, it is unclear what Section 505 purports to do. It could be construed to simply prohibit preferential treatment of individuals who may not have obtained lawful immigration status. As noted, the Kansas statute does not give any preferential treatment. "Post-secondary education benefit" as used in Section 505 has not been defined. It is unclear whether eligibility for in-state tuition is to be considered a post-secondary education benefit. Moreover, there are no binding federal regulations implementing Section 505.

FAIR says: "The proposed bill constitutes an 'illegal alien tuition scheme' that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States."

• **HB2145 only applies to students who have been attending school in Kansas for three or more years; therefore, these students, by definition, have already entered the United States (legally or illegally).** HB2145 does not, then, entice immigrants to come to the United States. Because, as explained below, HB2145 does not attempt to confer any immigration-related benefits, it is not 'encouraging' such immigration either.

FAIR says: "HB2145 would be an unconstitutional regulation of immigration that is preempted by the Supremacy Clause."

• **HB2145 does not confer any immigration benefit, change an individual's immigration status, or interfere with federal responsibilities to regulate immigration.** Its benefits are available to Kansas students regardless of their immigration status. If there has been an overextension of power into another's sphere, it arguably occurred when the federal government passed Section 505, which attempts to regulate decisions that are wholly within the domain of the State, decisions concerning state education policy and use of resources. This makes Section 505 constitutionally suspect as a violation of the 10th amendment, which reserves to the states all powers not specifically enumerated to the federal government.

FAIR says: "Passive resistance to federal immigration law by state agencies is unlawful, violates the Supremacy Clause, and is not protected by the Eleventh Amendment."

• **HB2145 is not a sanctuary or refuge program, as FAIR suggests. It does not circumvent nor oppose immigration law.** It does not shelter deportable students from deportation. It simply allows them to be eligible for instate tuition if they meet the requirements of school attendance.

FAIR says: "The 'illegal alien tuition scheme' would violate federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education."

• **FAIR's concerns here relate to non-immigrants who entered the country to study with a student visa and who are subject to certain registration and reporting guidelines. These students are specifically exempted from the provisions of HB2145**, and nothing within this bill excuses universities from their responsibilities to cooperate with the Department of Homeland Security. The students potentially impacted by HB2145 are not the alien students (non-immigrants) covered by these federal regulations.

FAIR says: "The 'illegal alien tuition scheme' would violate the Equal Protection Clause of the Fourteenth Amendment."

• HB2145 is a provision that simply does not take into account immigration status. Therefore, it is open to all, except those whose immigration status is tied to their student status (student visa holders). Since they are receiving an immigration benefit dependent on their student status, they remain non-residents for tuition purposes. **It therefore does not show preference to non-citizens over citizens. In fact, citizens will be able much easier and earlier to qualify for in-state tuition by establishing residency through the ordinary rules.** Furthermore, to concede this argument, one must accept that the admittance of immigrant students will mean that fewer U.S. citizen students will be admitted. No other states' experiences have revealed this.

Additionally, while an organization such as FAIR could not be expected to know this without experience with or knowledge of higher education in Kansas, exceptions to the

ordinary residency rules already exist in Kansas. Currently, there are both statutory exceptions to the regulations governing granting of instate tuition and Board of Regents authority to grant waivers providing instate tuition to students in a variety of instances. For example, Haskell graduates who are enrolled tribal members are deemed residents for tuition and fee purposes under KSA 76-731. Pittsburg State University extends resident tuition to residents of certain contiguous out-of-state counties. Various individuals, by virtue of some special status, such as children of police officers killed in the line of duty, the Kansas teacher of the year, and certain children in foster care, are given tuition breaks. Kansas has, therefore, established a precedent of providing eligibility to non-Kansas residents on grounds other than residence in the state.

Possible Questions for FAIR from the Senate Higher Education Committee
Thursday, March 20, 2003

1. The fact remains that hundreds of undocumented students graduate from Kansas high schools every year. However, because United States immigration policy must be addressed at the federal – not state – level, Kansas can do nothing to help these students address their immigration status. Given this reality, and our state's need to remain economically competitive throughout the 21st Century, how would you recommend that we meet the human capital needs of our rapidly diversifying state if we continue to close the door to higher education to a significant portion of our population?

2. I don't understand your concern about how the admission of undocumented students to Regents' colleges and universities would displace students who are already legal permanent residents or U.S. citizens. There is no "cap" on the number of students who can attend college. As colleges and universities encounter additional qualified, tuition-paying students, those institutions have the freedom and capability to, over time, build on those additional resources and grow both in size and in scope. Since HB2145 in no way bars citizens and legal permanent residents from attending school in Kansas or paying the instate tuition to which they are entitled, how, exactly, is it that legal permanent residents or citizens will be adversely affected by this?

3. You mentioned that this legislation would allow U.S. citizens from other states to sue Kansas. Since HB2145 is in compliance with Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and does not offer undocumented students any benefit that is not also available to citizens, it's unclear to me how this would work. On what grounds could a citizen from another state sue Kansas?

4. It is clearly a state's prerogative to determine both the admissions requirements and the tuition fees for the publicly funded colleges and universities within that state. As we have noted, immigration is a federal issue. As a national organization based in Washington, D.C., you are well situated to work to affect U.S. immigration policy directly. I'm interested to know why, then, FAIR is concerned with a Kansas bill that deals with education and not immigration?

5. According to FAIR's website, there are no FAIR affiliates in the entire state of Kansas, and you, Ms. Tully, serve as Kansas' field representative but are based out of Wisconsin. It seems from some of your written testimony that you are not particularly familiar with our higher education system in Kansas or with the particulars of HB2145. What motivated you to make the trip to Topeka today?

M : FAIR 608 637-8403 FAX NO. : 608 675 3400 Mar. 12 2003 11:44AM P1

FAIR Federation for American Immigration Reform

518 Walnut Ave.
Viroqua, WI 54665

(608) 637-6418
(608) 673-8403

Fax Transmittal Form

To Senator Umbarger

Name:

CC:

Phone number:

Fax number: (785) 296-6718

From

Susan P. Tully

(608) 637-6418
(608) 673-8403

cell 608 606 0631

☒ **Urgent**
☐ **For Review**
☐ **Please Comment**
☐ **Please Reply**

Date sent:
Time sent:
Number of pages including cover page: 13

Message:

Dear Senator Umbarger;

Here is a portion of a legal brief I would like you to look at before proceeding with HB 2145, Kansas in-state tuition for illegal aliens. You will see that there are a number of important legal issues you must be prepared for if this bill continues and becomes law.

Last week I was in Oklahoma, working against this same bill, more or less, and the Governor's Office admitted they thought there were problems with the legality of the bill, as it relates to Federal Law.

I also have an analysis from the Counsel for the Regents in Oklahoma, which concurs with our analysis of the conflicts with federal law. I would be happy to pass it along, but I would assume that the Counsel for the Regents in Kansas have done the same, you might check for it.

I would like to be notified of any future hearings on this bill, and would like to have my attachment placed into the hearing record of the bill.

If you have any questions, you may contact me at (608) 637-6418

Respectfully,

Susan Tully
Mid-West Field Director
FAIR
Federation for American Immigration Reform

MAR 1 1 2003

Kansas Legislature to Vote on HB 2145 Wednesday 3-12-03 at 1:30 PM

Granting In-State Tuition to Illegal Aliens

Commentary by Susan Tully
Mid-West Director, Federation for American Immigration Reform

The Attorney General of Virginia recently advised Virginia public universities and colleges that federal law precluded grants of in-state tuition to illegal aliens.[i] The Attorney General cited the leading case from the California Court of Appeals, which held that a state's legitimate interests in denying in-state tuition to undocumented aliens are "manifest and important." The Court listed nine important state interests at stake:

1. Interest in not subsidizing violations of law.
2. Interest in preferring to educate the states' own lawful residents.
3. Interest in avoiding enhancement of the employment prospects of those to whom employment is forbidden by law.
4. Interest in conserving state fiscal resources for the benefit of its lawful residents.
5. Interest in avoiding accusations that it unlawfully harbors illegal aliens in its classrooms and dormitories.
6. Interest in not subsidizing the university education of those who may be deported.
7. Interest in avoiding discrimination against citizens of sister states and aliens lawfully present.
8. Interest in maintaining respect for government by not subsidizing those who break the law.
9. Interest in not subsidizing the university education of students whose parents, because of the risk of deportation if detected, are less likely to pay taxes.[ii]

HB 2145 flunks any test of sound public policy. Kansas is enduring its worst state budget crisis in a generation, and the nation has not yet recovered from the September 11th attacks carried out by people who were living illegally in the United States under the guise of being students, yet the Kansas legislature seems prepared to offer lavish subsidies to an unrestricted number of illegal aliens.

Each illegal alien who is admitted to a University of Kansas System school in resident tuition status will be receiving approximately an $11,000 annual subsidy from Kansas taxpayers. We have public servants who offer every conceivable benefit to people who violate our immigration laws, and then wonder how it is that we have an estimated 10

million illegal aliens loving in our country. A place at one of our leading public universities is certainly a very nice benefit for people who break the law.

The policy of admitting and subsidizing illegal aliens punishes citizens and legal residents who have done nothing wrong themselves. There are a finite number of seats on Kansas campuses and a finite amount of money available to subsidize higher education. In essence the legislature will be telling many young people whose parents played by the rules, 'We're sorry, but we've given your seat to someone who is in the country illegally and, by the way, we'd like you to help pay for it.'

not based on domicile

1. Illegal aliens, as a matter of law, may not establish legal domicile in Kansas.

no, it does not

2. HB 2145 would directly violate 8 U.S.C. 1623 (IIRAIRA Section 505).

already living here

3. The proposed bill constitutes an 'illegal alien tuition scheme' that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States.

not regulating immigration status

4. HB 2145 would be an unconstitutional regulation of immigration that is preempted by the Supremacy Clause.

5. Passive resistance to federal immigration law by state agencies is unlawful, violates the Supremacy Clause, and is not protected by the Eleventh Amendment.

Section 505 is the only such law, + it is not in conflict

6. The 'illegal alien tuition scheme' would violate federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education.

7. The 'illegal alien tuition scheme' would violate the Equal Protection Clause of the Fourteenth Amendment.

Federal law prohibits states or their political subdivisions (such as public community colleges or private education institutions chartered by a state) from providing in-state tuition to illegal aliens without also granting the same preferential treatment to all U.S. citizens, regardless of their resident status under state law. In 1996 Congress enacted the Illegal Immigration and Immigrant Responsibility Act (IIRAIRA). IIRAIRA Section 505 provides as follows:

"(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."

This statute is clear on its face, both in scope and intent, and there appears to be no judicial or administrative cases construing it more narrowly. No federal regulations have been issued to limit the operation of this provision.

nonbinding

The legislative history of this provision is also clear. The House Conference Report stated, "this section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." Should the state of Kansas act to provide such a benefit to illegal aliens, a class of tens of thousands of citizens would have an immediate viable cause of action to seek injunctive relief barring implementation of the statue, or alternatively, a refund of the out-pf-state tuition they have paid to study in Kansas.

no, because they would not have established the requisite conditions

The proposed bill constitutes an illegal alien tuition scheme that would violate federal criminal statutes prohibiting the encouragement or inducement of illegal aliens to reside in the United States.

Immigration and Nationality Act (INA) §274(a)(1)(A)(iv) makes it a felony for any person to encourage or induce an alien to reside in the U.S. in reckless disregard of the fact that the alien's residence is in violation of law.[iii]

The term "any person" in the statute is to be construed broadly, and would include a state agency or its officers.[iv] There is no Eleventh Amendment immunity from the jurisdiction of federal courts for state agencies that violate federal immigration law (see discussion of passive resistance, *infra*).

The term "encourage" has been held to mean to knowingly instigate, help, or advise. "Induce" has been held to mean to knowingly bring on or about, to affect, cause, or influence an act or course of conduct.[v] "Encouraging" includes actions that permit illegal aliens to be more confident that they could continue to reside with impunity in the United States, or actions that offer illegal aliens "a chance to stand equally with all other American citizens."[vi] The legislative history of HB 2145 clearly indicate an express intent to provide "equity" or "fairness" for a class of illegal aliens.

not assisting in violating any laws

Specific actions found to constitute encouraging include counseling illegal aliens to continue working in the U.S. or assisting them to complete applications with false statements or obvious "errors."[vii] Sanctuary is not a valid ground for violating the INA. The Ninth and Second Circuit Courts of Appeal have hold that it is illegal for non-profit and religious organizations to knowingly assist an employer to violate employment sanctions, regardless of claims that their convictions require them to assist aliens.[viii]

The First Amendment does not protect actions aiding illegal aliens to remain in the United States.[ix] Likewise, there is no possible policy or humanitarian argument, absent conditions that would qualify the illegal alien for refugee or a related *nonrefoulement* status, that would negate the criminal *mens rea* of reckless disregard for the fact, expressed in the legislative history of the proposed legislation, that the aliens are present in the United States in violation of law.[x]

not claiming discrimination

Illegal aliens are not a suspect class entitled to Fourteenth Amendment-based strict scrutiny of any discriminatory classification based on that status, nor are they defined by an immutable characteristic, since their status is the product of conscious unlawful action.[xi] The U.S. Supreme Court has ruled that education is neither a fundamental right, nor a right protected explicitly or implicitly by the Constitution.[xii] There is no case law supporting the claim by some open borders advocates that Title VII of the Civil Rights Act of 1964 bars the prohibition of undocumented aliens from attending a college or university.[xiii]

Identity is not a constitutionally protected privacy right, and an illegal alien has no expectation of privacy from another person's knowledge of his or her immigration status.[xiv]

Aggrieved private citizens may bring a civil action against officials of educational institutions under federal racketeering law (RICO) for violations of INA §274.[xv]

HB 2145 forms an unconstitutional regulation of immigration that is preempted by the Supremacy Clause.

federal law regulating tuition pricing more closely approximates overreaching federal/state divisions

The legislation being proposed in the Kansas legislature constitutes a state statutory scheme (the "illegal alien tuition scheme") that will have a direct and substantial effect on immigration and will conflict with federal law, and would therefore be preempted on constitutional grounds. The scheme is an impermissible regulation of immigration by state statute, since it is not tied to and directly conflicts with federal standards.

Preemption Standards. A fundamental principle of the Constitution is that Congress has the power to preempt state law.[xvi] Even without an express provision for preemption, state law must yield to a Congressional Act in at least two circumstances:

First, when Congress intends federal law to "occupy the field," state law in that area is preempted.[xvii] The power to regulate immigration is unquestionably exclusively federal power, and any state statute that regulates immigration is unconstitutionally proscribed.[xviii] States can neither add to nor take from conditions lawfully imposed upon the admission or residence of aliens in the United States.[xix]

The illegal alien tuition scheme is a comprehensive program by state agents to encourage and assist illegal aliens to remain in the state of Kansas in violation of federal law, and thus has a direct and substantial effect on immigration. The elements of the scheme are:

only required for students who are nonimmigrants= have a student or other temporary visa

1. The University first admits and enrolls non-immigrant aliens as students in violation of federal law requiring that the University first verify the statutory eligibility of non-immigrant aliens and, if qualified issue Form I-20 to the U.S. Department of State before such aliens may be issued an F-1 student visa. Exceptions to this scheme for exchange visitors under 101(a)(15)(J) are not relevant for illegal aliens.

2. The University keeps records that identify such illegal aliens for internal administrative and academic purposes, but forbids its staff from reporting their presence at the University to the Department of Homeland Security to initiate their removal from the United States.
3. The University provides such illegal aliens with financial aid, reducing the amounts available to U.S. citizens and legal permanent residents.
4. The University provides such illegal aliens, as part of the admission process, access to health, recreation, job recruitment, employment, and other services.
5. The University now grants such students significant reductions in tuition fees.

no

Second, even if Congress had not occupied the field, state law is preempted to the extent of any conflict with a federal statute.[xx] The Supreme Court will find preemption where it is impossible for a private party to comply with both state and federal law,[xxi] or where "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[xxii]

What constitutes a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects:

> " For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the Act cannot otherwise be accomplished--if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect--the state law must yield to the regulation of Congress within the sphere of its delegated power."[xxiii]

does not conflict w/ Section 505 as written

Acts of Congress preempt state law when (1) Congress expressly provided for preemption, (2) Congress intended to "occupy the field," or (3) the state law conflicts with the congressional statute at issue.[xxiv]

Passive resistance to federal immigration law by state agencies is unlawful and unconstitutional.

Acceptance and enrollment of illegal aliens as students by the University of Kansas System, the unlawful encouragement and inducement of such student's continued residence in Kansas by means of grants of financial aid, and the provision of in-state resident tuition to certain illegal aliens constitute a practice of unlawful state resistance to federal immigration law.

does not even understand our educational system

The HB 2145 illegal alien tuition scheme is explicitly intended to and in fact resists and impedes the enforcement of immigration law by federal officials. The operation of HB 2145 would therefore be preempted under the Supremacy Clause of the United States Constitution.[xxv]

no - does not conflict with federal law or protect these students from deportation

This is not a refuge or sanctuary law at all

Cooperation among government authorities at all levels is essential to any effective response to the criminal and illegal alien problem. Nonetheless, in the 1980s and 1990s numerous cities and other local governments enacted laws, often referred to as refuge, sanctuary or non-cooperation laws, with the explicit intention of restricting or blocking immigration law enforcement in their jurisdictions.[xxvi] After widespread citizen complaints, Congress enacted the 1996 welfare reform (PRWORA)[xxvii] and illegal immigration reform (IIRIARA)[xxviii] statutes, which make restrictions on sharing immigration or citizenship status information by any government entity or official unlawful. Under these federal laws, no federal, state, or local government agency can be prohibited from maintaining or exchanging information regarding the citizenship or immigration status of any individual with the INS.

Immediately after Congress enacted IIRAIRA, New York City sued the federal government, claiming the two statutes violated the Tenth Amendment and exceeded the plenary power over immigration granted to Congress.[xxix] New York City argued that it could elect not to participate in a federal regulatory program, and that the federal government could not disrupt the operations of local governments through legislation. The federal district court rejected New York's claims in 1997.[xxx]

On appeal, the Second Circuit Court of Appeal affirmed that the statutes were constitutional.[xxxi] The Second Circuit held that the City had no right to "passive resistance," because such claims violate the Supremacy Clause of the U.S. Constitution:

> " The City's sovereignty argument asks us to turn the Tenth Amendment's shield against the federal government's using state and local governments to enact and administer federal programs into a sword allowing states and localities to engage in passive resistance that frustrates federal programs. If Congress may not forbid states from outlawing even voluntary cooperation with federal programs by state and local officials, states will at times have the power to frustrate effectuation of some programs. Absent any cooperation at all from local officials, some federal programs may fail or fall short of their goals unless federal officials resort to legal processes in every routine or trivial matter, often a practical impossibility. *For example, resistance to Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), was often in the nature of a refusal by local government to cooperate until under a court order to do so* [emphasis added]. "

The Second Circuit also noted that the city's policy was not a general rule that protected confidential information for citizens and aliens alike, but instead was intended only to obstruct federal officials, "while allowing City employees to share freely the information in question with the rest of the world."[xxxii]

The Court then articulated the mandatory nature of state-federal cooperation in the area of immigration law enforcement:

> A system of dual sovereignties cannot work without informed, extensive, and cooperative interaction of a voluntary nature between sovereign systems... Without the Constitution, each sovereign could, to a degree, hold the other hostage by selectively withholding voluntary cooperation as to a particular program(s). The potential for deadlock thus inheres in dual sovereignties, but the Constitution has resolved that problem in the Supremacy Clause, which bars states from taking actions that frustrate federal laws and regulatory schemes." [xxxiii]

The proposed Kansas illegal alien tuition scheme violates federal law regulating the admission, attendance and public support of aliens for study at institutions of higher education.

A comprehensive federal statutory and regulatory scheme prohibits the University of Kansas from concealing from the federal government the admission, attendance, or grant of public benefits to an illegal alien student.

these students are exempted specifically from HB2145

Non-immigrant aliens who seek to enter the United States to pursue full-time academic studies at a public university are admitted only in the F-1 non-immigrant visa category.[xxxiv] Aliens who have been admitted to the U.S. as nonimmigrant visitors may not apply for a change of status to student.[xxxv]

Degree-granting institutions of higher education must apply for approval from the INS before they may admit non-immigrant alien students on F-1 visas. The university or college must agree to report the name of every foreign student who stops attending the school.[xxxvi] Every school that recruits foreign students must have a Designated School Official (DSO) who is required to personally perform the required regulatory function.[xxxvii]

A DSO must certify, under penalty of perjury, a completed and executed Form I-20 (Certificate of Eligibility for Nonimmigrant Student Status) for every non-immigrant alien student the school has admitted, to enable them to apply for F-1 visas. The DSO must certify that he or she has personally examined the alien's application and supporting documents in the United States and that all information on the I-20 is true and correct. The educational institution must keep the required documentation until the student is no longer attending the school. The certification includes the information on the college's written application.[xxxviii] Willful false statements or "any conduct ...which does not comply with regulations" by a DSO are grounds for withdrawal of approval to enroll non-immigrant alien students.

yes, but these are not these students

The University of Kansas System and community colleges must keep extensive information and documentary records on each non-immigrant alien student, including documentation of the alien's immigration status.[xxxix]

The Immigration Reform and Control Act of 1986 (IRCA) requires states and other entities to verify, through INS computer records, the immigration status of aliens applying for federal financial assistance.[xl] Congress enacted this verification process,

known as SAVE (Systematic Alien Verification for Entitlements), based on INS testimony that "significant numbers" of ineligible aliens are receiving assistance and that a verification procedure would result in "considerable" cost savings for the federal government.[xli]

they will not be eligible for this aid

All applicants for federal, state, and university-administered educational assistance at Kansas institutions of higher education must complete OMB Form 1845-0001, the Free Application for Federal Student Aid (FAFSA).[xlii] Every applicant must state on the FAFSA, under penalty of federal false statements and perjury sanctions, whether they are a U.S. citizen. If the applicant states that he or she is an "eligible non-citizen", that applicant must provide a valid Alien Registration Number ("A number). Eligible non-citizens must declare that they are in a "satisfactory immigration status," and provide additional documentation showing their status. The participating state educational institution must then verify the alien's immigration status with the INS.[xliii] Any state administrative or statutory relief from these requirements, including permission to apply for any financial aid using variant forms or procedures, or counseling by University representatives on methods of circumventing the standard requirements, would violate the Equal Protection clause of the Fourteenth Amendment.

not as "residents"

No Resident Status for Illegal Aliens by Omission. American Immigration Lawyers Association spokesman Professor Stephen Yale-Loehr has asserted that, "no federal law" or "state law prohibits undocumented aliens from attending public colleges or universities."[xliv] However, the courts have rejected the claim that failure by Congress to designate a non-immigrant classification for illegal aliens in the INA allows states to treat them as residents.

The organized immigration bar has also argued that the immigration laws do not require a school to refuse to admit an alien who does not have lawful nonimmigrant status, and that federal regulations require only that a DSO collect and provide information on students to whom the DSO has issued an I-20. The central claims are that the law is silent on the issue, and that the DSO does not otherwise have a "duty" to report illegal aliens. Professor Yale-Loehr asserts that although INS 8 C.F.R. 214.3(g)(1) requires approved schools to keep records containing specific information and documents relating to each F-1 and M-1 student to whom it has issued a Form I-20, "no such reporting requirement exists for undocumented students," and the grounds for withdrawal by the INS of approval to issue I-20s (and thus admit foreign students) in 8 C.F.R. 214.4(a) do not include "having undocumented students on campus."[xlv]

The California state courts (in reasoning subsequently accepted by the federal Ninth Circuit) rejected as "Daedalian but unpersuasive" reasoning the a nearly identical "clever formal proof that [state law] does not classify undocumented aliens as nonresidents."[xlvi] Federal law forbids aliens to enter the United States without applying for admission.[xlvii] Aliens who nonetheless do enter illegally, or who overstay their visas, are subject to detention and deportation.[xlviii] Similar sanctions apply to admission procured by fraud.[xlix] Thus, "it is unremarkable that Congress, in organizing various classifications of lawfully

admitted non-immigrant aliens, reserved no classification for aliens who have entered or remained in this country unlawfully."[i]

they do have the same right to exemption "regardless of whether or not the person is or is not a citizen of the United States"

The Kansas illegal alien tuition scheme would violate the Equal Protection Clause of the Fourteenth Amendment by denying U.S. citizens and legal permanent resident aliens the privilege of exemption from non-resident tuition that has been granted to certain illegal aliens.

The proposed Kansas illegal alien tuition scheme violates the Equal Protection clause, by granting illegal aliens the privilege of classification as residents of Kansas for admission and tuition eligibility purposes, while U.S. citizens and legal permanent residents of other states are denied such privilege. The scheme discriminates on the basis of alienage and national origin in favor of a class of illegal aliens, who are prohibited by state and federal law from establishing either legal residence or domicile in the state of Kansas by providing such class of illegal aliens the benefits of admission to the university and classification as residents.

Classifications created by a state legislature that are based on alienage are inherently suspect, and are subject to strict judicial scrutiny.[ii] This is so whether the governmental benefit at issue is a right or – as in this case – a privilege.[iii]

In *Toll v. Moreno*, the U.S. Supreme Court held that a University of Maryland policy of denying in-state tuition to legal non-immigrant 'G-4' visa holders,[iii] whose visa status did not prohibit them from acquiring domicile, was "a state regulation not congressionally sanctioned that *discriminates* [emphasis added] against aliens lawfully admitted to the country ...[by] impos[ing] additional burdens not contemplated by Congress."[iv]

The discriminatory effect operates in two related ways. First, because the number of openings for admission to the university is limited, admission of the class of illegal aliens displaces a similar-sized class of equally qualified U.S. citizens and legal permanent residents (LPRs) of the United States.

not denying residence to U.S. citizens + legal permanent residents

Second, granting state resident tuition eligibility to the same class of illegal aliens, while denying such tuition to U.S. citizens and legal permanent residents who are similarly barred from establishing residence under state law, violates the equal protection rights of both citizens and LPRs. Under the strict scrutiny standard, the court may not defer to a decision by the State legislature but must independently determine whether the illegal alien tuition scheme is narrowly tailored to promote a constitutionally compelling end.[iv] Maryland cannot show a compelling interest in providing large financial and social benefits to a suspect class who are statutorily barred from receiving such benefits under federal law.

A state government agency custom or policy that extends affirmative benefits to a suspect class, in this case the offer of one of a limited number of openings at a public institution of higher education and a significant preferential reduction in tuition fees, violates equal protection, where such preferences are otherwise prohibited by federal law.[vi] U.S.

citizen residents of the jurisdiction have been deprived of a constitutional right under color of state law.[lvii] This violation is by its nature ongoing.

Aggrieved citizens may sue in state or federal court to block such unlawful policies, and may sue officials and employees in their official or private capacities for violations of their rights.[lviii] State officials do not possess Eleventh Amendment immunity or qualified immunity when sued in their official capacity for prospective injunctive or declaratory relief to end the statutory and constitutional violations discussed in this statement.[lix] Qualified immunity does not shield government officials, or private parties acting in concert with public officials, from complaints for injunctive relief.[lx]

Notes

[i] Virginia OAG, Immigration Law Compliance Update, Sept. 5, 2002 (20 pg.).
[ii] *Regents of the University of Californian v. Superior Ct. of Los Angeles County*, 225 Cal. App. 3d 972, at 982 (1990).
[iii] 8 U.S.C. 1324(a)(1)(A)(iv).
[iv] *U.S. v. Zheng, No. 01-1151 (11th Cir. Sep. 17, 2002); U.S. v. Oloyede* 982 F.2d 133 (4th Cir 1993); *Villegas-Valenzuela v. INS*, 103 F.3d 805 (9th Cir. 1996).
[v] *U.S. v. He*, 245 F.3d 954 (7th Cir. 2001).
[vi] *U.S. v. Oloyede*, 982 F.2d 133, at 136 (4th Cir. 1992).
[vii] *Id.*, at 137.
[viii] *AFSC v. Thornburgh*, 961 F.2d 1405 (9th Cir. 1992). *Intercommunity Center for Peace and Justice v. INS*, 910 F.2d 42 (2nd Cir. 1990).
[ix] *U.S. v. Merkt*, 794 F.2d 950 (5th Cir. 1986), *cert. denied* 480 US 946.
[x] See notes 21 and 22, *supra*.
[xi] *Plyler v. Doe*, 457 U.S. 502, at 32-33 (1982).
[xii] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, at 37 (1973): "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected... We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty, and have found those arguments unpersuasive."
[xiii] Prof. S. Yale-Loehr, 5 Benders Imm. Bull. 413, at 415 (May 15, 2001).
[xiv] *U.S. v. Rodriguez-Arreola*, 270 F.3d 611 (8th Cir. 2001).
[xv] 18 U.S.C. 1961-1968. See also *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002).
[xvi] Art. VI, cl. 2; *Gibbons v. Ogden*, 9 Wheat. 1, at 211 (1824); *Savage v. Jones*, 225 U.S. 501, at 533 (1912); *California v. ARC America Corp.*, 490 U.S. 93, at 101 (1989).
[xvii] *Id.*, at 100; cf. *United States v. Locke*, 529 U.S. —, —, 120 S.Ct. 1135, 1151 (2000)(citing *Charleston & Western Carolina R. Co. v. Varnville Furniture Co.*, 237 U.S. 597,at 604 (1915)).
[xviii] *De Canas v. Bica*, 424 U.S. 351, at 354-55 (1976).
[xix] *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, at 419 (1948).
[xx] *Hines v. Davidowitz*, 312 U.S. 52, at 66-67 (1941); *ARC America Corp.*, supra, at 100-101; *Locke*, supra, at —, 120 S.Ct. at 1148.
[xxi] See, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, at 142-143 (1963).
[xxii] *Hines*, supra, at 67.
[xxiii] *Savage*, supra, 533, 32 S.Ct. 715, quoted in *Hines*, supra, at 67, n. 20, 61 S.Ct. 399; both cited in *Crosby v. National Foreign Trade Council*, 530 U.S. 372, 120 S.Ct. 2288, 2000 WL 775550 (2000).

was based, and Information specified by the INS as necessary to identify the student (such as date and place of birth), and to determine the student's (legal or illegal) immigration status).
(2) As a consequence of concerns raised by abuse of student visas by alien terrorists, Congress has mandated the collection of additional data per IIRAIRA §641(c): Identity and current address of alien, Visa classification, date of visa issuance or classification granted, Academic status of alien (full-time, part-time), Academic disciplinary actions taken against the alien due to criminal conviction.
(3) Additional data now required per the USA PATRIOT Act §416: Port of entry, Date of entry.

[xl] IRCA § 121, amending the Higher Education Act of 1965 § 484.
[xli] IRCA § 121(d)(1)(A). See H.R. Rep. No. 99-682 Part I, 99th Cong., 2d Sess. 67.
[xlii] UM Financial Aid Office website (visited March 10, 2003): http://www.inform.umd.edu/CampusInfo/Departments/FIN/OSFA/app_fafsa_current.html .
[xliii] IRCA § 121(a)(3), amending §484 of the Higher Education Act of 1965 (20 U.S.C. § 1091).
[xliv] See e.g. Immigration Brief No. 94-11, 'F-1 Nonimmigrant Students: Law, Regulation, And Practice (1994); 5 Benders Imm. Bull. 413, 'They Can't Go Home Again: Undocumented Aliens and U.S. Higher Education' (May 15, 2000).
[xlv] Id., at 415.
[xlvi] *Regents of California, supra*, at 978-79.
[xlvii] 8 U.S.C. §§ 1101(a)(4), 1181(a), 1201.
[xlviii] 8 U.S.C. §§1227(a)(1) & (a)(3)(A), 1229a, 1231, 1357.
[xlix] 8 U.S.C. §§1227(a)(3)(B)-(D).
[l] *Regents of California, supra*, at 979.
[li] *Graham v. Richardson*, 403 U.S. 365, at 372 (1971).
[lii] *Id.*, at 374.
[liii] Dependents of representatives of international organizations.
[liv] 458 U.S. 1, at 13-17 (1982).
[lv] *Shapiro v. Thompson*, 394 U.S. 618, at 634 (1969).
[lvi] *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996); *Pyke v. Cuomo*, 258 F.3d 107, at 108-9 (2nd Cir. 2001).
[lvii] 42 U.S.C. 1983.
[lviii] *Yellow Freight Systems v. Donnelly*, 494 U.S. 820 (1990).
[lix] *Burnham v. Ianni*, 119 F.3d 668, at 673 (8th Cir. 1997); *Ramirez v. Oklahoma Dept. of Mental Health*, 41 F.3d 584, 588-89 (10th Cir. 1994) [11th Amdt. immunity]; *Kikumura v. Hurley*, 242 F.3d 950, at 956 (10th Cir. 2001) [qualified immunity].
[lx] *Wyatt v. Cole*, 504 U.S. 158 (1992).

[xxiv] *Crosby*, at 372; see also *English v. General Elec. Co.*, 496 U.S. 72, 79 n. 5 (1990) (recognizing that these categories are not rigidly distinct); both cited in *In Re World War II Era Japanese Forced Labor Litigation*, 164 F.Supp.2d 1160, (N.D.Cal.,2001).

[xxv] Art. VI Cl.2; McCulloch v. Maryland, 17 U.S. 316 (1819).

[xxvi] Staff Testimony, Senate Permanent Subcommittee on Investigations, before the U.S. Senate Commission on Governmental Affairs (Nov. 1993).

[xxvii] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, 110 Stat. 2105, §434: "Notwithstanding any other provision of Federal, State, or local law, no state or local government entity may be prohibited , or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

[xxviii] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009, §642:

"(a) IN GENERAL -

Notwithstanding any other provision of Federal, State, or local law, a Federal State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES. –

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit or in any way restrict, a Federal, State, or local entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) maintaining such information.

(3) exchanging such information with any other Federal, State or local government entity."

[xxix] New York City claimed it had over 400,000 illegal aliens at that time, many of them living in mixed households with legal aliens and U.S. citizens, and that granting them confidential treatment would insure that illegal aliens were not afraid to report crimes or seek treatment for contagious diseases.

[xxx] *City of New York v. U.S.*, 971 F.Supp 789, (S.D. NY 1997).

[xxxi] *Id.*, 179 F.3d 29, (2nd Cir. 1999).

[xxxii] *Id., at 36*, citing *Barnett Bank v. Nelson*, 517 U.S. 25, at 31 (1996); *Hines v. Davidowitz*, 312 U.S. 52, at 67 (1941).

[xxxiii] *Id.*, at 35. New York's petition for certiorari was denied by the U.S. Supreme Court in January 2000. 120 S. Ct. 932 (2000).

[xxxiv] 8 U.S.C.1101(a)(15)(F), INA§ 101(a)(15)(F). M and J visas (for vocational training and exchange visitors) are not available for full time undergraduate or graduate study at a university or college.

[xxxv] 8 C.F.R. 248(c)(3).

[xxxvi] INA § 101(a)(15(F)(i).

[xxxvii] 8 CFR § 214.3(a)(1).

[xxxviii] 8 CFR § 214.3(k).

[xxxix] (1) Data required per 8 C.F.R. 214.3(g) includes: INS admission number, Country of citizenship, Address and telephone number in the United States, Full or part-time status, Course load, Date of commencement of studies, Degree program and field of study, Expected date of completion, Non-immigrant classification, Termination date and reason, if known, Documents that show the scholastic ability and financial status on which the student's admission to the school

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1559

By: Calvey

COMMITTEE SUBSTITUTE

An Act relating to schools; establishing criteria for a waiver of nonresident tuition for certain students; requiring compliance with certain admission criteria; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Students who are enrolling in an institution in The Oklahoma State System of Higher Education shall be eligible for a waiver of nonresident tuition if the student:

1. Resided with a parent or guardian of the student while attending a public, private, or other type of high school;

2. Graduated from a public, private, or other type of high school in this state or received the equivalent of a high school diploma in this state;

3. Resided in this state for at least three (3) years prior to the date the student graduated from high school or received the equivalent of a high school diploma;

4. Registers as an entering student in an institution in The Oklahoma State System of Higher Education no earlier than the beginning of the 2003-2004 school year; and

5. In the case of a student without lawful immigration status:

a. files an affidavit with the institution stating that the student has filed an application or has a petition pending with the Immigration and Naturalization Service to legalize their immigration status, or

b. files an affidavit with the institution stating that the student will file an application to become a permanent resident at the earliest opportunity the student is eligible to do so.

B. To be granted the tuition waiver as provided for in subsection A of this section, an eligible student shall have satisfied admission standards as determined by the Oklahoma State Regents for Higher Education for first-time entering students for the appropriate type of institution and have secured admission to, and enrolled in, an institution in The Oklahoma State System of Higher Education.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

49-1-6183 KB 02/05/03

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A 501(c)4 Organization

March 20, 2003

To: Senator Dwayne Umbarger and members of the Senate Education Committee

From Janis McMillen, Public Policy Chair
The MAINstream Coalition, MAINstream Education Foundation

The MAINstream Coalition, a non-partisan advocacy group that supports quality public education for all residents of Kansas, is writing to express our dismay that HB2145 has attracted to our fair state a cadre of anti-immigrant extremists.

When the Federation for American Immigration Reform (FAIR) testifies before you today, they will attempt to hide their venomous ideas with rhetoric about protecting the rights and sovereignty of Kansans, when in fact, they seek to scare us into accepting their anti-immigrant sentiments.

They will offer specious arguments about depriving Kansans of educational opportunity, or depriving the state of badly needed revenues. Their goal is more sinister. In fact their history shows that they hold and promote the most reprehensible of bigoted white-supremacist beliefs.

The previous hearings on HB2145 were sufficient to allow lawmakers to decide the merits of this bill. FAIR will have its say. But we plead with you to carefully examine their testimony and their motives before you make any decision about the fate of HB2145.

Thank you for your consideration.

Senate Education
3-20-03
Attachment 6

Dear Editor:

The recent radio and TV advertisements run in Kansas which attack legal immigration into the United States are short on facts and resort to tactics which mislead Kansans about the impact legal immigrants have on the United States. A closer examination of the facts demonstrates that immigrants make important contributions to the economic and social fabric of our nation, and, in so doing, strengthen it.

Numerous scholarly studies have concluded in recent years that legal immigration helps, not hurts, our nation, and that immigrants integrate into the United States without much difficulty.

First, legal immigration is a plus for our nation economically. A 1998 study by the conservative CATO Institute, for example, reported that in 1997 immigrant households paid an estimated $133 billion in direct taxes to federal, state, and local governments. A study that same year by the National Research Council of the National Academy of Sciences found that immigrants raise the incomes of U.S.-born workers by at least $10 billion per year. Additionally, immigrants contribute significantly to the Social Security system: the CATO study concluded that, given current trends, immigrants will contribute a net benefit (taxes paid over benefits received) $500 billion to the Social Security system over the next twenty-five years.

Immigrants also are quick to assimilate into American society. A recent report authored by Gregory Rodriguez of Pepperdine University and published by the National Immigration Forum stated that within ten years of arrival, more than three-quarters of immigrants speak English with high proficiency. Second and third generation immigrants speak English well, very well, or exclusively. The study also found that immigrants eventually become homeowners: within twenty years of arrival, more than six out of ten owned their own homes in 1990.

These studies confirm what many of us already know: immigrants are by and large hard-working and law-abiding persons who contribute positively to their communities. Many simply desire what most Americans take for granted: an opportunity to work and support their children in an environment free of persecution and danger. Legal immigrants long to be accepted on the basis of their contributions and not judged upon their race, ethnicity, or country of origin.

These anti-immigrant advertisements distort the truth and leave an impression that our nation's social ills can be attributed primarily to immigrants. In reality, practically speaking we are all immigrants or descendants of immigrants, many of whom built this nation into the world's lone superpower. We must not forget that basic fact.

Mike Farmer
Executive Director

Senate Education
3-20-03
Attachment 7

It is a Federal Crime under Section 274 of the Immigration and Nationality Act To encourage an illegal alien to remain illegally in the United States.

This country is a land of law and order and it behooves all of us to uphold it.

In-state college tuition should not be given to anyone who is not a citizen of this country and this state.

I understand foreign students are given preferential college admission tests--winning access to competitive taxpayer-funded schools that reject American students who are forced to apply under normal, more difficult standards.

Some Americans think the American government gives preferential treatmemt to immigrants and even illegal immigrants.

This is outrageous and beneath any government that is elected and funded by the people.The idea that we are all immigrants is really false. The real immigrants were those who overcame unimaginable hardships pioneering and settling this country.

There comes a time when every country must realize that it is not possible to allow more immigrants to come to their land. The United States reached this time a long time ago. It is not fair or equitable for the citizens or the future of this country.

All illegal immigrants should immediately be returned to their native land.

Donna Methe
1957 Anita
Wichita KS 67217

316-943-9579

Senate Education
3-20-03
Attachment 8