

(1) S167791 *Martinez et al. v. Regents of the University of California et al.*

Normally, nonresidents of California attending California state colleges and universities must pay out-of-state tuition in addition to fees that California residents must pay. In 2001, the California Legislature enacted Government Code section 68130.5. That statute exempts students, including those “without lawful immigration status,” from having to pay out-of-state tuition if they meet certain requirements.

These requirements include “[h]igh school attendance in California for three or more years,” “[g]raduation from a California high school or attainment of the equivalent thereof,” and, for those without lawful immigration status, “the filing of an affidavit . . . stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.”

In this lawsuit, plaintiffs, United States citizens who were forced to pay out-of-state tuition to attend California state colleges and universities, claim that to the extent section 68130.5 applies to persons not in this country lawfully, it violates (or, to use a term that might be used at oral argument, is “preempted by”) federal immigration law in various ways. If they are correct, then section 68130.5 would be invalid because federal law prevails over state law in this situation. Defendants are officials representing the University of California, the California State University System, and the California Community Colleges.

Previously in this litigation, the trial court ruled in favor of defendants, but the Court of Appeal ruled in favor of plaintiffs on some of their claims. The Supreme Court granted defendants’ petition to review the Court of Appeal opinion.

One federal statute that will probably be discussed extensively at oral argument is section 1623 of title 8 of the United States Code. As relevant here, that statute provides: “Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.”

Plaintiffs argue, and defendants deny, that, when applied to students not lawfully present in the United States, the state statute violates the federal statute because it exempts students on the basis of residence within California from having to pay out-of-state tuition.

The Supreme Court will have to decide whether section 68130.5 violates, or complies with, federal law, including section 1623.