

## Law granting in-state tuition to illegal immigrants goes to court

by **Andy Hogue**

As it stands, a foreign national who obeys the law and gets a student visa to study at a Texas college or university pays more in tuition than does an illegal immigrant.

Why? Because of a law that grants in-state tuition discounts to “undocumented residents” who have lived in Texas for three years or more and announce their intention to apply for permanent residency.

Lawbreakers pay less in tuition than do those who filed the proper paperwork to live in the U.S.: Such is the message anti-illegal immigration lawyers will likely convey when they challenge in court a 2001 law that gives illegal immigrants a way to attend college at discounted Texas-resident rates.

The suit, filed Monday in a Harris County district court, charges that the 2001 law is a violation of federal law. The suit names the University of Houston, Lone Star College, and Houston Community College, and was filed by **David A. Rogers** of the Immigration Reform Coalition of Texas (IRCOT) and former Texas Supreme Court Justice **Steven Wayne Smith**.

Ten states — California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Utah, Washington and Wisconsin — have similar laws requiring that certain criteria be met before an illegal immigrant may receive in-state tuition rates. In Texas, an applicant must graduate from high school and indicate intention to file paperwork for citizenship.

Rogers said the suit follows on the heels of an Attorney General’s opinion sought by Rep. **Leo Berman** (R-Tyler) a year and a half ago.

In the July 29 opinion, Atty. Gen. **Greg Abbott** said it was unclear whether portions of Texas Education Code Section 54 violate the federal 1996 Illegal Immigration Reform and Immigrant Responsibility Act, authored by U.S. Rep. **Lamar Smith** in 1996 (*LSR*, July 31). Smith’s legislation made Texas the first state to offer in-state tuition and financial aid to immigrants, though a similar California law was ruled unconstitutional by a state court of appeals (and is now under review by the California Supreme Court).

Berman submitted his request for an AG opinion after the California appeals decision.

“The [California] court ruled that federal law says if you allow in-state tuition for illegal aliens you have to give in-state tuition to every-

one,” Berman said.

Berman said the answer from Abbott was “a real detailed thing and hard to read” — so he met with IRCOT via a telephone conference, when the lawsuit was planned.

Six months later, Berman said, “[T]hey finally got themselves into a position to file suit. Of course, that lawsuit will likely work its way up to the Texas Supreme Court, which will determine whether 8,000 illegal immigrants in our system should be receiving tuition. And I think they’ll turn them down.”

Since the Texas law was passed (as HB 1403 in the 77th Legislature, authored by then-Rep. **Rick Noriega** of Houston, a Democrat who later ran for Lieutenant Governor in 2006), the cost of providing higher education for immigrants has risen sharply.

According to a 2006 study by *LSR*’s publisher, the Lone Star Foundation, in 2003 it cost Texas an estimated \$11.9 million to educate 1,670 four-year university students who are in the U.S. illegally, and \$6.5 million to facilitate 4,021 illegal immigrants in community colleges and technical institutes. By 2005 that number had increased to \$21.9 million to teach 3,150 immigrants in four-year universities and \$12.8 million for 8,300 two-year college students — a grand total of \$79.2 million from 2003-05.

Flash forward a few years to 2008, and the number of students covered by allowances made possible by HB 1403 was at 9,062, according to an update of the study done by former *LSR* correspondent **James A. Bernsen**. Cost estimates vary from \$36.8 million on the low end to \$66.7 million.

A 2005 bill, SB 1528 (which attempted to streamline the process for determining resident and non-resident tuition and make the standards uniform among all colleges and universities) was approved by a decidedly more Republican legislature. It did little to affect the rise in eligibility, Bernsen wrote. The University of Texas at Dallas had the most beneficiaries, he wrote, and Houston Community College led the pack in terms of two-year institutions.

It would be difficult, Bernsen wrote, to learn precisely how much financial aid is costing Texas in terms of funds dispersed to illegal immigrants, as the Texas Higher Education Coordinating Board does not calculate such statistics.

**Rebecca Forrest**, spokeswoman for

IRCOT, said Texas taxpayers already spend a large amount educating the children of illegal immigrants in kindergarten through grade 12. “Texas taxpayers already give them a generous gift that’s sufficient,” Forrest said.

A Pew Hispanic Center study Bernsen cited in his update noted there are between 643,000 and 814,000 children of undocumented immigrants in Texas, costing anywhere between \$5.05 to \$6.4 billion to educate them in public schools.

“We believe Texas is in clear violation of federal law by giving cash grants to illegal aliens,” Forrest said. “Texas is currently treating illegal aliens better than it treats legal residents and American citizens, and we obviously want our leaders in Texas to change this situation ... We want people to come legally, obey our laws, speak our language, and assimilate.”

**Michael Olivas**, a University of Houston law professor who assisted Noriega in drafting HB 1403, told the *Houston Chronicle* that IRCOT’s lawsuit is based on “a flawed reading” of federal law and Texas residency requirements. He told the *Chronicle* that federal law allows states to pass their own laws for in-state tuition residency requirements for undocumented students.

“The state can, and did act properly, and the statute is constitutional,” Olivas said.

Rogers said there have been many questions asked of IRCOT on the ethical dimensions to this situation — whether the state has a moral obligation to educate “strangers within the gate” so to speak. Rogers cited the Lord’s Prayer: “Forgive us our trespasses as we forgive those who trespass against us.”

“These people are trespassers,” Rogers said of undocumented students. “But what it doesn’t say is, ‘forgive our trespassers and write them a big check!’ That’s what this lawsuit is about.” [E]

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