



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103  
(801) 521-9862 PHONE • (801) 532-2850 FAX  
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

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**PREPARED REMARKS ON H.B. 191 “Nonresident Tuition Waiver  
Amendments”  
PRESENTED BY MARINA LOWE, LEGISLATIVE & POLICY COUNSEL  
AMERICAN CIVIL LIBERTIES UNION OF UTAH  
HOUSE REVENUE AND TAXATION COMMITTEE  
FEBRUARY 18, 2011  
SALT LAKE CITY**

Mr. Chairman and members of the committee, for the record, my name is Marina Lowe and I am the Legislative & Policy Counsel for the American Civil Liberties Union of Utah, a statewide, nonpartisan organization of nearly 2200 members and supporters dedicated to protecting the principles set forth in the Bill of Rights. Today I am here to testify in opposition to H.B. 191, “Nonresident Tuition Waiver Amendments.”

Utah's current law is critical to promoting fundamental fairness in access to public higher education for talented, high achieving young people who are able to gain admission to our public colleges and universities, regardless of their immigration status.

In the landmark case of Plyler v. Doe, 457 U.S. 202 (1982), the U.S. Supreme Court held that undocumented students have a fundamental right to basic public education as a matter of due process and equal protection. The Court observed that denying undocumented children access to K-12 primary education “raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents.” Id. at 207. This rationale applies with equal force to higher education, increasingly essential to an individual’s potential and opportunity.

Furthermore, denying these students access to affordable college education is short-sighted because they are likely to remain in the United States and may well regularize their immigration status under current or future federal laws.

Providing in-state tuition to Utah high school graduates at public colleges and universities promotes economic growth and increases opportunities. College graduates who are likely to remain in Utah earn higher wages, and therefore generate significantly more in income, sales, and property taxes. Their increased earning power and disposable income stimulate growth in our state's economy. A better educated population also increases competitiveness in the global economy.

Denying higher education access to undocumented students means failing to capitalize on Utah's investment in their K-12 education. Many of the undocumented students already educated in the K-12 public school system come from impoverished backgrounds and would not otherwise be able to attend college or university without in-state tuition.

Finally, Utah's current policy of providing for in-state tuition to undocumented students is legally sound and consistent with federal law. Despite legal challenges in Kansas and California to similar state programs, the only final court ruling on this topic, issued in December 2010 by the California Supreme Court in a unanimous decision, declared that notwithstanding certain provisions in federal law, states are not prohibited from making the policy choice to afford students equal access to education.

The ACLU of Utah thus opposes H.B. 191 because as a matter of fairness, all those high-achieving students who graduated from Utah high schools and successfully gained admission to public universities, often against remarkable odds, should be given the same educational opportunities as other Utah residents.

Thank you for your time,

Marina Lowe