Supplementary Material

Chapter 11: The Contemporary Era—Democratic Rights/Citizenship/Illegal Aliens

---

Martinez v. The Regents of the University of California, 50 Cal 4th 1277 (2010)

Robert Martinez was a citizen of the United States who was paying out-of-state tuition at a public college in California. In 2001, California passed a law that granted in-state tuition to anyone who attended high school for three years in California. Many persons not legally in the United States took advantage of that law. Martinez and other persons paying out-of-state tuition filed a class action suit against the Regents of the University of California, claiming that California was discriminating against American citizens by permitting some persons not legally in the United States to pay less tuition at state colleges. The trial court rejected that claim, but the California Court of Appeal reversed. The Regents appealed to the Supreme Court of California.

The Martinez class action attracted substantial interest group attention. Many liberal public interest groups, particularly those concerned with immigration, filed briefs supporting the California law. The brief for the American Civil Liberties Union asserted,

> *The California in-state tuition laws also promote principles of fundamental fairness. Undocumented individuals who benefit from the bill are, by and large, talented high achievers who were brought to California as children through no fault of their own. These students grew up in the State of California and persevered against the odds to graduate from high school and secure admission to a California college or university. In today's society, denying these children access to higher education (similar to the denial of 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."*

Several conservative members of Congress and prominent conservative public interest groups filed briefs asking the California court to declare the law unconstitutional. The brief for the Pacific Legal Foundation declared,

> *Even assuming that an illegal alien stays and finds employment in the state where the subsidy arose, it will most likely be a position that could have been filled by a citizen or legal nonresident. The argument historically relied upon to justify the nonenforcement of United States immigration and labor laws, is that illegal aliens simply fill unskilled positions that Americans refuse to perform (discrediting the "jobs Americans won't do" justification for illegal immigration). However in actuality, jobs are being taken away from displaced citizens and lawful residents by companies that chose to replace them with foreign workers and exploit the cheaper illegal labor to maximize profits. . . . It follows to reason that just as unskilled illegal aliens take away blue-collar jobs from legal workers, college-educated illegal aliens take away white-collar jobs from professionals.*

The Supreme Court of California sustained California's decision to offer in-state tuition to some persons not legally in the United States. Judge Chin's unanimous opinion declared that the Constitution of the United States did forbid laws that, in some respect, treated persons not legally in the United States better than American citizens. Assuming no federal law to the contrary, could California offer free tuition to persons and only persons not legally in the United States? What, if anything, might be the constitutional problems with such a law?

CHIN, J.

The main legal issue is this: [Federal law] provides that an alien not lawfully present in this country shall not be eligible on the basis of residence within a state for any postsecondary education benefit unless a citizen or national of this country is eligible for that benefit. In general, nonresidents of California who attend the state's colleges and universities must pay nonresident tuition. But [California law] exempts from this requirement students—including those not lawfully in this country—who meet certain requirements, primarily that they have attended high school in California for at least three years. The question is whether this exemption is based on residence within California in violation of [federal law].

Because the exemption is given to all who have attended high school in California for at least three years (and meet the other requirements), and not all who have done so qualify as California residents for purposes of in-state tuition, and further because not all unlawful aliens who would qualify as residents but for their unlawful status are eligible for the exemption, we conclude the exemption is not based on residence in California. Rather, it is based on other criteria. Accordingly, section 68130.5 does not violate section 1623.

We also conclude plaintiffs' remaining challenges . . . lack merit. Specifically, [California law] . . . does not violate the privileges and immunities clause of the Fourteenth Amendment to the United States Constitution. . . .

. . .

[The first part of the opinion concluded that the California law was not preempted by federal law].

. . .

Plaintiffs argue that the clause guarantees the citizen's privilege "of being treated no worse than an illegal alien in the distribution of public benefits." They seem to argue that any state action that gives a public benefit to unlawful aliens within the state's borders . . . violates the clause unless the state gives the same public benefit to all American citizens. They cite no authority that supports this proposition. Indeed, they cite no case interpreting the clause that compares treatment of unlawful aliens living within a state's borders to treatment of citizens who do not reside in that state. . . .

Plaintiffs note, correctly, that unlike some other constitutional provisions, the privileges and immunities clause applies only to citizens. Thus, aliens, lawful or unlawful, cannot claim benefits under the clause. But no authority suggests the clause prohibits states from ever giving resident aliens (again, lawful or unlawful) benefits they do not also give to all American citizens. The fact that the clause does not protect aliens does not logically lead to the conclusion that it also prohibits states from treating unlawful aliens more favorably than nonresident citizens.

The clause does operate in some circumstances to prevent states from treating nonresident citizens less favorably than resident citizens. In *Saenz v. Roe* (1999) the high court held that a statutory limitation on state welfare benefits for recently arrived resident citizens violates the clause. . . . The holding of that case was based on the federal right of interstate travel. . . . But there is no equivalent federal right for nonresidents to pay reduced in-state tuition while attending a public college or university. The high court has specifically held that states may charge nonresidents, even those who are American citizens, more for attending their public postsecondary institutions than they charge residents. . . .

It cannot be the case that states may never give a benefit to unlawful aliens without giving the same benefit to all American citizens. In *Plyler v. Doe* (1982), the high court held that the equal protection clause of the Fourteenth Amendment to the United States Constitution prohibits states from denying "to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens." Thus, the high court has held that the Constitution requires states to provide a free public education to some unlawful aliens. We do not believe that the same court would also hold that the privileges and immunities clause requires states that comply with

this requirement, and provide a free education to unlawful aliens, also to provide the same free education to all citizens of the entire United States.

. . .