

FLORIDA VOTERS' ATTITUDES TOWARD ALLOWING UNDOCUMENTED STUDENTS TO RECEIVE IN-STATE TUITION AT FLORIDA'S PUBLIC COLLEGES AND UNIVERSITIES

Dr. Lynne Holt*

Background:

The 2014 Florida Legislature is considering measures in both the House and the Senate that would allow Florida public colleges and universities to charge certain undocumented immigrants in-state tuition.¹ Students who are not eligible to pay in-state tuition rates generally pay several times more in out-of-state tuition to attend those institutions.²

If state legislation is enacted this year, Florida will join 17 states, including California, Texas, and New York, which currently charge in-state tuition for that population by statute.³ Moreover, several state university systems, including those in Hawaii, Michigan, and Rhode Island, currently authorize in-state tuition rates for that population by administrative decree.⁴ The push for in-state tuition for undocumented immigrants has yet to be universally endorsed. In several states including Arizona, Georgia, Indiana, Ohio, Montana, and South Carolina, granting in-state tuition rates to undocumented immigrants is specifically prohibited.⁵

Even in the absence of authorizing legislation or action by the Florida Board of Governors, Florida International University and Miami-Dade College opted to offer partial tuition waivers to students participating in President Obama's administrative initiative, the Deferred Action for Childhood Arrivals (DACA) program.⁶ President Obama explained the reasoning for his initiative in reference to the potential beneficiaries:

These are young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents -- sometimes even as infants -- and often have no idea that they're undocumented until they apply for a job or a driver's license, or a college scholarship.⁷

DACA enables eligible undocumented young people who are in this country to defer deportation for two years, subject to renewal, and also receive authorization to work. To be eligible, one must submit a request to the U.S. Citizenship and Immigration Services (USCIS) and meet certain conditions, including being younger than 16-years-old upon arrival in the United States. USCIS started accepting requests for deferred action in August 2013. Absent federal legislation, DACA provides some legal stability for undocumented immigrants, universities that accept them as students, and employers who hire them. To date, almost 611,000 deferral request have been approved, with over 20,000 of them in Florida.⁸

*Policy Analyst, affiliated with the Bob Graham Center for Public Service, University of Florida

There has been mounting pressure for universities such as the University of South Florida and the University of Florida to grant in-state tuition rates to eligible undocumented immigrants.⁹ In the past, one legislative chamber or the other passed bills to allow in-state tuition for undocumented immigrants, but such legislation has yet to be passed by both chambers and approved by a governor. In the lead up to the 2014 legislative session, Speaker Will Weatherford expressed support for legislation that would allow all students to qualify as residents for tuition purposes provided they attend a Florida secondary school for three consecutive years immediately before graduating from high school and apply for admission to college within 24 months after graduation. According to Senate President Don Gaetz, the Senate is almost evenly divided between supporters and opponents of an in-state tuition policy for undocumented immigrants.¹⁰

Strategies such as state legislation and DACA have been undertaken as a result of a federal law passed in 1996 which prohibits undocumented immigrants from obtaining in-state tuition rates at public institutions of higher education.¹¹ Another provision of federal law allows states that enacted laws after August 22, 1996 to provide public benefits (which include in-state tuition) to undocumented immigrants but it does not appear to overturn the general federal statutory prohibition.¹²

If the Florida Legislature decides to enact legislation, a recent decision in federal district court may provide some guidance on this issue. The Florida State Board of Education and the Florida Board of Governors each promulgated rules establishing requirements governing residency for tuition purposes.¹³ In *Ruiz v. Robinson*, plaintiffs from Florida challenged the rules, claiming they were unconstitutional, because they violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.¹⁴ The plaintiffs, all born in the United States, were charged out-of-state tuition to attend Florida public post-secondary institutions because they were unable to establish their parents' federal immigration status. The court enjoined the two boards from interpreting the rules in a manner that would require dependent students who are U.S. citizens to establish the federal immigration status or legal presence of their parents. This injunctive relief took effect with the Spring 2013 academic term.¹⁵

Public Support for Legislation

It is unclear whether public opinion will lead Florida to adopt any in-state tuition legislation for undocumented immigrants. However, there is at least some indication that the public in general and voters in particular support such legislation.

A January 2014 survey conducted by the Bureau of Economic and Business Research (BEBR), in cooperation with the Bob Graham Center for Public Service at the University of Florida, polled 1,006 registered Florida voters. The survey posed questions gauging Florida voters' opinions on an array of public policies before the Legislature. One question asked: "Would you support allowing undocumented students to receive in-state tuition at Florida's public colleges and universities if they attended a Florida high school for at least three years and graduated from a Florida high school?"¹⁶ Over 62% of respondents supported the idea, approximately 33 % opposed it, and over 4% did not respond to the question or said they did not know.

In terms of party identification, the 62% supporting the issue was composed of 46% Democrats, 29% Republicans, and 18% Independents. The remaining supporters did not provide party affiliation. With respect to the 33 % of voters who opposed the measure, over twice as many respondents reported being Republican (55%) as opposed to Democrat (21%), with almost a third of respondents identifying themselves as Independents. Of total respondents, 77% of Democrats, 49% of Republicans, and 61% of Independents expressed support for in-state tuition for undocumented immigrants. Opposition to that idea was expressed by 19% of Democrats, 48% of Republicans, and 32% of Independents. Republicans were more split than Democrats and Independents in their position on this issue.

In terms of age, more supporters for the issue came from respondents 60 years of age and older(55%) than those 18 to 60 years of age (45%). However, opposition to the issue did not reflect much difference between the two age cohorts – 51% for voters 18 to 60 years old and 49% for voters older than 60 years old. Gender, however, did matter for those supporting the measure – with 65% of women in favor as opposed to 60% of men.

Three-fourths of all undocumented immigrants in the United States come from Latino or Hispanic backgrounds. According to the Pew Research Center, an estimated 950,000 undocumented immigrants resided in Florida in 2012.¹⁷ Unfortunately, the number of Hispanics polled by BEBR was too small to draw any definitive conclusions about their opinion on the in-state tuition issue.

In their response to the question of allowing in-state tuition to be offered to undocumented immigrants, Florida voters appear to take a position similar to that of voters elsewhere. For example, a year ago, a survey by the Field Poll of registered voters in California found 60% of voters supported and 36% opposed allowing undocumented students to pay the same in-state tuition fees at the state’s public universities as other residents. The remaining 4% had no opinion. Democrats and Independents supported the proposal, whereas Republicans opposed it by a margin of 53% to 45%.¹⁸

A survey of Ohio voters conducted in 2013 asked about their stance with respect to the DREAM Act which would provide a legal pathway to citizenship for those who came to this country without documentation as children.¹⁹ That pathway would involve joining the military or enrolling in a college or university. In response to the question, 59% favored such a policy.²⁰ Like Florida, Ohio has been a swing state in past presidential elections and does not have a statutory in-state tuition policy for undocumented immigrants.

One might use other state-level polls on similar questions to ground these polling results. For example, with respect to gauging public opinion on the in-state tuition rate issue, in 2013 BEBR posed the same question to adult Floridians (not necessarily voters) as it did this year to registered voters. That survey found 50% supported that measure whereas 45% opposed it.²¹ Another poll attempted to gauge support for the public policy underlying the DREAM Act. That poll, conducted by the Public Religion Research Institute (PRRI) in conjunction with the Brookings Institute, revealed that 64% of Floridians were in favor of and 33% against such a proposal.²² Those percentages were almost the same as the percentages of Floridians supporting and opposing in-state tuition rates for undocumented students in the 2014 BEBR/Graham Center poll. Of course, there were differences in the polls. For one, registered

voters were surveyed in the 2014 BEBR/ Graham Center poll discussed above, whereas adult Floridians (but not necessarily voters) were polled in the PRRI poll. Moreover, the question about respondents' views on DREAM, which addresses a more controversial matter – that of granting citizenship – is not the same as the question about their attitude toward in-state tuition.

Conclusion

While momentum for legislation granting in-state tuition for undocumented immigrants may gain traction in 2014, any such measure in Florida will unfold against the backdrop of the absence of federal legislation on immigration reform; ongoing implementation of DACA; the growing number of states lending support to such a measure; and the decision in *Ruiz v. Robinson* in favor of the plaintiffs.

Florida voters appear to support adoption of a policy that would make tuition more affordable for eligible undocumented immigrants. However, when party affiliations are included in this consideration, Florida's Republican voters appear more divided in their attitudes toward such a measure (49% in favor and 48% opposed).

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Endnotes

¹ For example, 2014 H.B. 851 and 2014 S.B. 428 require the applicant to meet certain requirements related to high school attendance, completion, and documentation submittal. Both bills also authorize students residing in Florida to pay in-state tuition if that person marries a person who qualifies as a resident for in-state tuition.

² For example, in-state tuition and fees in 2013-2014 at the University of Florida total \$6,263, compared to \$28,540 for out-of-state tuition and fees, http://www.ir.ufl.edu/OIRAPPS/commondataset/g_annexpense.aspx (accessed February 25, 2014). In-state tuition per credit hour for an AA degree at Miami-Dade College is \$82.78 in 2013-2014 but an additional \$248.33 for out-of-state tuition, totaling \$331.11, <http://www.mdc.edu/main/academics/tuition.aspx> (accessed February 25, 2014).

³ In addition to California, New York, and Texas, the states include Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, Oregon, Utah, and Washington. Oklahoma and Wisconsin also enacted legislation but ceased supporting through the budgetary process in-state tuition rates for undocumented immigrants in 2008 and 2011, respectively. See Ann Morse, National Conference of State Legislatures, "In-State Tuition and Unauthorized Immigrant Students," Revised, February 19, 2014, <http://www.ncsl.org/research/immigration/in-state-tuition-and-unauthorized-immigrants.aspx> (accessed February 26, 2014).

⁴ Ibid.

⁵ For statutory citations, see "Table Two: States Restricting Access to Postsecondary Education, 2012," <https://www.law.uh.edu/ihelg/documents/Statute-TableTwo.html>. Colorado's statute also banned in-state tuition for undocumented immigrants but a revision in 2013 (the addition of 3(i) to CRSA § 24-76.5-103) now authorizes it to be offered under specified conditions.

⁶ DACA is the product of a memorandum from the Obama Administration signed in June 2013. The program does not confer citizenship or legal status to individuals whose deferral requests have been approved.

⁷ The White House, Office of the Press Secretary, "Remarks by the President on Immigration," June 15, 2012, <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration> (accessed February 26, 2014).

⁸ See USCIS, “Deferred Action for Childhood Arrivals Process Through Fiscal Year 2014 First Quarter, Data of December 31, 2013,” Published February 6, 2014, <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA-06-02-14.pdf> (accessed February 15, 2014). Florida ranks fifth among states, after California, Texas, Illinois, and New York, in the number of DACA requests accepted and approved.

⁹ Kathleen McGrory, “Florida Legislature May Back In-State Tuition for Undocumented Immigrants,” Miami Herald, January 18, 2014, http://www.flbog.edu/pressroom/newsclips_detail.php?id=28173 (accessed February 15, 2014).

¹⁰ Denise-Marie Ordway, “Florida May Allow Undocumented Students to Pay Lower College Tuition,” Orlando Sentinel, February 14, 2014, http://articles.orlandosentinel.com/2014-02-14/features/os-florida-tuition-undocumented-students-20140214_1_undocumented-students-college-tuition-in-state-tuition (accessed February 15, 2014).

¹¹ See 8 U.S.C. § 1623 (a): “In general 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.”

¹² See 8 U.S.C. § 1621(d) and interpretation provided by FinAid, “Financial Aid and Scholarships for Undocumented Students,” <http://www.finaid.org/otheraid/undocumented.phtml> (accessed February 17, 2014).

¹³ The State’s Board of Education Rule is 6A-10.044 and the Board of Governor’s Rule is 72.1001, F.A.C.

¹⁴ 892 F. Supp. 2d 1321 (S.D. Fla. 2012).

¹⁵ Final Judgment, *Ruiz v. Robinson*, Docket Document 109, 1:11-cv-23776-KMM, Federal District Court, Southern District of Florida (October 2012). A good summary of the case is found in House of Representatives Staff analysis, CS/HB 851, February 21, 2014, <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0851a.HEWS.DOCX&DocumentType=Analysis&BillNumber=0851&Session=2014> (accessed February 25, 2014).

¹⁶ The requirements associated with this question are similar to those included in several bills before the 2014 Florida Legislature.

¹⁷ Jeffrey S. Passel, D’Vera Cohn, Ana Gonzalez-Barrera, “Population Decline of Unauthorized Immigrants Stalls, May Have Reversed,” September 23, 2013, <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf> (accessed February 24, 2014).

¹⁸ Mark DiCamillo and Mervin Field, “Near-Universal Support for Allowing Long-Term Undocumented Residents to Stay and Become Citizens Under Certain Conditions. Majority Also Backs Granting California Driver’s Licenses to These Residents,” Release #2439, February 22, 2013, <http://media.sacbee.com/smedia/2013/02/21/17/21/1twMb.So.4.pdf> (accessed February 26, 2014).

This survey was conducted February 5-17, 2013, with a sample of 834 registered voters, and included an array of questions related to undocumented California residents.

Caution is needed in comparing the responses in both states: The question posed to California voters occurred in February 2013 before DACA took effect; California is one of 17 states with laws to authorize in-state tuition for undocumented students; Hispanics in California have different ethnic origins than those in Florida; and the question to California voters, in contrast to Florida voters, included no conditions based on high school attendance and graduation. The qualifiers governing the question posed to Florida voters may have persuaded a certain percentage of otherwise less supportive voters to indicate their support.

¹⁹ Robert P. Jones, Daniel Cox, and Juhem Navarro-Rivera, “The 2013 Ohio Values Survey,” http://publicreligion.org/site/wp-content/uploads/2013/09/2013_OHIO_VALUES_SURVEY.V5.pdf (accessed February 24, 2014). This survey was conducted by the Public Religion research Institute based on telephone interviews with 1,001 adults including 883 registered voters.

²⁰ *Ibid.*, p. 9.

²¹ That poll was conducted March 1-31, 2013 and involved a sample of 608 respondents. The question on in-state tuition was added to a monthly survey of Floridians conducted by BEBR. See http://www.bobgrahamcenter.ufl.edu/sites/default/files/press_release_legislative_issues_final.pdf.

²² Robert P. Jones, Daniel Cox, and Juhem Navarro-Rivera, “What Americans (Still) Want from Immigration Reform,” Public Religion Research Institute, November 25, 2013, http://publicreligion.org/site/wp-content/uploads/2013/11/2013.Immigration_Phase2.WEB-copy.pdf (accessed February 26, 2014).