



Written by [Bruce Walker](#) on November 17, 2010

California Supreme Court Holds Illegals Can Attend College at In-State Rates

The California Supreme Court reversed a lower state court ruling that struck down a 2001 California law providing that in-state illegal-alien residents could pay much lower college fees than out-of-state students. The difference in tuition rates was substantial. At the University of California the in-state fee is about \$12,000 per year while the out-of-state fee is about \$35,000 per year.

Other states, such as New York and Texas, have laws that also allow illegal immigrants to pay the lower in-state tuition rate.

The plaintiffs argued that the California law violated a federal 1996 statute, the Illegal Immigration Reform and Immigrant Responsibility Act, which prohibited giving education benefits to illegal (rather than legal) immigrants. The California Supreme Court ruled, however, that the state law did not conflict with the federal law because under the state law, anyone was eligible for in-state fees provided he had attended high school in California for three years. That, the court held, meant that out-of-state citizens, such students from Kansas, were not being held to a different standard than illegal aliens in California: Three years of attendance at California high schools still provided the means to be eligible for the lower fee.



If Californians wish to provide funding for those illegally in their state, that may be a state question. It can hardly please voters in California that the state system of higher education is [pondering huge hikes](#) in fees to attend state universities — or that even with these big increases, state colleges anticipate needing more money from a state government already fiscally so unsound that it is having trouble selling state bonds to investors.

It is quite a different issue if American taxpayers are asked to pay for California's subsidizing illegal aliens while discriminating against legal citizens of other states. The creation of legal and illegal immigrant status is a federal issue, reserved by the Constitution under Article I, Section 8. In fact, the Constitution requires that Congress establish a uniform system of naturalization, which would seem to prohibit a state from allowing immigrants who are in our nation in violation of federal law from being



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granted different rights from state to state.

The White House, however, which has the responsibility for executing laws passed by Congress and for regulating one of the few truly federal duties of our constitutional system — protection of our borders and our sovereignty — appears to be ignoring its duty and worse, attacking that solemn duty. The United States Department of Justice sued Arizona to prevent the enforcement of federal laws, but when California violates the rights of the citizens of our states, the same federal department is mum.

Federal courts, however, will ultimately decide the fate of this state court decision. That will take years of litigation. Meanwhile, in a state unable to pay its bills or abide by its own constitutional requirements for a balanced budget, politicians in California will continue to subsidize in one form or another those who live there in violation of federal laws. When the new Congress looks at ways to cut spending, federal aid to higher education ought to be near the very top of the list.



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