

**FOR IMMEDIATE RELEASE****August 9, 2005**

WLF FILES CIVIL RIGHTS COMPLAINT AGAINST STATE OF TEXAS REGARDING BENEFITS FOR ILLEGAL ALIENS

The Washington Legal Foundation (WLF) filed a formal complaint today with the U.S. Department of Homeland Security (DHS) against the State of Texas, charging that Texas is violating the civil rights of U.S. citizens who live outside the State. WLF charged that Texas is violating federal law by offering in-state college tuition rates to illegal aliens who live in Texas, while denying those same rates to U.S. citizens who do not live in Texas. WLF called on DHS to bring appropriate enforcement action against Texas, including ordering Texas to make refunds to students who have been charged excessive tuition.

The federal statute at issue, 8 U.S.C. § 1623, was adopted in 1996 and is designed to ensure that any State that offers discounted, in-state tuition rates to illegal aliens on the basis of their residence in the State must offer the same discounted rates to *all* U.S. citizens. In 2001, Texas adopted a law that allows illegal aliens to attend public universities at in-state rates, but it has refused to extend that same opportunity to U.S. citizens living outside the State. Similar laws have since been adopted in seven other States: California, New York, Utah, Illinois, Washington, Oklahoma, and Kansas.

WLF filed its complaint on behalf of members and supporters who are not Texas residents and who attend or are interested in attending (or whose dependent children attend or are interested in attending) state-run universities in Texas. WLF filed its complaint with DHS's Office for Civil Rights and Civil Liberties, which is charged with investigating complaints alleging violations of rights arising under federal immigration laws.

WLF's complaint stated that DHS action may be the only way that Texas's illegal conduct can be enjoined. WLF noted that a group of students and their parents filed suit against Kansas's similar law, but a federal court last month ruled that Congress did not intend to permit individuals to sue to enforce § 1623. Rather, the court ruled, any enforcement action must be initiated by DHS.

"Texas and seven other states are in clear violation of federal law by offering in-state tuition to illegal aliens. Unless DHS steps forward and adopts measures designed to enforce § 1623, immigration-rights groups may be emboldened to encourage yet other States to flout federal law," said WLF Chief Counsel Richard Samp after filing WLF's complaint.

"Reasonable people can disagree on the issue of whether States should favor illegal aliens over non-resident U.S. citizens in the award of in-state tuition rates. But Congress has already decided the issue: in adopting § 1623, it determined that no such favoritism is permissible," Samp said.

Section 1623 unequivocally provides that States may not afford less favorable treatment to U.S. citizens, with respect to postsecondary education benefits, than that afforded to illegal aliens physically present in the State. Section 1623 includes one significant qualifier: the prohibition on discrimination against nonresident citizens is limited to discrimination "on the basis of residence." Thus, WLF argued, Texas is free to offer football scholarships to athletically talented illegal aliens without offering similar scholarships to less athletically talented nonresident U.S. citizens. But Texas quite clearly *is* discriminating "on the basis of residence," WLF argued: Texas provides in-state tuition only to those illegal aliens who live in Texas and graduated from a Texas high school.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to protecting the constitutional and civil rights of individuals. WLF also regularly litigates in support of efforts to enforce the nation's immigration laws and to ensure that public funds are used solely for the benefit of those lawfully present in this country. *See, e.g., Ambros-Marcial v. United States*, ___ F. Supp. 2d ___, 2005 U.S. Dist. LEXIS 14742 (D. Ariz. 2005) (opposing efforts to impose tort liability on U.S. for failing to install water stations in Arizona desert for benefit of aliens crossing into this country); *Friendly House v. Napolitano*, No. 05-15005 (9th Cir., dec. pending) (representing intervenors seeking to uphold Arizona's Proposition 200).

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's complaint is posted on its web site, www.wlf.org.