

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MICHAEL LEE PHILIPS,
and
PATRICIA FENATI,
and
DAVID DRAKE,
Plaintiffs,
vs.
BOARD OF TRUSTEES OF
MONTGOMERY COLLEGE,
Suite 355
900 Hungerford Drive
Rockville, MD 20850,
Defendant.

Case No.: V342882

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Michael Lee Philips, Patricia Fenati, and David Drake hereby sue Defendant Board of Trustees of Montgomery College for declaratory and injunctive relief, and, for their Complaint, allege as follows:

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JAN 20 2011

Clerk of the Circuit Court
Montgomery County, Md.

PARTIES

1. Plaintiff Michael Lee Philips is a 28-year resident of Montgomery County and a citizen of the State of Maryland. Plaintiff has paid and will continue to pay taxes to Montgomery County and the State of Maryland.

2. Plaintiff Patricia Fenati is a 38-year resident of Montgomery County and a citizen of the State of Maryland. Plaintiff has paid and will continue to pay taxes to Montgomery County and the State of Maryland.

3. Plaintiff David Drake is a 69-year resident of Montgomery County and a citizen of the State of Maryland. Plaintiff has paid and will continue to pay taxes to Montgomery County and the State of Maryland.

4. Defendant Board of Trustees of Montgomery College ("Defendant Board") is an entity organized under the laws of the State of Maryland and serves as the governing body of Montgomery College, a public community college located in Montgomery County, Maryland. As the governing body of Montgomery College, Defendant Board is empowered to exercise general control over Montgomery College and to adopt reasonable and lawful rules, regulations, and policies for the operation of the college. Defendant Board carries out its duties and responsibilities from its principal offices in the City of Rockville, Montgomery

County, Maryland. By law, Defendant Board has the capacity to sue and be sued.

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to Sections 1-501, 3-403, and 6-102 of the Courts and Judicial Proceedings Article of the Maryland Code Annotated, among other applicable provisions.

6. Venue is proper in this judicial circuit pursuant to Section 6-201 of the Courts and Judicial Proceedings Article of the Maryland Code Annotated, among other applicable provisions.

FACTUAL BACKGROUND

7. As a public community college, Montgomery College relies primarily on appropriations of state and county tax dollars, as well as student tuition and fees, for its revenue. Appropriations of county tax dollars comprise the largest portion of Montgomery College's revenue. Combined, appropriations of state and county tax dollars account for approximately one half of the college's revenue. By contrast, tuition and fees paid by students constitute less than a quarter of the college's revenue.

8. By law, the tuition charged to a student who attends a community college in Maryland is determined by the student's place of residence. Students who are residents of the county or counties supporting the community college they attend are charged an in-county rate. Students who are residents of the

State of Maryland, but reside outside the county or counties supporting the community college they attend are charged an in-state rate. Students who reside outside the State of Maryland are charged an out-of-state rate.

9. Contrary to Maryland law, however, it has been the long-standing policy of Defendant Board to provide reduced, in-county tuition to all recent graduates of Montgomery County public high schools regardless of their place of residence. Students who have graduated from a Montgomery County public high school within three years of enrolling at Montgomery College are not required to prove residency status to receive the reduced, in-county tuition rate. Until recently, this policy had never been put in writing.

10. In November 2010, Defendant Board adopted a resolution incorporating its long-standing, unwritten policy into College Policy 45003. Specifically, on November 15, 2010, Defendant Board adopted Resolution No. 10-11-086, "to clarify and confirm tuition and fees practices previously authorized by the Board but not contained in the present public policies on tuition."

11. College Policy 45003 now states, "[I]t is the policy of the Board of Trustees to provide a quality education at the least cost for residents of Montgomery County and to recent graduates of Montgomery County public schools"

(Emphasis added.)

12. College Policy 45003 sets forth three categories of tuition rates: a "C Rate," an "S Rate," and an "OS Rate." It specifically provides, in relevant part:

A. Applicability of Tuition Rates

a. Students attending Montgomery College will pay the "C Rate" if any of the following is determined to be applicable by the President or designee, in the following order:

1. Residence in Montgomery County;

. . . .

4. A graduate from a Montgomery County Public School within the past three years.

b. Students attending Montgomery College that do not qualify for the "C Rate" shall pay the "OS Rate" unless it is determined by the President or designee that the student is a Maryland resident from outside of Montgomery County in which case the student shall pay the "S Rate."

B. Determination of Residence and Domicile

a. To qualify as a resident of Montgomery County or the State of Maryland for purposes of determining the applicable tuition rate to be applied, legal domicile must have been maintained for a period of not less than three months prior to the first regularly scheduled class for the semester.

b. For a student to be considered as a resident of Montgomery County or the State of Maryland for purposes of determining the

applicable tuition rate to be applied, the student must possess the legal capacity under State and Federal law to establish Maryland domicile.

13. In 1982, the U.S. Supreme Court ruled in *Plyler v. Doe* that all children, including children who are unlawfully present aliens, are entitled to free, primary and secondary public school education. The ruling in *Plyler v. Doe* does not apply to post-secondary education, including post-secondary education at community colleges such as Montgomery College.

14. Under federal law, unlawfully present aliens generally are ineligible for state or local public benefits, including post-secondary education benefits such as reduced tuition, unless a state has enacted a law affirmatively providing for such eligibility.

15. The State of Maryland has never enacted a law affirmatively providing that unlawfully present aliens are eligible to receive reduced, in-county tuition at public institutions of higher education, including community colleges such as Montgomery College. The Maryland General Assembly passed a bill in 2003 that would have provided for such eligibility, but then-Governor Robert L. Erlich vetoed the measure.

16. Defendant Board's longstanding policy has the effect of providing a local benefit -- reduced, in-county tuition -- to

unlawfully present aliens who graduate from a Montgomery County public high school.

17. On information and belief, it was and is the intent of Defendant Board to provide this local benefit to unlawfully present aliens who graduate from Montgomery County public high schools.

18. Montgomery College has admitted repeatedly that Defendant Board's long-standing policy enables unlawfully present aliens to pay in-county tuition rates. In its audited financial statements for Fiscal Years 2007, 2008, and 2009, Montgomery College stated: "[T]he Montgomery College policy is applicable to all persons, equally, and includes all citizens as well as undocumented aliens"

19. Moreover, Montgomery College spokesperson Brett Eaton was quoted in the October 29, 2010 edition of the Montgomery County Gazette as stating, "We do not give in-state tuition to illegal immigrants, with the exception of recent [Montgomery County Public Schools] graduates."

20. Defendant Board's long-standing policy is causing substantial, pecuniary loss to taxpayers in Montgomery County and the State of Maryland. By providing reduced, in-county tuition to all students who graduate from Montgomery County public high schools, regardless of their residence or status as unlawfully present aliens, Montgomery College is failing to

collect revenue that, by state and federal law, it is required to collect. Because taxpayers in Montgomery County and the State of Maryland subsidize the cost of attending Montgomery College, Montgomery County and Maryland taxpayers have been required and are being required to make up the resulting lost revenue through greater appropriations of tax dollars and, in particular, greater appropriations of county tax dollars.

21. During the 2006-2007 academic year, which corresponds approximately to Fiscal Year 2007, Montgomery College charged the following rates for tuition:

- \$93.00 per course hour to students classified as Montgomery County residents;
- \$191.00 per course hour to students classified as out-of-county, Maryland residents; and
- \$257.00 per course hour to students classified as out-of-state residents.

22. During the 2006-2007 academic year, the number of course hours charged to students who graduated from a Montgomery County public high school within three years of enrolling at Montgomery College and were unable to demonstrate, or failed to demonstrate, that they were lawful residents of Montgomery County, totaled 11,168. If Montgomery College had charged these students the highest, out-of-state rates instead of the lowest, in-county rates, it would have collected an additional \$1,831,552 in revenue in Fiscal Year 2007. This additional

revenue could have been used to offset appropriations of state and county taxpayer dollars.

23. During the 2007-2008 academic year, which corresponds approximately to Fiscal Year 2008, Montgomery College charged the following rates for tuition:

- \$96.00 per course hour to students classified as Montgomery County residents;
- \$197.00 per course hour to students classified as out-of-county, Maryland residents; and
- \$266.00 per course hour to students classified as out-of-state residents.

24. During the 2007-2008 academic year, the number of course hours charged to students who graduated from a Montgomery County public high school within three years of enrolling at Montgomery College and were unable to demonstrate, or failed to demonstrate, that they were lawful residents of Montgomery County, totaled 11,406. If Montgomery College had charged these students the highest, out-of-state rates instead of the lowest, in-county rates, it would have collected an additional \$1,939,020 in revenue in Fiscal Year 2008. This additional revenue could have been used to offset appropriations of state and county taxpayer dollars.

25. During the 2008-2009 academic year, which corresponds approximately to Fiscal Year 2009, Montgomery College charged the following rates for tuition:

- \$99.00 per course hour to students classified as Montgomery County residents;
- \$203.00 per course hour to students classified as out-of-county, Maryland residents; and
- \$275.00 per course hour to students classified as out-of-state residents.

26. During the 2008-2009 academic year, the number of course hours charged to students who graduated from a Montgomery County public high school within three years of enrolling at Montgomery College and were unable to demonstrate, or failed to demonstrate, that they were lawful residents of Montgomery County, totaled 11,540. If Montgomery College had charged these students the highest, out-of-state rates instead of the lowest, in-county rates, it would have collected an additional \$2,100,280 in revenue in Fiscal Year 2009. This additional revenue could have been used to offset appropriations of state and county taxpayer dollars.

27. During the 2009-2010 academic year, which corresponds approximately to Fiscal Year 2010, Montgomery College charged the following rates for tuition:

- \$102.00 per course hour to students classified as Montgomery County residents;
- \$209.00 per course hour to students classified as out-of-county, Maryland state Residents; and
- \$284.00 per course hour to students classified as out-of-state residents.

28. The number of course hours charged to students who graduated from a Montgomery County public high school within three years of enrolling at Montgomery College and were unable to demonstrate, or had failed to demonstrate, that they were lawful residents of Montgomery County, is not presently available for the 2009-2010 academic year. Using the average of the three prior academic years, which is 11,371, if Montgomery College had charged students the highest, out-of-state rates instead of the lowest, in-county rates for these hours, it would have collected an additional \$2,069,522 in revenue in Fiscal Year 2010. This additional revenue could have been used to offset appropriations of state and county taxpayer dollars.

29. In addition, in Fiscal Years 2007 through 2009, state and county appropriations of taxpayer dollars to Montgomery College increased at a faster rate than tuition increased.

30. In Fiscal Year 2007, Montgomery College received \$127,421,884 in state and county appropriations of taxpayer dollars, which constituted 52.93 percent of the college's total revenue. This represented an increase of \$17,058,937, or 15.46 percent, over Fiscal Year 2006.

31. By contrast, students at Montgomery College paid \$54,861,598 in tuition and fees in Fiscal Year 2007, which, net of scholarship allowances, constituted 22.79 percent of the

college's total revenue. This represented an increase of \$1,313,587, or 2.45 percent, over Fiscal Year 2006.

32. In Fiscal Year 2008, Montgomery College received \$143,666,578 in state and local appropriations of taxpayer dollars, which constituted 49.76 percent of the college's total revenue. This represented an increase of \$16,244,745, or 12.75 percent, over Fiscal Year 2007.

33. By contrast, students at Montgomery College paid \$58,083,353 in tuition and fees in Fiscal Year 2008, which, net of scholarship allowances, constituted 20.12 percent of the college's total revenue. This represented an increase of \$3,221,755, or 5.87 percent, over Fiscal Year 2007.

34. In Fiscal Year 2009, Montgomery College received \$152,153,404 in state and local appropriations of taxpayer dollars, which constituted 49.33 percent of the college's total revenue. This represented an increase of \$8,486.15, or 5.91 percent, over Fiscal Year 2008.

35. By contrast, students at Montgomery College paid \$60,257,629 in tuition and fees in Fiscal Year 2009, which, net of scholarship allowances, made up 19.54 percent of the college's total revenue. This represented an increase of \$2,174,276, or 3.74 percent, over Fiscal Year 2008.

36. In Fiscal Year 2010, Montgomery College received \$155,543,398 in state and local appropriations of taxpayer

dollars, which constituted 49.45 percent of the college's total revenue. This represented an increase of \$3,389,994, or 2.22 percent, over Fiscal Year 2009.

37. By contrast, students at Montgomery College paid \$62,947,088 in tuition and fees in Fiscal Year 2010, which, net of scholarship allowances, made up 20.01 percent of the college's total revenue. This represented an increase of \$2,689,459, or 4.46 percent, over Fiscal Year 2009.

Count I
(Violation of Maryland Law -
Md. Code Ann. Educ. § 16-310, et al.)

38. Plaintiffs reallege paragraphs 1 through 37 as if fully stated herein.

39. Pursuant to Section 16-310 of the Education Article of the Maryland Code Annotated and Code of Maryland Regulations 13B.07.02.03, and subject to certain exceptions not relevant here, Montgomery College is required to charge out-of-state tuition to any student who attends a community college in the State of Maryland and is not a resident of the State, and is required to charge out-of-county tuition to any student who, although a resident of the State, attends a community college not supported by the county in which the student resides.

40. Defendant Board's longstanding policy of allowing recent graduates of Montgomery County public high schools to pay reduced, in-county tuition regardless of their place of

residence violates Maryland law, including but not limited to Section 16-310 of the Education Article of the Maryland Code Annotated and Code of Maryland Regulations 13B.07.02.03.

41. As a proximate result of Defendant Board's violation of Maryland law, taxpayers in Montgomery County and the State of Maryland, including Plaintiffs, are suffering pecuniary injury and will continue to suffer such injury unless and until Defendant Board's policy is enjoined.

42. Plaintiffs have no adequate remedy at law.

Count II
(Violation of Federal Law - 8 U.S.C. § 1621)

43. Plaintiffs realleges paragraphs 1 through 42 as if fully stated herein.

44. Pursuant to Title 8, Section 1621(d) of the United States Code, unlawfully present aliens are not eligible for state or local public benefits, including postsecondary education benefits, unless a state enacts a law affirmatively providing for such eligibility.

45. Payment of reduced, in-county tuition rates at public institutions of higher learning, including community colleges such as Montgomery College, constitutes a "local public benefit" as that term is defined by Title 8, Section 1621(c)(1)(B) of the United States Code.

46. The State of Maryland has not enacted a law affirmatively providing that unlawfully present aliens are eligible to receive reduced, in-county tuition rates at public institutions of higher learning, including community colleges such as Montgomery College.

47. Defendant Board's longstanding policy of allowing recent graduates of Montgomery County public high schools, including unlawfully present aliens, to pay reduced, in-county tuition violates federal law and, in particular, violates Title 8, Section 1621 of the United States Code.

48. As a proximate result of Defendant Board's violation of federal law, taxpayers in Montgomery County and the State of Maryland, including Plaintiffs, are suffering pecuniary injury and will continue to suffer such injury unless and until Defendant Board's policy is enjoined.

49. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court: (1) declare unlawful Defendant Board's long-standing policy of allowing students who enroll at Montgomery College within three years of graduating from a Montgomery County public high school to pay reduced, in-county tuition rates regardless of their place of residence or status as unlawfully present aliens; (2) enjoin Defendant Board from continuing to enforce or otherwise

carry out its unlawful policy; (3) to the extent allowed by law, grant Plaintiffs an award of attorney's fees and other litigation costs reasonably incurred in this action; and (4) grant Plaintiffs such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: January 20, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.



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