

The Good, the Bad, and Undocumented College Students: 2012 State and Federal Developments
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There have been many recent changes in the college law provisions of both accommodationist and restrictionist residency policies. In fact, there have been so many that it is hard to tell the traffic without a road map or Google-map. At the bottom of this note, is such a map, current as of June 30, 2012. Recent activities at the state level include Wisconsin (repealed resident tuition statute), Maryland (passed resident tuition statute; “frozen” while certified for state ballot measure); Rhode Island (state Board responsible for residency tuition policy enacted rule allowing residency tuition in 2012); Illinois (passed state statute allowing schools to award non-state-funded scholarships to the undocumented); California (passed three state statutes: allowing schools to award non-state-funded scholarships, providing state financial assistance, and making special provisions for undocumented student leaders [A.B. 130, 131, and 844]); Connecticut (passed resident tuition statute). While Maryland has already placed the issue on the next statewide ballot, there was an effort in California to do the same before the provisions of the new laws take effect in 2013: David Hill, Both Sides Gear Up for Dream Act Vote in Md.; Expect Campaign to Cost Millions, WASH. TIMES, June 25, 2012, at A18:

<http://www.washingtontimes.com/news/2012/jun/24/both-sides-gear-up-for-dream-act-vote-in-md> ; Paloma Esquivel, Dream Act Opponents Are Pushing to Repeal It, L.A. TIMES, Dec. 18, 2011, at A41: www.latimes.com/news/local/la-me-dreamact-repeal-20111218,0,5614278.story . When the signatures were counted in early January, 2012, there were not enough legitimate signatures to certify the measure to the November, 2012 ballot: Nicholas Riccardi, Dream Act Opponents' Petition Drive Fails, L.A. TIMES, Jan. 7, 2012, at AA5; Don Thompson, Effort to Block California 'Dream Act' Falls Short, SFGATE, Jan. 6, 2012, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2012/01/06/state/n103501S74.DTL> .

In June, 2012, the plaintiff dismissed *Marderosian v. Topinka*, the lawsuit challenging the Illinois in-state tuition law for undocumented students. (XX F. Supp. xxx N.D. Ill. 2012) Case # 12-cv-2262. The dismissal is without prejudice, so under Illinois law, it may be re-filed. ([Attachments](#)) By my count, the only other such restrictionist challenge pending to an undocumented student resident statute is *IRCOT v Texas*, which is idling in Texas State court, and which I predict will be poured out at any time; it was removed to Texas state court some time ago: *IRCOT v Texas*, 706 F. Supp. 2d 760 (S.D. Tex. 2010).

There have been states that have done the opposite: having enacted statutes or policies to prevent the undocumented from receiving resident tuition (redundant, as 1621 and 1623 require affirmative passage of state laws to accord the status), and a small number of states ban them outright, including Alabama, Indiana, and Ohio, which did so in 2011. For these, see Table Two. Although the recent Alabama bill would have restricted even refugees from enrolling—showing how the rush to exclude the undocumented often misses the mark— it has been enjoined by the federal district judge, for now. See *HICA v Bentley* (2011) [Sec 8 (colleges)]. I wrote about this: Michael A. Olivas, Sweet Home Alabama?, InsideHigherEd.com, October 13, 2011, available at:

http://www.insidehighered.com/views/2011/10/13/essay_on_the_alabama_immigration_law_and_higher_education . Following the restraining orders, Alabama went back and passed additional laws, largely

restrictionist, although it did amend the higher education section that had been enjoined by the 11th Circuit. Georgia has also enacted a complex policy: “the State Board of Regents barred illegal immigrants from any University System of Georgia college that has so many applicants they must turn away academically qualified U.S. citizens. The ban applies to: University of Georgia, Georgia State University, Georgia Tech, Georgia Health Sciences University and Georgia College & State University. Illegal immigrants may attend other colleges, including KSU, provided they pay out-of-state tuition. Lawmakers have filed bills to bar illegal immigrants from all of Georgia's public colleges but none have received enough support to become law.” Laura Diamond, *KSU Graduate Colotl to Remain in U.S.*, Atlanta J. Const., May 8, 2012, at 2B; Laura Diamond and Kristina Torres, *Illegal Immigration Law; Senate Passes College Ban*, Atlanta J. Const., March 6, 2012 at 1A.

But challenges to state practices or statutes remain for the opposite theory—in New Jersey (financial aid) and Florida (state residency tuition) to U.S. Citizen residents whose parents are undocumented—are making their way forward. Despite the widespread public attention paid to the practices in the mainstream press and in the immigrants’ rights community, states were parceling resident tuition status and financial aid eligibility on the immigration status of the parents, rather than upon the US citizen-status of their children, who are otherwise eligible for the programs. On October 20, 2011, the Southern Poverty Law Center filed *Ruiz v. Robinson*, which would overturn the state statute and require Florida to extend its in-state tuition rates to citizen residents who qualify, even if their parents were undocumented. When it was discovered that existing New Jersey policy denied state financial aid to a student who is a U.S. citizen, but whose mother was undocumented, suit was filed by the NJ ACLU on this issue in October 24, 2011: *A.Z., a minor, by B.Z., her guardian v. Higher Education Education Student Assistance Authority of New Jersey*. A companion suit has also been filed in New Jersey on this issue, with another student in similar status. *Cortes v. Higher Education Education Student Assistance Authority of New Jersey*. Both New Jersey cases are making their way through the process, as of June, 2012.

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