

No. 26-5303

In the United States Court of Appeals
for the Sixth Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

KENTUCKY COUNCIL ON POSTSECONDARY EDUCATION, *ET AL.*,
Defendants-Appellees

and

KENTUCKY STUDENTS FOR AFFORDABLE TUITION,
Intervenor-Defendant-Appellant.

On Appeal from the United States District Court for the
Eastern District of Kentucky at Frankfort, Case No. 3:25-cv-00028
(The Hon. Gregory F. Van Tatenhove)

**BRIEF OF AMICI CURIAE NATIONAL EDUCATION
ASSOCIATION AND KENTUCKY EDUCATION ASSOCIATION
IN SUPPORT OF INTERVENOR-DEFENDANT-APPELLANT
AND URGING REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(4)(a), Amici Curiae National Education Association (NEA) and Kentucky Education Association (KEA) state that they are nonprofit corporations. Amici further state that they are not subsidiaries of any corporation, nor do they have any stock that can be owned or held by a publicly held corporation.

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STATEMENT OF AMICI CURIAE

NEA and KEA have a strong interest in this appeal, which involves a state’s ability to extend in-state college tuition rates to its own high school graduates who immigrated to the United States without authorization (sometimes referred to as “undocumented” students).¹ NEA is the oldest and largest educational association in the United States. Founded in 1857, NEA represents nearly three million educators, including teachers, counselors, nurses, and education support professionals throughout the country. NEA’s membership includes thousands of aspiring educators, many of whom are enrolled in higher education on their path to teaching careers. NEA’s mission is to “advocate for education professionals” and to work collectively to “fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world.”²

¹ Amici submit this brief with the parties’ consent. Fed. R. App. P. 29(a)(2). No party’s counsel authored the brief in any part or contributed money intended to fund the brief’s preparation or submission, and no person—other than amici, their members, or counsel—contributed money intended to fund the brief’s preparation or submission. *Id.* 29(a)(4)(E).

² Nat’l Educ. Ass’n, *Our Mission, Vision, & Values* (2006), <https://www.nea.org/about-nea/mission-vision-values>.

This mission encompasses supporting immigrants in education, including those who are undocumented. Many NEA members are immigrants, some of whom are undocumented but have received temporary relief and work authorization through programs such as Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS), or once were undocumented before obtaining permanent lawful status. NEA members also serve the hundreds of thousands of students in the United States who are undocumented—including those with DACA and TPS—approximately 90,000 of whom complete high school each year.³ NEA supports these students’ access to higher education, including the opportunity to pay in-state tuition in the states where they graduate from high school.

KEA is NEA’s Kentucky affiliate, comprised of 44,000 educators and education support professionals in Kentucky who form the Commonwealth’s largest labor organization. KEA’s mission is to “unite, organize and empower [its] members to advocate for themselves and to

³ Jeanne Batalova, *Graduating into Uncertainty: Unauthorized Immigrant Students in U.S. High Schools*, Migration Pol’y Inst. 1 (Feb. 2026)

<https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-hs-grads-fact-sheet-2026-final.pdf>.

ensure a quality public education for every Kentucky student.”⁴ Like NEA, KEA is committed to supporting the immigrants who are among its members and the students and families they serve.

INTRODUCTION AND STATEMENT OF THE CASE

This case presents questions about whether federal laws limiting states’ ability to offer benefits to undocumented immigrants and other non-citizens preempt a Kentucky regulation that permits some such graduates of Kentucky high schools to pay in-state tuition at public colleges and universities.

Two 1996 laws relating to “welfare and immigration” are central to this question: the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). 8 U.S.C. § 1601, *et seq.* These laws were meant to embody a national immigration policy rooted in the principle of “self-sufficiency,” in which immigrants “rely on their own capabilities” and public benefits do not encourage unauthorized immigration. *Id.* §§ 1601(1)–(2). In relevant part, PRWORA allows only a

⁴ Ky. Educ. Ass’n, *Mission, Vision, and Values*, <https://www.kea.org/about/mission-vision-values> (last visited July 15, 2026).

narrow class of “qualified” non-citizens to receive “State or local public benefits,” defined to include any “postsecondary education . . . benefit.” 8 U.S.C. § 1621(a), (c). States only may allow individuals who are “not lawfully present”—the undocumented, even if they have DACA or TPS—to receive “State or local public benefits . . . through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d). IIRIRA provides that individuals who are not lawfully present “shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit . . . without regard to whether the citizen or national is such a resident.” 8 U.S.C. § 1623.

Almost thirty years later, in February of 2025, President Trump signed two executive orders that directed agency heads to take action to enforce compliance with PRWORA and IIRIRA. *See* Exec. Order 14,218 (“Ending Taxpayer Subsidization of Open Borders”), 90 Fed. Reg. 10,581 (Feb. 25, 2025); Executive Order 14,287 (“Protecting American Communities From Criminal Aliens”), 90 Fed. Reg. 18,761 (May 1, 2025). In June of 2025, the United States sued Kentucky officials and the

Kentucky Council on Postsecondary Education (KCPE), claiming that KCPE's regulation permitting certain undocumented or visa-holding Kentucky high school graduates to avail themselves of in-state tuition, 13 Ky. Admin. Regs. 2:045 § 8(4)(a), violates the Supremacy Clause. Am. Compl., R.4, PageID # 1–13. Rather than defending its regulation, KCPE joined the United States in seeking to invalidate it through a joint motion for entry of a consent decree. Mot. for Entry of Consent J., R.24, PageID # 1–3.

The district court granted the motion over the objection of an association of immigrant students that intervened to defend the law, Kentucky Students for Affordable Tuition (KSAT). Op. & Order, R.57, PageID # 1–22. The court first assessed whether the privately negotiated agreement before it presented a dispute within the court's jurisdiction. Op. & Order, R.57, PageID # 6. Relevant to this brief, the court held that it did because, among other things, the decree "furthers the objectives" of the laws underlying the suit, *i.e.*, PRWORA's and IIRIRA's promotion of immigrants' self-sufficiency and reducing the draw of public benefits. Op. & Order, R.57, PageID # 8 (citing 8 U.S.C. § 1601).

The district court then considered whether equitable principles supported the decree's entry, probing if it was "fair, adequate, and reasonable," and consistent with the "public interest." Op. & Order, R.57, PageID # 9 (quotation omitted). The court held that even though the decree violated state law by allowing KCPE to immediately terminate a regulation, entering it was necessary to remedy a federal law violation. Op. & Order, R.57, PageID # 16–17. Specifically, the court held that Section 8(4)(a) violated PRWORA's bar on benefits to unqualified non-citizens, 8 U.S.C. § 1621(a), and did not fall within the exception for benefits provided by "State law," *id.* § 1621(d). Op. & Order, R.57, PageID # 17–21. The court rejected KSAT's argument that Section 8(4)(a) had "force of law" and thus met this exception, construing PRWORA to contain "a broad prohibition" with "a limited exception," based in part on Congress's purpose of encouraging immigrants' "self-sufficiency" and "rel[iance] on their own capabilities," 8 U.S.C. §§ 1601(1)–(2). Op. & Order, R.57, PageID # 19. The court did not go on to address IIRIRA.

NEA submits this brief to provide background relating to the enactment of Section 8(4)(a) and to explain how its broadening of access to higher education fulfills Congress's goal of promoting immigrants' self-

sufficiency.⁵ Moreover, invalidating Section 8(4)(a) contravenes the public interest because it imprudently erases an important avenue for undocumented students' advancement and for Kentucky to invest in its students and communities.

ARGUMENT

The district court erroneously rested aspects of its decision to enter the consent decree on the premise that eliminating undocumented students' access to in-state tuition comports with Congress's aim in PRWORA and IIRIRA of promoting immigrants' self-sufficiency. This outcome is inconsistent with the public interest.

This was wrong, first, in the context of Section 8(4)(a)'s adoption. Section 8(4)(a) is one of many state laws that has provided in-state tuition to undocumented graduates of the state's high schools, undisturbed by the federal government for years. These laws were designed against the backdrop of PRWORA and IIRIRA, and their longstanding operation is harmonious with those statutes' goals.

⁵ This brief addresses how Section 8(4)(a) relates to Congress's stated goals, not whether the district court rightly considered and weighed these statutory purposes in its analysis of Section 1621(d)'s meaning.

Second, Section 8(4)(a) reflects an investment in individual students that enables them to lead productive lives that are personally fulfilling and professionally and financially rewarding. Through this, undocumented students may become more self-sufficient and better able to support their families.

Finally, Section 8(4)(a) represents an investment in Kentucky's education system and in its economy by expanding the ability of all children to achieve and contribute at their highest level. Because of this, eliminating Section 8(4)(a) through approval of the consent decree is contrary to the public interest.

These reasons, among others, support reversal.

I. Many states, including Kentucky, equalized access to in-state tuition for undocumented students against the backdrop of PRWORA and IIRIRA.

Over 13 million people who immigrated without authorization are estimated to live in the United States.⁶ Despite lacking proper

⁶ Julia Gelatt, et al., *Changing Origins, Rising Numbers: Unauthorized Immigrants in the United States*, Migration Pol'y Inst. 1 (Oct. 2025), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-fact-sheet-2025_FINAL.pdf. The Migration Policy Institute's October 2025 estimate of 13.7 million unauthorized immigrants is based on data from mid-2023. *Ibid.*

documentation, these immigrants are an integral part of American communities. The vast majority of the unauthorized (or undocumented) immigrant population has lived in the country for at least five years and nearly half for more than 20 years.⁷ Many—nearly thirty percent—have formally sought and received the government’s temporary forbearance from removal pursuant to programs such as DACA and TPS.⁸ Importantly, these programs also provide recipients the ability to obtain work authorization and thus to work lawfully in the United States.⁹

The bulk of working-aged undocumented immigrants have jobs, more than 200,000 of which are in elementary and secondary schools.¹⁰ Significantly, as of July 2026, it is estimated that more than 425,000 teaching positions are either unfilled or filled by teachers not fully certified for their assignments, representing one in eight of all teaching positions nationwide.¹¹

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Id.* at 6.

¹¹ Tiffany Tan, et al., *State Teacher Shortages 2026 Update*, Learning Pol’y Inst. (July 6, 2026), <https://learningpolicyinstitute.org/product/state-teacher-shortages-vacancy-resource-tool-2026>.

Undocumented children are also an integral, if small, part of K–12 education. Indeed, the vast majority of the country’s approximately one million undocumented school-aged children (ages 5 to 18) are enrolled in school.¹² Around 90,000 of these children complete their schooling each year, with 75,000 receiving high school diplomas.¹³

In Kentucky specifically, there are about 6,000 school-aged undocumented children, with 5,000 enrolled in school.¹⁴ Although there are over 227,000 undergraduate students in Kentucky,¹⁵ only around 2,000 undocumented college-aged adults (ages 19 to 24) are enrolled in school.¹⁶

There is longstanding public awareness of and sympathy for the situation of children without lawful immigration status,¹⁷ who are

¹² Migration Pol’y Inst., *Profile of the Unauthorized Population: United States*, https://www.migrationpolicy.org/data-tool/unauthorized-immigrants/us#education_and_language (last visited July 15, 2026).

¹³ Batalova, *supra* n.3, at 1.

¹⁴ Migration Pol’y Inst., *Profile of the Unauthorized Population: Kentucky*, <https://www.migrationpolicy.org/data-tool/unauthorized-immigrants/ky> (last visited July 15, 2026).

¹⁵ Ky. Council on Postsecondary Educ., *2026 Progress Report 17* (May 13, 2026), <https://cpe.ky.gov/data/reports/2026progressreport.pdf>.

¹⁶ Migration Pol’y Inst., *Profile of the Unauthorized Population: Kentucky*, *supra* n.14.

¹⁷ See, e.g., Stephen Nelson, et al., *Administrative Dream Acts and Piecemeal Policymaking: Examining State Higher Education Governing*

excluded from many public programs, including under the relevant parts of PRWORA and IIRIRA. Federal legislators considered creating a pathway to citizenship for undocumented youth and to eliminate IIRIRA's limitations on in-state tuition in the 2001 Development, Relief, and Education for Alien Minors (DREAM) Act, S. 1291, 107th Cong. (2001), but the DREAM Act failed then and stalled upon later reintroductions as well.¹⁸

Against the backdrop of PRWORA, IIRIRA, and the failure of the DREAM Act, many states began adopting measures—sometimes referred to as “tuition equity”—that enable undocumented students to access in-state tuition alongside their classmates who have lawful status.¹⁹ In

Board Policies Regarding In-State Tuition for Undocumented Immigrant Students, 28 Geo. Immigr. L. J. 555, 557 (2014) (describing official efforts to address undocumented students' concerns); Lydia Saad, *Surge in U.S. Concern About Immigration Has Abated*, Gallup (July 11, 2025), <https://news.gallup.com/poll/692522/surge-concern-immigration-abated.aspx> (showing, among other things, that support for undocumented immigrants brought to the United States as children is on an upswing, with 85% of Americans supporting a pathway to citizenship for this group in 2025).

¹⁸ See Nelson, *supra* n.17, at 567–68; Kristina Rogan, *Defining Residency: In-State Tuition Implications for United States Citizens Who Are Children of Undocumented Immigrant Parents*, 41 Seton Hall Leg. J. 177, 185–86 (2017).

¹⁹ Rogan, *supra* n.18, at 186–187.

2001, Texas became the first state to do so through the bipartisan Texas Dream Act, which allowed students to access in-state tuition if, among other things, they graduated from a Texas high school. *See* Tex. H.B. 1403, 77th Leg., R.S. (2001), codified as amended at Tex. Educ. Code §§ 54.052–053. Other states soon followed suit. At the peak of this movement, 25 states and the District of Columbia offered in-state tuition to undocumented students.²⁰

These laws have remained on the books—undisturbed by challenges from the federal government—for over two decades. Since early 2025, however, that number has dropped to 20 (as of this writing) due to state repeals and consent judgments like the one at issue here.²¹

Kentucky’s story tracks this arc. In 2002, KCPE, exercising authority delegated to it by the Kentucky legislature, *see* Ky. Rev. Stat. Ann. 164.020(8)(a), extended in-state tuition to any person who “graduated from a Kentucky high school and . . . [i]s an undocumented alien” or who holds a particular visa (or is the dependent of such a visa-

²⁰ Higher Ed Immigr. Portal, *Portal to the States*, <https://www.higheredimmigrationportal.org/states> (last visited July 15, 2026).

²¹ *Ibid.*

holder). *See* 29 Ky. Admin. Reg. 749-751 (Sept. 2002), now codified at 13 Ky. Admin. Regs. 2:045 § 8(4)(a)–(c). Section 8(4)(a) classifies an undocumented student as a “Kentucky resident” for tuition purposes based on their graduation from a Kentucky high school and immigration status—not on residency itself. Lawmakers have introduced bills that would effectively reverse the regulation, but they have not passed. *See, e.g., AN ACT relating to immigration*, H.B. 352, 2025 Ky. Leg. (Feb. 2025) (introduced); *AN ACT relating to compliance with state and federal law*, H.B. 231, 2022 Ky. Leg. (Jan. 2022) (introduced).

Thus, Section 8(4)(a) has remained in place for more than two decades, with the Kentucky legislature unwilling to alter the legal landscape and without legal challenge—disrupted only by the Justice Department’s sudden invocation of the federal government’s preemptive interests.

II. Tuition equity for undocumented students promotes immigrants’ self-sufficiency.

By allowing students to pay in-state tuition, Kentucky makes it more likely that those students will attend the Commonwealth’s colleges and universities. As detailed below, higher education is associated with a number of positive outcomes—enhanced earnings, wellbeing,

stability—that promote some of the very goals that Congress articulated in enacting PRWORA and IIRIRA: enhancing immigrants’ self-sufficiency and reliance on their own resources. *See* 8 U.S.C. §§ 1601(1)–(2). Section 8(4)(a) thus operates in harmony with the federal regime and promotes the public interest.

There can be little doubt that in-state tuition makes higher education significantly more affordable and accessible. The average out-of-state tuition cost for students at four-year public colleges and universities in Kentucky was \$26,640 in 2025, whereas the average in-state tuition cost was \$11,299.²² This \$15,000 difference is meaningful, representing nearly a quarter of the median annual household income of \$64,526 in Kentucky.²³ This is all the more significant for undocumented students because “many . . . come from low socioeconomic backgrounds,” and money is often a barrier to attendance—especially because they are

²² Melanie Hanson, *Average In-State vs. Out-of-State Tuition*, Educ. Data Initiative (Feb. 2, 2025), <https://educationdata.org/average-in-state-vs-out-of-state-tuition>.

²³ U.S. Census Bureau, *Kentucky*, <https://data.census.gov/profile/Kentucky?g=040XX00US21#income-and-poverty> (last visited July 15, 2026).

generally ineligible for government-sponsored financial aid.²⁴ Unless these students can pay the in-state rate, college may be beyond their reach.²⁵

It is unsurprising, then, that several reports and studies have shown that access to in-state tuition increases the likelihood or incidence of undocumented students' enrollment in higher education.²⁶ The perception of college affordability has been shown to impact the

²⁴ Amy Nunez & Gretchen Holthaus, *In-State Tuition for Undocumented Students: A Policy Analysis*, 2017 J. of the Student Pers. Ass'n at Ind. Univ. 47–48.

²⁵ Leslie Villegas & Madeleine Rodriguez, *The Push to Make College (More) Unaffordable for Undocumented Students*, New Am. (Oct. 31, 2025), <https://www.newamerica.org/insights/the-push-to-make-college-more-unaffordable-for-undocumented-students>.

²⁶ Christian Penichet-Paul, *Eliminating Barriers to a Higher Education for Undocumented Students Is an Urgent Need*, EdTrust (Feb. 2023), <https://edtrust.org/blog/eliminating-barriers-to-a-higher-education-for-undocumented-students-is-an-urgent-need>; Catalina Amuedo-Dorantes & Chad Sperber, *In-State Tuition for Undocumented Immigrants and its Impact on College Enrollment, Tuition Costs, Student Financial Aid, and Indebtedness*, 49 Reg'l Sci. and Urb. Econ. 11, 14 (Sept. 2014); Robert Bozick, et al., *Non-citizen Mexican Youth in US Higher Education: A Closer Look at the Relationship Between State Tuition Policies and College Enrollment*, 50 Int'l Migration Rev. 864, 879–880 (2016); Stella M. Flores, *State Dream Acts: The Effect of In-State Resident Tuition Policies and Undocumented Latino Students*, 33 Rev. of Higher Educ. 260 (2010).

likelihood that students plan to attend college²⁷ and that they actually enroll.²⁸ Access to in-state tuition also tends to reduce delays in starting college, which increases the odds of degree completion (and speeds students' access to the lifetime financial rewards of higher education, *see infra*, pp. 17–18).²⁹ Further, paying in-state tuition also gives students a better chance to focus on their studies once enrolled. One analysis has found that paying in-state tuition reduces students' need to work to support their tuition and living costs by many hours per week.³⁰

The opportunity to attend institutions of higher learning pays off, leaving students better positioned to earn higher salaries and thus to support themselves and their families. The impact of higher education on

²⁷ Erin Dunlop Velez & Laura Horn, *What High Schoolers and Their Parents Know About Public 4-Year Tuition and Fees in Their State*, U.S. Dep't of Educ., Inst. of Educ. Scis. 13 (Oct. 2018), <https://nces.ed.gov/pubs2019/2019404.pdf>.

²⁸ Brian Freeman & Sandra Wilson, *College Affordability Views and College Enrollment*, U.S. Dep't of Educ., Inst. for Educ. Scis. 2 (Jan. 2022), <https://nces.ed.gov/pubs2022/2022057.pdf>.

²⁹ Rajeev Darolia & Stephanie Potochnick, *Educational “When,” “Where,” and “How” Implications of In-State Resident Tuition Policies for Latino Undocumented Immigrants*, 38 Rev. of Higher Educ. 507, 523, 530 (2015).

³⁰ Wil del Pilar, *Crushed Dreams and Broken Promises, Supreme Court Edition*, EdTrust (July 2, 2020), <https://edtrust.org/blog/crushed-dreams-and-broken-promises-supreme-court-edition>.

economic possibility is clear: the median weekly earnings for those with a high school diploma is \$930, whereas the median weekly earnings for those with a bachelor's degree is \$1,543, an increase of nearly \$32,000 (or 66 percent) per year.³¹ Students who earn an associate's degree—as well as those who complete some college but do not graduate—all earn more than those who receive only a high school diploma.³²

Even if students do not ultimately attend college, the availability of in-state tuition (and realistic possibility of college attendance) can incentivize high schoolers to remain in school.³³ Indeed, one study has shown an eight-point reduction in the dropout rate of foreign-born, non-citizen Mexican students (a proxy for undocumented students) after a state adopted an inclusive in-state tuition policy.³⁴ High school completion alone increases median earnings by nearly \$200 per week,

³¹ Bureau of Labor Statistics, *Education Pays* (2024), <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm>.

³² *Ibid.*

³³ Nunez & Holthaus, *supra* n.24, at 51; Robert Bozick & Trey Miller, *In-State College Tuition Policies for Undocumented Immigrants: Implications for High School Enrollment Among Non-Citizen Mexican Youth*, 33 Population Rsch. & Pol'y Rev. 13, 27–28 (2014)

³⁴ Stephanie Potochnick, *How States Can Reduce the Dropout Rate for Undocumented Immigrant Youth: The Effects of In-State Resident Tuition Policies*, 45 Soc. Sci. Rsch. 12, 17 (May 2014).

from \$738 to \$930.³⁵ Importantly, while 23% of those without a high school degree live in households in poverty, only 13% with a high school degree do so—a figure that further reduces to 4% among those with a bachelor’s degree.³⁶

Beyond improving financial prospects, increasing the accessibility of higher education for undocumented students also may promote health and wellbeing outcomes that allow them to thrive and contribute within their communities. People who attain higher levels of education demonstrate higher rates of positive behaviors including: civic engagement, such as volunteering; healthy habits like exercise and not smoking; and parenting practices like preschool enrollment and active engagement with children.³⁷ These individuals also are well positioned for long-term stability, as higher levels of educational attainment are associated with higher rates of participation in employer-sponsored health insurance and retirement savings plans.³⁸

³⁵ Bureau of Labor Statistics, *supra* n.31.

³⁶ Matea Pender, et al., *Education Pays 2026: The Benefits of Higher Education for Individuals and Society* 38, Coll. Bd. (2026), <https://research.collegeboard.org/media/pdf/education-pays-2026-full-report.pdf>.

³⁷ *Id.* at 41–45.

³⁸ *Id.* at 36–37.

These outcomes show that access and incentives to college attendance steer undocumented students toward higher earnings, wellbeing, and stability, serving Congress' goals in PRWORA and IIRIRA of promoting self-sufficiency and reliance on one's own resources and capabilities.

III. Tuition equity for undocumented students is an investment in public education, the workforce, and the economy that serves the public interest.

The extension of access to in-state tuition through Section 8(4)(a) is also an investment in the people of Kentucky and in the Commonwealth's future, strengthening its schools, workforce, and economy.

a. Tuition equity is an investment in schools.

Access to in-state tuition for all of Kentucky's students may improve both K–12 and post-secondary education by increasing engagement, enrollment, and the quality of the academic experience students receive.

First, the availability of in-state tuition may boost enrollment and engagement in K–12 schools. As noted previously, *supra* p. 17, expanding access to in-state tuition has been shown to increase high school enrollment and reduce the dropout rate among undocumented students.

Indeed, the mere perception that college is or is not affordable may impact students' investment in school and willingness to attend, for better if students believe they can afford college, for worse if not.³⁹ This not only may increase enrollment but also may promote positive classroom experiences.

Naturally, expanded access to in-state tuition also likely increases enrollment in a state's higher education institutions, as explained above, *supra* pp. 15–16, strengthening their campuses' vitality and supporting the educator workforce. This boost in enrollment may be particularly strong in two-year institutions, but also at four-year institutions.⁴⁰ States adopting these policies report that this comes at a “negligible” cost: the discounted tuition that undocumented students pay “often increases school revenues because it represents income that the institutions would not otherwise receive” (because the students would not enroll at all).⁴¹ Notably, improvement in undocumented students' enrollment is not at

³⁹ See Potochnick, *supra* n.34, at 12, 17; Bozick & Miller, *supra* n.33, at 27-28; Nunez & Holthaus, *supra* n.24, at 51.

⁴⁰ Darolia & Potochnick, *supra* n.29, at 530–31.

⁴¹ Nat'l Immigr. L. Ctr, *Basic Facts About In-State Tuition for Undocumented Immigrant Students* 2 (June 2, 2026), <https://media.nilc.org/2025/09/instate-tuition-basicfacts-2026-06-02.pdf>.

the expense of other groups, who have not been shown to enroll at a lower rate once undocumented students' enrollment increases.⁴²

In other words, tuition equity can benefit everyone. This is certainly true in a state like Kentucky, which has only about 5,000 undocumented children enrolled in K–12 schools to begin with and thus a small number of undocumented young adults reaching eligibility for post-secondary education each year. *See supra* p. 10. Indeed, only about 2,000 undocumented 19–25-year-olds are enrolled in school in Kentucky. *Ibid.*

Finally, tuition equity for Kentucky's high-school graduates, regardless of citizenship, may enhance the quality of the higher-education experience the Commonwealth offers and the workforce it prepares. Maintaining access to in-state tuition for undocumented students encourages their pursuit of education and thus promotes a more diverse student body, which benefits all students. Indeed, studies have shown that exposure to diversity can improve academic achievement, intellectual engagement, cognitive skills, and civic engagement, and

⁴² Neeraj Kaushal, *In-State Tuition for the Undocumented: Education Effects on Mexican Young Adults*, 27 J. of Pol'y Analysis & Mgmt. 771, 789 (2008); *see also* Amuedo-Dorantes, *supra* n.26, at 15.

helps students prepare for participation in a diverse workforce and society.⁴³ These benefits accrue to all enrollees.

b. Tuition equity is an investment in the workforce and the economy.

Section 8(4)(a) also supports the state’s workforce by creating an incentive for graduates of Kentucky high schools to remain in the state for further education and their professional lives.

Indeed, failing to “give all of their college-bound residents access to their higher education systems at in-state tuition rates” means that “states miss an opportunity to get the most” from the investments they already have made.⁴⁴ In Kentucky, reimposing an economic barrier to undocumented students’ access to higher education “may lead to

⁴³ See, e.g., Katherine W. Phillips, *How Diversity Works*, 311 Sci. Am. 42, 44–46 (Oct. 2014); Deborah Son Holoien, *Do Differences Make a Difference? The Effects of Diversity on Learning, Intergroup Outcomes, and Civic Engagement* 4–8, 14–15 (Sept. 2013), <https://inclusive.princeton.edu/sites/g/files/toruqf7151/files/pu-report-diversity-outcomes.pdf>; Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330, 346–58 (2002).

⁴⁴ Erica Williams, et al., *Inclusive Approach to Immigrants Who Are Undocumented Can Help Families and States Prosper*, Ctr. on Budget & Pol’y Priorities (Dec. 19, 2019), <https://www.cbpp.org/research/state-budget-and-tax/inclusive-approach-to-immigrants-who-are-undocumented-can-help>.

unrealized potential” that reduces “the production of doctors, teachers, engineers, as well as other careers requiring advanced degrees.”⁴⁵

Encouraging students to pursue higher education in their home state is particularly valuable for essential professions like education and healthcare, where there are national shortages of qualified staff. *See* p. 9, *supra*. Kentucky is no exception. A report showed that 80% of Kentucky school districts had a vacancy at the start of the 2025–2026 school year, with several hundred certified educator shortages including, chiefly, school psychologist, speech pathologist and therapist roles.⁴⁶

Kentucky is also one of many states that faces deficits in healthcare professions. Indeed, the Kentucky Senate passed a resolution earlier this year to require the State’s major public universities to coordinate an effort to address the physician shortage, which affects rural communities in particular. Ky. Sen. J. Resol. 116 (2026), <https://apps.legislature.ky.gov/law/acts/26RS/documents/0186.pdf>. The resolution observed that substantial percentages of physicians practice

⁴⁵ Nunez & Holthaus, *supra* n.24, at 54.

⁴⁶ Joe Ragusa, *Kentucky schools show progress toward addressing staffing needs*, Ky. Teacher (Oct. 16, 2025), <https://www.kentuckyteacher.org/news/2025/10/kentucky-schools-show-progress-toward-addressing-staffing-needs>.

within the states where they completed their undergraduate and medical training. *Ibid.* There is a shortage of non-physician medical staff as well.⁴⁷

Having a robust college-educated workforce not only ensures the ability to fill essential roles, but also promotes greater prosperity for the state overall by increasing productivity and wages.⁴⁸ Further, college graduates' increased earnings "mean more money circulating through local stores and businesses and more public revenue for state investments and services that benefit everyone, like safe roads and public schools."⁴⁹

These benefits to schools, the workforce, and the economy demonstrate that Section 8(4)(a)'s extension of in-state tuition to undocumented high school graduates is a boon to the Commonwealth.

⁴⁷ Ky. Hosp. Ass'n, *2025 Workforce Survey Report* (June 2025), <https://www.kyha.com/wp-content/uploads/2025/07/2025-KHA-Workforce-Survey-Report.pdf>.

⁴⁸ See Williams, *supra* n.44; Noah Berger & Peter Fisher, *A Well-Educated Workforce Is Key to State Prosperity*, Econ. Pol'y Inst. (Aug. 22, 2013), <https://www.epi.org/publication/states-education-productivity-growth-foundations>.

⁴⁹ Williams, *supra* n.44.

The consent decree eliminating Section 8(4)(a) thus defied the public interest, and the district court should not have adopted it.

CONCLUSION

For the foregoing reasons, the district court's judgement should be reversed.

Respectfully submitted,

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July 17, 2026

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I hereby certify that on July 17, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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