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Private Citizen and Owner of Law Office of Raymond Rico, LLC

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SB 254

Written Only

Raymond Rico

Federal and State Affairs Committee

Hearing on SB 254

February 27, 2025

My name is Raymond Rico. I was born and raised in Kansas City, KS. I have practiced immigration law since 2011 where I have met Kansans from all over the state who where I get the chance to see how immigration laws impact the daily lives of immigrants from all over the world. I can attest that being undocumented today does not mean you remain undocumented forever; as it seems the proponents believe.

I have directly assisted many past undocumented Kansas In-State Tuition beneficiaries to achieve permanent residency and U.S. Citizenship. As Kansas is their home, they are here in Kansas, are making their lives here, and are making Kansas great.

I provide this testimony in opposition to SB 254, a veiled attempt to imbed a repeal of Kansas' successful in-state tuition law as part of a broader bill as past attempts to do so independently have failed.

On multiple occasions, I have rebutted Mr. Kobach's claims on in-state tuition before various committees here at the Capitol. However, if past is prologue, Mr. Kobach and other proponents will likely state that Kansas has been in violation of federal law by providing in-state tuition rates

to "illegal aliens" since 2004. He may further state that Kansas is prohibited from allowing in-state tuition to "illegal aliens" unless Kansas gives in-state tuition rates to all U.S. citizens from other states.

Mr. Kobach litigated *Day v. Sebelius*, 376 F. Supp. 2d 1022 (D. Kan. 2005) which asserted the above claims in challenging Kansas' In-State Tuition law. Although Kobach will say the case was never decided on the merits, the unvarnished truth is that Kobach lost this case as the plaintiffs lacked standing. The court decided the student plaintiffs were not injured by the passage of the in-state tuition law, nor would they benefit from its repeal.

The Federal court decision in *Day v. Sebelius* from 2005 contradicts Mr. Kobach's argument that Kansas must give all U.S. citizens in-state tuition if it also gives in-state tuition to illegal aliens. Kansas satisfies 8 U.S.C. § 1623 if it extends benefits to US citizens to the same extent that they are available to undocumented immigrants. Kansas need not "give" in-state tuition to all U.S. citizens from other states as Mr. Kobach suggested; Kansas' in-state tuition law satisfies 8 U.S.C. § 1623 if Kansas offers U.S. citizens eligibility to qualify for in-state tuition under the same criteria; which it does. The Kansas law makes any individual (citizen or not) eligible for in-state tuition if they meet the requirements of K.S.A. § 76-731a: three years of high school and graduation from a high school in Kansas.

If all U.S. citizens should receive in-state tuition under 8 U.S.C. § 1623 but were being denied this benefit in Kansas, then it is clear to see where the plaintiffs could show injury by being denied the ability to pay in-state tuition. Thus, the issue of standing would have been met in *Day v. Sebelius* if Mr. Kobach had been successful in showing injury to the plaintiffs. However, the court in *Day v. Sebelius* held that:

"Plaintiffs have failed to demonstrate that they are injured in fact...Prior to the passage of the law, plaintiffs paid out-of-state tuition. With the passage [of the law], plaintiffs continued to pay out-of-state tuition. The law passed by the Kansas legislature does not apply to plaintiffs, and plaintiffs have made no argument that it does. Plaintiffs have failed to show that a favorable decision will redress the injury to them. If the court were to find [Kansas' in-state tuition law] is preempted by federal law or in violation of federal law as suggested, plaintiffs will not receive any benefit. A favorable decision for the plaintiffs would require those who have received the benefit...to pay more, but plaintiffs' tuition bills would not change. Since the relief that could be granted to plaintiffs by the court will provide them with no personal benefit, they lack standing."

The ruling was appealed to the 10th Circuit Court of Appeals where the court affirmed the Federal District Court of Kansas decision. The Supreme Court of the United States denied

certiorari to review the decision. Thus, to downplay the decisive ruling in *Day v. Sebelius* dismisses the applicability of the ruling to arguments still being made today. Apart from the Kansas law, the Supreme Court of California upheld a similar challenge to its in-state tuition law...litigated by none other than Kris Kobach.

In *Martinez v. Regents of the University of California*, 241 P.3d 855 (Cal. 2010), the California Supreme Court ruled on the merits as to whether California's in-state tuition law grants in-state tuition based on residency. The court ruled that in-state tuition in California was based on other criteria, specifically, that persons possess a California high school degree or equivalent, and that they have attended high school in California for three or more years. Thus, it was not preempted by 8 U.S.C. § 1623 as eligibility for in-state tuition was not based on residency. The in-state tuition law in California was upheld.

Thus, a closer look at the rulings in the cases Mr. Kobach litigated reveals the courts have debunked his arguments time and time again. Mr. Kobach's arguments that Kansas must give in-state tuition to all U.S. citizens if it continues to give in-state tuition to undocumented immigrants are not supported by his failed litigation. Decisions made in the Supreme Court of California on a nearly identical in-state tuition law was upheld and ruled not to be in violation of 8 U.S.C. § 1623. Simply put, Mr. Kobach's interpretation of federal law, standing, and preemption under the constitution, has never stood up in court and it shouldn't stand as sound advice to your committee.

Retaining this law does not overcrowd our state colleges and universities. Taking away in-state tuition will make college unaffordable for the vast majority of current students paying in-state rates. Such students will either stop out or not enroll in the first place. Yet, they will remain in Kansas while being unable to pursue their career choice and contribute their talents in many of the fields Kansas desperately needs. In-state tuition to all Kansans just makes sense. An uneducated Kansas does not. The choice is yours.