

**FOR IMMEDIATE RELEASE****October 26, 2005**

COURT URGED TO REINSTATE CHALLENGE TO IN-STATE TUITION FOR ILLEGAL ALIENS

(Day v. Bond)

The Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Tenth Circuit in Denver to reinstate a challenge to a Kansas statute that, WLF charges, violates the civil rights of U.S. citizens who live outside the State. The statute grants illegal aliens the right to attend Kansas universities at in-state rates but denies that same right to U.S. citizens who live outside of Kansas.

In a brief filed in *Day v. Bond*, WLF argued that the Kansas law violates a 1996 federal statute that prohibits States from granting more favorable tuition rates to illegal aliens than they grant to citizens. A federal district court dismissed the suit earlier this year on procedural grounds; WLF urged the appeals court to overturn that dismissal.

WLF filed its brief on behalf of Brigette Brennan and her parents. Brennan attended and graduated from a Kansas high school and has been living for the past four years in Lawrence, Kansas while attending the University of Kansas. But Kansas has refused to offer her in-state tuition rates because she lived in Kansas City, Missouri while attending high school. The result is that she is paying considerably higher tuition than illegal aliens who lived in Kansas illegally while attending high school and whose presence in this country continues to be illegal. WLF also filed its brief on behalf of itself and the Allied Educational Foundation.

"Kansas and eight other states are in clear violation of federal law by offering in-state tuition to illegal aliens. Unless the courts show a willingness to stop those violations, 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 brief. "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 and has determined that no such favoritism is permissible," Samp said.

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 2004, Kansas 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 been adopted in eight other States: Texas, California, New York, Utah, Illinois, Washington, Oklahoma, and New Mexico.

The district court dismissed the lawsuit on a technical ground: it held that Congress had not intended that § 1623 be enforced by lawsuits filed by individuals. Rather, the court held, the statute can only be enforced by federal immigration officials. WLF argued that Congress did, indeed, intend to permit private enforcement of § 1623. WLF also argued that private suits are needed because to date federal officials have done nothing to enforce the statute.

The district court also dismissed the plaintiffs claims that Kansas's policy violated their rights under the Constitution's Equal Protection Clause. The court held that the plaintiffs lacked "standing" to raise that claim. WLF urged that the Equal Protection Clause ruling be reversed as well. WLF argued that the plaintiffs had demonstrated sufficient injury to maintain Equal Protection Clause "standing" by demonstrating that they are being treated less well than illegal aliens, based solely on their nonresidence in Kansas.

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* (2005) (successfully opposed 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* (2005) (successfully defended Arizona's Proposition 200 -- which denies welfare benefits to illegal aliens -- on behalf of the sponsors of that initiative).

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