

A national battle over state laws that grant cheaper, in-state college tuition to some undocumented immigrants is now centered in California, where the state Supreme Court is expected to begin hearing arguments early next year on whether offering the benefit violates federal law.

The case is drawing close attention from both sides of the immigration debate and from other states that offer similar benefits. If the court throws out the California law, the decision could sway other states to do the same, making it more difficult for undocumented students to afford to go to college.

But the outcome of the case could also have a direct effect on another, unlikely group of students: former Californians.

In a little-known quirk of the state law, thousands of students who receive in-state tuition under the provision are not, in fact, undocumented immigrants. They are legal U.S. residents, who are able to take advantage of the law's broad language to avoid paying higher, out-of-state tuition.

Most of the unintended beneficiaries are students who left California after attending high school there and then return for college, officials say. Those students are able to take advantage of language in the state law that promises in-state tuition to any student who has a diploma from a California high school and attended high school in the state for three years or more. The law was written broadly in an attempt to avoid violating provisions of a federal immigration statute that restricts benefits for undocumented students.

At the University of California and California State University, legal residents who qualify for the tuition benefit appear to outnumber the undocumented immigrants for whom the state law was designed, according to university data and interviews with officials.

Less than 20 percent of the 1,639 recipients of the tuition benefit in the 2006-7 academic year at the University of California were undocumented, according to the system's most recent report. On the Santa Barbara campus, the student records of only three out of 72 recipients showed no sign of documentation, such as a Social Security number, the report said.

The university system would have gained an additional \$18.5-million in tuition revenue in 2006-7 from students who were legal residents had they not qualified for the benefit.

The lost revenue comes as all of the state's colleges and universities struggle to meet unprecedented cuts in state support. Last month the University of California raised undergraduate tuition by 32 percent, leading to widespread student protests.

#### Mix of Students

Some of the legal residents who receive the benefit are undergraduates from other states who attended boarding school in California. Others are graduate students who attended high school in California and then moved away. Those students would otherwise be required to pay out-of-state tuition—thousands of dollars higher than the in-state rate—for one year after they came back to the state. After their first year, they would qualify for residency.

"My sense is that these are primarily Asian students," said Elena Macías, special assistant to the president at California State University at Long Beach. "They are students who have graduated from high school here, gone to get their bachelor's degree somewhere else, maybe settled into another state. ... Then they come back home."

The unintended effects of the law are not widely known, added Ms. Macías, who trains administrators in immigrant-student issues. "I have never encountered anybody who is aware of the fact that U.S. citizens take advantage of this more than undocumented students," she said.

Recipients' status is not known at the state's 110-campus community-college system, which does not collect detailed data on students who receive the benefit. A total of about 34,000 students qualified for the benefit during the 2008-9 fiscal year, system officials said.

The large number of students who have been able to qualify under the 2001 law, known as AB 540, has surprised even its supporters.

"I don't think anybody thought that the large majority of people benefited would be citizens," said Alfred R. Herrera, assistant vice provost for academic partnerships at the University of California at Los Angeles, who advocated for the state law before it was passed.

#### Skirting a Lawsuit

The topsy-turvy dynamic in California appears to be unique among the 10 states that offer some version of the in-state tuition benefit meant to help undocumented immigrants. The other nine states all require students to live in the state for a period of time, usually a year, immediately leading up to the time they enroll in college, making it difficult to qualify for those who have left the state.

Lawmakers in California omitted the time requirement because they feared it would make the law more susceptible to a legal challenge, Mr. Herrera said. They feared the provision could be interpreted as establishing a test of residency, violating a federal statute that prohibits states from granting a postsecondary-education benefit to illegal immigrants that is denied to legal residents.

Opponents of the law sued anyway, saying the requirement that students attend a California high school itself established a test that violates federal law.

That case, which is being considered by the state Supreme Court, was brought by out-of-state students who said they were unfairly denied the ability to pay in-state tuition. In a state Court of Appeal last year, lawyers for the University of California argued, among other things, that the large numbers of legal residents who receive the tuition exemption were evidence that the law did not discriminate against U.S. citizens.

But in a major victory for opponents of the tuition benefit, the appeals court ruled in September 2008 that the California provision clearly violated federal law. In its opinion, the court took time to rebut the argument that a diversity of recipients in state colleges and universities made the law more legally acceptable, calling it "irrelevant."

Michael Brady, a lawyer for the students who challenged the law, said he did not trust numbers reported by the university that undocumented students were the minority of recipients. But regardless, he argued, "Congress meant to deter the illegals absolutely, and without qualification, from getting the benefit. There is no circumstance under which an illegal alien should receive it."

Supporters of the in-state tuition laws are divided on whether writing the law broadly, in a way that allowed former residents to benefit, was a good idea. Michael A. Olivas, a law professor at the University of Houston and a prominent proponent of such laws, said California lawmakers should have included protections, like those in other states, that prevent out-of-state students from obtaining in-state tuition.

"It's a badly written statute," Mr. Olivas said. But the laws will survive in the courts even with the additional requirement, he continued. "They were dodging a bullet that they didn't need to dodge."

Ms. Macías, the Long Beach administrator, said it was worth granting in-state tuition to all students who spent their high-school years in California, even if the benefit has been widened by accident. "In a way," she said, "what it signifies is that California has made a commitment to its children that if you go to a public high school for three years and graduate, you can go on paying in-state tuition."