

Raymond Rico
Federal and State Affairs Committee
Hearing on HB 2192
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My name is Raymond Rico; I was born and raised in Kansas City, KS to an immigrant father, and both of my grandparents immigrated to the U.S. on my mother's side. I practice immigration law at the Garcia Immigration Law Firm where I get the chance to see how immigration laws impact the daily lives of immigrants from all over the world. Every day I get to help immigrants navigate the immigration system and if able, adjust their immigration status.

Thus, immigration status is not static, it can change. Granted, at times, there is no line to enter. However, in other instances the line may be decades long. Many immigrants in Kansas are at various stages of the legalization process, many will be able to have their status changed. Perhaps even this year as congress will likely address fixing our federal immigration system this summer.

My career is my vocation, and in my career I have gotten to personally know many undocumented youth. Education is the gateway to the "American Dream" and a college degree is now a virtual requirement for financial security. That is why I stand against HB 2192, an attempt we have seen before, to move in the wrong direction and repeal our in-state tuition law.

Many undocumented students have overcome many barriers you and I have never faced - yet have done everything right and wish to pursue higher education in Kansas, the only place many have ever known. As noted above, the legal process can take a long while. I meet and work with many students who are currently in that line for legal residency. Most students have become fluent in English if they weren't already, have assimilated into the American culture, and consider themselves Kansans.

Sadly, we are debating repeal at a time when the federal government seems primed to consider comprehensive immigration reform. The U.S. Senate and House have a bipartisan effort underway for comprehensive immigration reform, and even this week, the Republican National Committee recommended comprehensive immigration reform as consistent with Republican economic policies that promote job growth and opportunity for all. Immigration reform will address the legal status for those students not currently in a line for legal residency because all signs seem to point to inclusion of the DREAM Act within any reform bill.

The DREAM Act is federal legislation that would allow a path to legalization for youth who arrived as minors, have been in the US for over five years, and complete two years of college or two years in the military. Basically, the same students we're talking about today. To be clear, a path to legalization is something Kansas' in-state tuition bill does not have the power to

do. Only the DREAM Act can provide such a path. Many leaders in Washington of both political parties have specifically stated their support of the DREAM Act recently.

Obviously we're talking about young people here, who are present in Kansas, have grown up here, and will remain here. Kansas has already invested much in their K-12 education. As our population ages, we should prepare all young talented students who want to remain in Kansas to fill the positions that will be most in need. Our young immigrants have been and will continue to sustain Kansas' rural communities, start businesses here, and contribute their talents here. All of us know that people with a college degree on average will earn more in income than those without, and with more income means more contribution in taxes.

As undocumented students cannot receive financial aid, many are already taking only a few classes per semester, but a repeal of in-state tuition will cause students to drop out, decreasing school revenues, and allowing our students to remain uneducated, in a permanent underclass, while remaining in Kansas.

Kansas' in-state tuition law has been challenged in court in large part by Kansas Secretary of State, Kris Kobach and FAIR. Mr. Kobach also challenged California's in-state tuition law, which is nearly identical to Kansas' law. On both occasions, the lawsuits failed. In-state tuition has been upheld as constitutional. It complies with federal law.

The California Supreme Court unanimously ruled that the California law did not improperly make in-state tuition available to undocumented students based on "residence."

In a Kansas federal court, the case *Day v. Sebelius* was dismissed, in part, because the plaintiffs lacked standing to challenge the constitutionality of the Kansas law. The student plaintiffs were not injured by the passage of the in-state tuition law, nor would they benefit from its repeal.

In 1996, Congress enacted Section 1623 of Title 8, or what is commonly referred to as IIRAIRA. Congress could have worded this section to unequivocally ban in-state tuition. However, section 1623 only requires that states extend benefits US citizens to the same extent that they are available to undocumented immigrants. Kansas need not "give" in-state tuition to all U.S. citizens from other states; it satisfies section 505 if the eligibility criteria are based on factors beyond state residency and if Kansas offers U.S. citizens the same opportunity to qualify for in-state tuition under the same criteria. The Kansas law makes any individual – including US citizens who wish to return to Kansas - eligible for in-state tuition if they meet the requirements of K.S.A. § 76-729: three years of high school and graduation from a high school in Kansas. Thus Kansas' law complies with federal law and the constitution, and that's why the courts have rejected legal challenges to the law.

This is no "loophole," it is a recognition from Congress that states may choose to enact tuition equity policies as Kansas and a growing number of states have done, including Colorado

which passed in-state tuition this month. Congress gave states the option to create postsecondary education benefits for undocumented immigrants on par with those of their citizen residents. Thus, it is absolutely not true to say that in-state tuition is something states may not do. Kansas acted in full compliance with federal law when it enacted in-state tuition. To suggest otherwise misreads federal law and ignores legal precedent. It is worth noting that the fiscal note in Colorado's bill states that Colorado stands to gain over 2 million dollars in new state revenue based on tuition paid by students.

It is also important to note that there is another provision of the Kansas' 2004 in-state tuition law that students seek to legalize their immigration status and file an application to begin the process for United States citizenship as soon as such person is eligible to do so. I have helped many students legalize their status and know students who paid in-state tuition in Kansas, who are now legal residents and citizens, now work in Kansas, purchased homes in Kansas, and have remained in Kansas. Today you would never know the difference that at one time they were in a tough situation on their long journey to become American, but Kansas' in-state tuition law helped them achieve their American dream. Students want to legalize their status, want become citizens, take that oath to support and defend the constitution of the United States. It is happening. I wish you could see as often as I do the joy when someone becomes a citizen!

With congress debating immigration reform, and the DREAM Act primed for passage, this is the wrong time to discuss repeal of in-state tuition. But now I'd like to turn to another reason that now is the wrong time to discuss repeal of in-state tuition. I have helped many students apply for DACA, which stands for "Deferred Action for Childhood Arrivals."

Individuals may now request protection from deportation through deferred action if they:

- Came to the United States before their 16th birthday;
- Were between the ages of 15 and 30 and had no valid immigration status on June 15, 2012;
- Have continuously resided in the United States between June 15, 2007 and the present;
- Are currently in school, graduated from high school, obtained a GED, or were honorably discharged from the Armed Forces;
- Have not been convicted of a felony, a "significant" misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Deferred Action is not a new concept, it has been around for ages, and it is an extension of prosecutorial discretion. Prosecutorial discretion is affirmed on page one of the Arizona SB 1070 Supreme Court ruling which states: "Removal is a civil matter, and one of its principal features is the broad discretion exercised by immigration officials, who must decide whether to pursue removal at all." With DACA, the federal government is using its discretion to determine that youth who fit the above criteria are not high priority individuals and that limited resources are best used elsewhere, not to deport valedictorians.

This federal program provides a system for young people, brought to the United States as young children through no decision of their own, who are fundamentally the same as other American students to now pursue their dream of earning a college degree. Because eligible DACA students may request a work permit the federal program enables these students to pursue opportunities for work in their fields of study and gives the states the choice of whether the state will treat the students as equal to all other students. Kansas made the right decision when it enacted a law to ensure tuition equity among all Kansas students. The law enables young people to start on the path of pursuing a career and making a meaningful contribution to our state.

I do not have data to show you what profession these students are most likely to enter into, but I have worked on around 300 cases supporting students seeking the opportunity to get an education and pursue a career. And one thing I always ask them is "what do you want to be?" Among males, the most common answer is a wish to be an engineer. Among females, the most common answer is a wish to be a nurse. A need we have across the country is the need for more bilingual nurses and science, technology, engineering, and math students. With needs in these areas, it does not make sense to stop the education short of any of our talented students, especially when the federal system allows students to use their degrees and work authorization to work in fields that we most need. If given a chance, our undocumented youth wish to contribute their talents here, pursue higher education here, pay taxes and contribute to the Kansas economy. The choice is yours as to whether we have our youth educated, or not. In the interests of Kansas taxpayers and future generations of Kansans, I urge your opposition to this bill and respectfully request the Committee allow current Kansas law to remain intact.