



**Judicial
Watch®**
*Because no one
is above the law!*

VIA FACSIMILE (401) 456-6028
AND U.S. MAIL

October 19, 2011

Lorne A. Adrain, Chairman
Rhode Island Board of Governors
for Higher Education
Shepard Building
80 West Washington Street
Providence, RI 02903

Re: Changes to RIBGHE's Student Residency Policy (S-5.0)

Dear Mr. Adrain:

Judicial Watch, Inc. is an educational organization that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. We frequently work with like-minded citizens and taxpayers across the United States who share our respect for law enforcement and dedication to the rule of law.

We understand that the Rhode Island Board of Governors for Higher Education ("RIBGHE") recently approved changes to its current student residency policy that are intended to make unlawfully present aliens eligible to pay reduced, in-state tuition rates at Rhode Island's public universities, colleges, and community colleges. These changes appear to be in clear violation of federal law and must, therefore, be reversed.

Specifically, on September 26, 2011, RIBGHE approved and adopted changes to its Student Residency Policy (S-5.0) that make all students, including unlawfully present aliens, eligible for reduced, in-state tuition if they meet the following criteria: (1) the student has attended an approved Rhode Island high school for three or more years and continues to live in Rhode Island; (2) the student has graduated from an approved Rhode Island high school or received a high school equivalency diploma from the state of Rhode Island; (3) if the student is not a U.S. citizen and/or does not have lawful immigration status, he or she has filed an affidavit with the institution stating that the student has filed an application for lawful status, or will file such an application as soon as he or she is eligible to do so; (4) the student is not, and if

unemancipated his or her parents are not, a non-immigrant within the meaning of paragraph (15) of subsection (a) of section 1101 of title 8 of the United States Code.

The changes to the policy will become effective at the start of the Fall 2010 semester. The new policy will apply to all public universities, colleges, and community colleges in Rhode Island.

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. Specifically, Section 1621 of Title 8 of the United States Code states, in pertinent parts:

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. §1182 (d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

* * *

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

8 U.S.C. §§ 1621(a) and (d).

There is no way to reconcile RIBGHE's new policy with federal law. The new policy provides a public benefit to individuals who clearly are ineligible for such a benefit under section 1621(a) of title 8, and Rhode Island has not enacted a law affirmatively providing for such eligibility under section 1621(d) of title 8. In fact, we understand that the Rhode Island General Assembly rejected proposed legislation earlier this year that would have made unlawfully present aliens eligible for in-state tuition at Rhode Island's public universities, colleges, and community colleges and that it has rejected similar proposed legislation in prior years.

RIBGHE may not ignore federal laws when those laws are not consistent with its own policy preferences. We hope that RIBGHE will reverse its new student residency policy immediately in order to conform it policy to the requirements of federal law.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Thomas J. Fitton
President

cc: Attorney General Peter F. Kilmartin
Governor Lincoln D. Chafee