

The DREAM Act: A Return to States' Rights

SEPTEMBER 2010

The DREAM Act is a bill that would provide a path to citizenship for undocumented students who have been in the U.S. since childhood if they attend college or perform military service. The bill also would repeal section 505 of the Illegal Immigrant Reform and Immigrant Reconciliation Act of 1996 (IIRIRA), which prohibits states from providing in-state tuition to undocumented student who are residents of the state unless they offer the same benefit to U.S. citizens in the same circumstances — even when those U.S. citizen students no longer reside in their state. **The DREAM Act would not require states to provide in-state tuition to undocumented students but rather would let states decide whether it was in their interests to do so.**

■ Current Law Attempts to Deny States the Ability to Determine Eligibility for In-State Tuition

Section 505 of IIRIRA, which prohibits states from providing in-state tuition to undocumented residents unless they provide the same benefit to out-of-state U.S. citizens, attempts to block state laws regarding who is eligible for in-state tuition. This is why groups from the National Conference of State Legislatures (NCSL) to the ACLU (www.aclu.org/files/assets/ACLU_Letter_of_Support_for_the_Dream_Act.pdf) support the repeal of section 505. According to the NCSL, "It is the position of the National Conference of State Legislatures that this underlying federal preemption of state authority should be amended or repealed by federal action on this issue with authority for the determination of eligibility for post-secondary education benefits restored to the states."¹

■ The DREAM Act Would Not Force States to Provide In-State Tuition to Undocumented Students

The DREAM Act simply restores the *choice* to states to determine eligibility for in-state tuition — penalty-free. The DREAM Act *does not require* states to provide in-state tuition to any undocumented immigrants. If the DREAM Act passes, each state will have the right to determine for itself whether or not to extend undocumented students this benefit. By eliminating a "one-size-fits-all" directive to states, they are free to debate the benefits of maximizing educational opportunities for all students in their state.

■ Federal Law Penalizes States for Making All State Residents Eligible for In-State Tuition

Ten states (California, Illinois, Kansas, Nebraska, New Mexico, New York, Texas, Utah, Washington, and Wisconsin) currently have laws permitting certain undocumented students who have attended and graduated from in-state primary and secondary schools to pay the same tuition as their classmates at public institutions of higher education.² These states recognize that undocumented students should not be punished based on their parents' decisions to bring them to the U.S. and that higher education is critical to young people achieving their fullest potential and becoming productive members of society.

FOR MORE INFORMATION, CONTACT

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¹ "Federal Preemption of State Postsecondary Tuition," <http://www.ncsl.org/Default.aspx?TabID=773&tabs=855,22,634#634>.

² Laws in these ten states require students to have attended a school in the state for a set number of years, graduated from high school in the state, and signed an affidavit stating that they have either applied to legalize their status or will do so as soon as eligible.



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