S_____

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

Earl De Vries,
Plaintiff and Appellant,

vs.

Regents of the University of California,
Defendant and Respondent.

After Decision by the Court of Appeal,
Second Appellate District, Division Seven
Case No. B264487

PETITION FOR REVIEW

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QUESTION PRESENTED FOR REVIEW

1. Whether the Legislature must enact a state law that affirmatively, explicitly, and unambiguously establishes unlawfully present aliens' eligibility for state or local public benefits in order to opt out of the general, federal prohibition against providing such benefits.

FACTUAL AND LEGAL BACKGROUND

This case concerns the proper application of Title 8, Section 1621 of the United States Code ("Section 1621"). Earl De Vries ("De Vries"), a California resident and taxpayer, alleges that the Regents of the University of California ("Regents") are spending his tax dollars illegally by providing in-state tuition and other postsecondary education benefits to unlawfully present aliens attending University of California ("UC") schools. (Appellant's Appendix ("AA") at AA-11 to AA-24.) De Vries alleges that no state law authorizes the benefits. (AA-11 to AA-24.) The Regents argue that three state laws, A.B. 540, A.B. 131, and S.B. 1210, make the aliens eligible for the benefits. (*Id.* at AA-25 to AA-63.) The Superior Court agreed with the Regents and sustained a demurrer to De Vries' Amended Complaint. (*Id.* at AA-565 to AA-568.) Judgment was entered in the Regent's favor. (*Id.* at AA-570 to AA-571.) The Court of Appeal affirmed.[1]

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[1] The Court of Appeal's decision ("Opinion") is set forth in the Addendum.

Section 1621, which is part of the federal immigration code, contains two relevant provisions. First, it makes unlawfully present aliens ineligible for most state or local public benefits. (8 U.S.C. § 1621(a).) Second, it creates a narrow exception to this rule of general ineligibility – an "opt out" provision. 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 … only through the enactment of a State law ... which affirmatively provides for such eligibility." (8 U.S.C. § 1621(d).)

Congress enacted Section 1621 as a part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). In enacting Section 1621, Congress determined that unlawfully present aliens should only be eligible for a state or local public benefit if a state's highest and most politically accountable level of government elects to opt out of the general prohibition on benefits. Specifically, a state legislature must decide whether to extend eligibility for a state or local public benefit to unlawfully present aliens. To do so, the legislature must enact a state law positively and unequivocally creating eligibility for the benefit. Absent a clear and specific state law, a benefit may not be provided.

There is no dispute that unlawfully present aliens attending California State University ("CSU") and California Community College ("CCC") schools are eligible for in-state tuition, state-administered financial aid, and

state-administered student loans. In enacting A.B. 540, A.B. 131, and S.B. 1210, respectively, the Legislature affirmatively provided such eligibility for CSU and CCC students. (*Martinez v. Regents of the Univ. of California* (2010) 50 Cal.4th 1277; *see also* AA-14.) Because of UC's self-governing status, however, the Legislature's power over the Regents and the UC is limited. (Cal. Const., art. IX, § 9; *see also* AA-12 to AA-13.) The "power of the Regents to operate, control and administer the University is virtually exclusive." (*Regents of the Univ. of California v. Superior Court* (1976) 17 Cal.3d 533, 537; *Regents of the Univ. of California v. Superior Court* (1970) 3 Cal.3d 529, 540; *see also* AA-13.) As a result, the Legislature lacks authority to enact a state law affirmatively providing eligibility for UC students.

Nonetheless, the Regents have adopted policies purportedly making unlawfully present aliens attending UC schools eligible for the same public benefits for which unlawfully present aliens attending CSU and CCC schools are eligible. (AA-16 to AA-18.) The Regents currently provide all three types of public benefits to unlawfully present aliens attending UC schools. (AA-16 to AA-18.)

THE COURT OF APPEAL'S DECISION

The Court of Appeal held that A.B. 540, A.B. 131, and S.B. 1210 satisfy Section 1621(d) for UC students. (Opinion at pp. 25-37.) In reaching this conclusion, however, the Court never found A.B. 540, A.B. 131, and

S.B. 1210 "affirmatively" provide eligibility for the benefits. It only found the provisions "provide eligibility." (Opinion at 28 ("Section 1621(d) "only requires that the Legislature provide '*eligibility*' for public benefits, which the Legislature has done through A.B. 540") and 35 ("Indeed, by specifically referencing the University of California and its students, those measures provide *eligibility* for the specified benefits to those students, regardless of whether the University ultimately confers such benefits on them.") (italics added).) In so holding, the Court disregarded both the plain language of Section 1621(d) and the fact that, given the Regents' and the UC's unique constitutional status, only the Regents can set policy for UC schools.

A.B. 540, A.B. 131, and S.B. 1210 have no legal force or effect on the Regents. For unlawfully present aliens attending UC schools to be eligible for in-state tuition and other postsecondary education benefits, California law requires that the Regents make them eligible. A.B. 540, A.B. 131, and S.B. 1210 do not provide "affirmative" eligibility for the challenged benefits. For purposes of federal law, however, only the Legislature can make the students eligible. The Court of Appeal resolved this dilemma by weakening the requirements of Section 1621. It ignored both the federal law's requirement that the state law "affirmatively" provide for eligibility and the constitutional limitation on the Legislature's power over the Regents and the UC. It also read A.B. 540, A.B. 131, and S.B. 1210 far too generously, finding a legislative intent to provide benefits where none exists. In fact, far from

intending to authorize benefits for UC students, the statutes expressly reference further action by the Regents.[2] (Cal. Stats. 2001, ch. 814, § 1(b)(1) (referencing, in relation to A.B. 540, "requirements adopted by the Regents of the University of California pursuant to Section 68134 of the Education Code"); Cal. Ed. Code § 69508.5(a) (referencing, in relation to A.B. 131, "equivalent requirements adopted by the Regents of the University of California"); Cal. Ed. Code §§ 70033(a)(1) (referencing, in relation to S.B. 1210, "equivalent requirements adopted by the Regents of the University of California"); *see also* AA-15.) The decision is plainly incorrect.

No petition for rehearing was filed in the Court of Appeal. The decision became final on January 9, 2017. This petition for review is being filed and served within 10 days of the Court of Appeal's ruling becoming final.

SUMMARY OF ARGUMENT FOR REVIEW

The Court of Appeal's decision conflicts with at least two decisions of this Court by creating a new, lower standard for establishing unlawfully

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[2] The Court of Appeal declined to address whether actions by the Regents constitute the enactment of state laws. (Opinion at 20 (the Regents argued 1621(d) is satisfied by "measures such as the quasi-legislative acts of the Regents. We need not decide whether the Regents' broader view is correct…").) The Court also did not address the Regents' argument that the Tenth Amendment to the U.S. Constitution prohibits Congress from requiring state legislative action as a condition of satisfying Section 1621(d). Both remain open questions.

present aliens' eligibility for public benefits. It also conflicts with decisions by the courts of several other states.

Without clarity and uniformity in this area, it is an open question whether unlawfully present aliens can be made eligible for public benefits by something less than a state law enacted by the Legislature positively, expressly, and unambiguously providing for such eligibility. The question is important to California because not only are the benefit programs at issue expensive – they cost at least $27 million per year – but California undeniably has the largest population of unlawfully present aliens in the nation. The question also is important because state, county, and local officials and other public entities may claim the power to extend public benefits to unlawfully present aliens based only on the vaguest, most tenuous expressions (or purported expressions) of the Legislature's intent.

It also is important that California and the nation as a whole not operate under a patchwork of rules for making unlawfully present aliens eligible for public benefits. In 1996, Congress determined that the issue of whether aliens – lawfully present and unlawfully present, immigrant and non-immigrant – could receive state or local public benefits was one of federal immigration law and policy. Immigration policy is reserved to the federal government, because it is a branch of the nation's foreign relations and diplomacy powers. By finding that entities other than state legislatures can determine unlawfully present aliens' eligibility for public benefits, the

Court of Appeal's decision weakened the federal government's powers over national immigration policy and foreign diplomacy.

ARGUMENT

I. Review Is Necessary to Secure The Uniform Application of Law.

The Court of Appeal's decision conflicts with two of this Court's decisions applying Section 1621: *Martinez v. Regents of the Univ. of California* (2010) 50 Cal. 4th 1277 and *In re Garcia* (2014) 58 Cal.4th 440. It also conflicts with rulings of state courts in New York, Florida, Illinois, and Maine.

Most courts applying Section 1621(d) have held that to "affirmatively provide" eligibility requires a state statute duly enacted by the legislature that establishes unlawfully present aliens' eligibility in terms that are unequivocal, non-passive, and leave no room for doubt. The Court of Appeal's decision plainly conflicts with this precedent. It ignores the word "affirmatively" in the text of Section 1621(d) and the effect of that word's inclusion in the statute. It found that A.B. 540, A.B. 131, and S.B. 1210 made UC students eligible for the benefits despite the fact that the statutes themselves expressly reference further action being required by the Regents to make the students eligible, and despite the indisputable fact that the Legislature lacks power to set policy for the Regents and the UC. Because the Court of Appeal's decision is at odds with how this Court and other courts

have read Section 1621, review should be granted to secure uniformity of law.

A. The Court of Appeal's Decision Creates A New Conflict Within California Regarding The Proper Application of Federal Immigration Law

Both *Martinez* and *In re Garcia* applied Section 1621 expressly, holding that the statute requires state laws that "affirmatively provide" eligibility for benefits before such benefits can be extended to unlawfully present aliens. The Court of Appeal interpreted Section 1621 as *not* requiring state laws that "affirmatively provide" eligibility, but only state laws that make unlawfully present aliens "eligible" for public benefits. (Opinion at 25.) It ignored the word "affirmatively."

In *Martinez*, this Court applied the text of Section 1621 expressly, finding that A.B. 540 "affirmatively provided" eligibility for CSU and CCC students to apply for in-state tuition benefits. The Court wrote:

> [S]ection 68130.5 provides: "(a) The Legislature hereby finds and declares all of the following . . . This act . . . allows all persons, *including undocumented immigrant students* who meet the requirements set forth in Section 68130.5 of the Education Code, *to be exempt from nonresident tuition* in California's colleges and universities." . . . Thus, it at least *appears* the Legislature **affirmatively provided** that qualifying unlawful aliens are eligible for the nonresident tuition exemption.

(*Martinez*, *supra*, 50 Cal.4th at p. 1295 (italics original) (emphasis added).) This Court also expressly found that, by its text, A.B. 540 "applies only to the California State University and California Community Colleges, and not

to the University of California." (*Martinez*, *supra*, 50 Cal.4th at p. 1287, fn. 1.) The Court reiterated that point by quoting A.B. 540 as stating that "[n]o provision of this part shall be applicable to the University of California unless the Regents of the University of California, by resolution, make such provision applicable." (*Ibid.*) By finding otherwise, The Court of Appeal's decision is in direct and unequivocal conflict with *Martinez.*

In *In re Garcia*, this Court again applied the text of Section 1621 expressly, finding that the Legislature enacted a statute that "explicitly authorized" – and therefore "affirmatively provided" – eligibility for unlawfully present aliens to apply for bar licenses:

> [B]y explicitly authorizing a bar applicant "who is not lawfully present in the United States" to obtain a law license, the statute expressly states that it applies to undocumented immigrants . . . and thus "**affirmatively provides**" that undocumented immigrants may obtain such a professional license so as to satisfy the requirements of section 1621(d).

(*In re Garcia*, *supra*, 58 Cal.4th at p. 458 (emphasis added).) *In re Garcia* stands in stark contrast to the Court of Appeal's decision, as nowhere do A.B. 540, A.B. 131, and S.B. 1210 "explicitly authorize" unlawfully present aliens attending UC schools to apply for benefits. If anything, they do the opposite by deferring to the Regents. Unlike the constitutionally-independent Regents, the Legislature has well-recognized, constitutional authority over bar admissions. (*In re Garcia*, *supra*, 58 Cal.4th at p. 452; *see also* Cal. Const., art. IX, § 9.) If anything, the Legislature's lack of authority over the

Regents and the UC should have led to the obvious conclusion that, absent an amendment to the California constitution, the Legislature can never affirmatively provide eligibility for benefits for unlawfully present aliens attending UC schools. By holding otherwise, the Court of Appeal created a clear conflict over the application of Section 1621.

B. The Court of Appeal's Decision Creates A Further Conflict Between California and Other States' Interpretations of Federal Immigration Law

In addition to creating a conflict in California law, the Court of Appeal's decision also creates a conflict nationally, between state courts in California and New York, Florida, Illinois, and Maine.

In 2014, the Supreme Court of Florida, citing *In re Garcia*, held that Section 1621 requires a state legislative act "affirmatively providing" that unlawfully present aliens seeking admission to the Florida Bar are eligible for such licenses before they can be admitted to the bar. (*Florida Bd. of Bar Exam'rs* (Fla. 2014) 134 So. 3d 432.) The Florida court explained:

> If the Florida Legislature were to take steps similar to those taken in California [in enacting Cal. Bus. Prof. Code § 6064(b)] and **affirmatively provide** that such unauthorized immigrants are eligible for professional licenses, or, more narrowly, a license to practice law, Applicant and other similarly situated qualified individuals would be eligible for admission to The Florida Bar….

(*Id.* at p. 440 (emphasis added).)

The following year, a New York appellate court agreed with Florida's interpretation of Section 1621. The New York court stated that Section 1621

"generally prohibits the issuance of state professional licenses to undocumented immigrants unless an individual state has enacted legislation affirmatively authorizing the issuance of such licenses." (*Matter of Application of Vargas* (N.Y. App. Div. 2015) 131 A.D.3d 4, 5.) The New York court further observed that interpreting Section 1621 as requiring a positive and unequivocal eligibility determination by the state legislature was in harmony with the interpretation of both California and Florida courts:

> [S]ection 1621(d) has been construed by courts in California and Florida to require the passage of an act by a state legislature, and that it be signed into law by the state's governor, as the mechanism by which a state must express its intention to opt out of the restrictions imposed by section 1621(a).[3]

(*Id.* at p. 23, *citing Florida Bd. of Bar Exam'rs*, *supra*, 134 So.3d at p. 435; *In re Garcia*, *supra*, 58 Cal.4th at p. 456; and *Martinez*, *supra*, 50 Cal.4th at pp. 1295-96.)

An Illinois appellate court made a finding very close to *In re Garcia*, namely that "affirmatively provide for eligibility" means the opposite of

[3] Ultimately, the New York appellate court found that, as applied to the limited question of attorney and counselor-at-law admissions in the State of New York, Section 1621(d)'s "legislative enactment" requirement was inconsistent with New York law and the Tenth Amendment and, in the limited context of attorney admissions, the New York judiciary could lawfully exercise the state's discretion to opt out from the restrictions imposed by Section 1621(a). (*Matter of Application of Vargas*, *supra*, 131 A.D.3d at p. 27.) The Court of Appeal did not reach this issue.

"passively providing" where a legislature delegates the decision on eligibility to another entity:

> [T]he better understanding of the requirement that the state law "affirmatively provides" for eligibility of undocumented aliens is that Congress wanted to prevent the passive or inadvertent override of section 1621(a).

(*Kaider v. Hamos* (Ill. App. Div. 2012) 975 N.E.2d 667, 673.) The Illinois court was considering an Illinois healthcare statute with wording nearly identical to the wording of the statute in *In re Garcia*: "[T]he Department of Healthcare and Family Services may provide medical services to noncitizens who have not yet attained 19 years of age…." (305 Ill. Comp. Stat. 5/12-4.35.)

The Illinois court made it clear that the dividing line for state compliance with the "affirmatively provides" language of Section 1621(d) is whether the legislative statute delegates *implementation* of the legislature's eligibility decision, or whether the statute delegates the eligibility *decision* itself:

> [T]he [Illinois] legislature has clearly expressed its intent to opt out of the benefits bar in section 1621(a), and nothing in section 1621(d) prevents state legislatures from delegating the implementation of the opt-out to administrative agencies once it affirmatively provides for it in the state statute.

(*Kaider*, *supra*, 975 N.E.2d at p. 677.)

A Maine court also found that Section 1621 requires a state statute affirmatively making unlawfully present aliens eligible for benefits and

declined to find that the decision of certain Maine municipalities to award benefits was a sufficient "state law enactment" under Section 1621(d):

> [T]he Maine Legislature enacted such language in connection with food assistance and in connection with TANF and Medicaid. Both of those statutes expressly extended benefits to households or non-citizens who "would be eligible . . . but for [PRWORA]." No comparable language has been enacted with respect to General Assistance.

(*Maine Mun. Ass'n v. Maine Dep't of Health and Human Servs.* (Me. Super. Ct., June 9, 2015, Civ. A. No. AP-14-39) 2015 Me. Super. LEXIS 197, **20-21) (internal citations omitted).) The court concluded that there was no "affirmative" action of the legislature, despite the fact that the legislature had budgeted sufficient funds for municipalities to provide benefits to aliens, and despite the fact that the legislative history showed a desire for municipalities to provide the benefits to aliens. (*Ibid.*) Furthermore, there was no "affirmative" state legislative action even though a state agency had been reimbursing the alien funding decisions made by the municipalities. (*Id.* at *18 ("… DHHS was fully aware that General Assistance was being provided to asylum seekers.").)

The Maine court further found that mere state legislative "acquiescence" to eligibility decisions of other state entities was insufficient under Section 1621, because Congress directed that eligibility decisions be made by state statute only:

> However, under 8 U.S.C. § 1621(d), a State can overcome the prohibition on eligibility set forth in § 1621(a) "only through

> the enactment of a State law after the date of the enactment of this Act [August 22, 1996] which affirmatively provides for such eligibility." The court is constrained to conclude that, notwithstanding prior legislative and DHHS acquiescence and notwithstanding the legislative history cited above, section 1621(d) requires statutory language conveying a positive expression of legislative intent to extend GA benefits to aliens who would otherwise be ineligible under § 1621(a).

(*Maine Mun. Ass'n*, *supra*, 2015 Me. Super. LEXIS 197 at **19-20.) The Maine Court concluded that even if the state legislature "intends" for other branches of state government to make eligibility decisions, this fails to satisfy Section 1621(d). (*Id.* at *21.)

Because of the conflict that now exists among the states regarding the proper interpretation of Section 1621, the U.S. Supreme Court ultimately may choose to review the Court of Appeal's decision or a decision by this Court.[4] This Court therefore should take the opportunity to secure uniform application of the law in California by reviewing the Court of Appeal's decision first.

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[4] A federal court in California – while not addressing the "affirmatively provides" language – held that Section 1621 required state legislative action, not actions of a state agency, board, or executive order. (*League of United Latin American Citizens v. Wilson* (C.D. Cal. 1997) 997 F. Supp. 1244, 1253 (Section 1621(d) provides "a description of state legislative options in the area of immigrant eligibility for state or local benefits").) The Court of Appeal determined that it "need not decide" the question of whether Section 1621 requires state legislative action or permits any state regulation, policy, or executive order, and so did not address it. (Opinion at 20.) Nonetheless, the issue is one that affects federals courts in California.

II. This Case Raises An Important Question of Law That Will Significantly Impact California Taxpayers, California Voters, and National Immigration Policy

The question of law presented in this case is important for at least three reasons. First, the cost of the challenged benefits is substantial – at least $27 million in taxpayer dollars per year. Second, the decision effectively eliminates the bright line rule that existed – the enactment of a state law affirmatively providing for eligibility – and replaces it with an ambiguous standard that undermines the political accountability intended by Congress when it enacted Section 1621. It also opens the door to state, county, or local officials and other public entities usurping state legislative authority to offer benefits based on vague or generalized language in a statute. Third, the decision undermines a cohesive national immigration policy, potentially turning a law that allows 50 state legislatures to make decisions into a law that allows 500 or 5,000 state and local institutions to do so – weakening the federal government's ability to conduct unified diplomacy for the entire nation.

First, this Court should grant review to determine whether the challenged benefits are legal. The cost of the benefits – approximately $27 million annually as of 2015 – is substantial. (AA-17 to AA-18.) That fact alone demonstrates the importance of the issue and justifies review.

Second, the decision replaces a bright line rule – one that required a state law enacted by the Legislature affirmatively and explicitly opting out

of the general prohibition on benefits – with an ambiguous one. In enacting Section 1621, Congress chose to authorize only the highest and most visible, politically accountable level of state government to opt out of the general prohibition and, to the extent a state elected to opt out, required that it do so affirmatively and in clear terms. Section 1621 is a "stand up and be counted" law designed to ensure political accountability should states wish to act contrary to federal policy. *See* H.R. Rep. No. 104-725, 2d Sess., p. 383 (1996) ("Only the affirmative enactment of a law by a State legislature and signed by the Governor after the date of enactment of this Act … will meet the requirements of [Section 1621].").[5] The Court of Appeal's decision undermines this congressional purpose by finding legislative authorization based on far less than a state law affirmatively providing eligibility. Under the Court of Appeal's decision, even contradictory language suffices. Indeed, it upheld the Regent's benefits program in the face of clear language showing that A.B. 540, A.B. 131, and S.B. 1210 did not apply to the Regents and longstanding case law holding that the Legislature has no policy-making authority over the Regents and the UC. The decision turns Section 1621 on its head.

Significantly, by finding that A.B. 540, A.B. 131, and S.B. 1210 satisfy Section 1621 for UC students, the Court of Appeal's decision

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[5] H.R. Rep. No. 104-725, available at https://www.congress.gov/104/crpt/hrpt725/CRPT-104hrpt725.pdf.

broadened when and how unlawfully present aliens may become eligible for public benefits. State, county, and local officials and other public entities may claim legislative authorization to offer benefits based on vague or generalized language in a statute that only hints at or suggests such benefits. Not only is such a result plainly not what Congress intended in enacting Section 1621, but it also raises the specter of substantial increases in public spending as a result of state, county, or local officials and other public entities pursuing their own agendas instead of an unequivocal decision by the Legislature.

Third and finally, the Court of Appeal's decision interferes with Congress' carefully crafted plan to keep the states on a single leash with respect to public benefits for unlawfully present aliens. Since the power to award public benefits to foreign nationals is essentially the power to make decisions affecting foreign affairs and international diplomacy, Congress' very specific decision to allow states to share in that federal power on certain, express terms must be respected. Recall that, in Section 1621(a), Congress preempted *all* state power to make decisions about benefits. In Section 1621(d), Congress gave back limited power to the states, but only under a very limited and explicit condition – Congress only gave this power to the 50 state *legislatures*, so that only 50 entities could share in the immigration policy powers of the federal government.

The Court of Appeal's decision undermines this carefully crafted plan by allowing benefits to be extended to unlawfully present aliens based on something less than a state law affirmatively providing eligibility for benefits. The decision's rationale could be used to extend benefits to unlawfully present aliens where the Legislature delegates eligibility decisions to state, county, or local officials or other public entities. It also could be used by these same officials and entities to make or usurp eligibility determinations for themselves, potentially turning a law that allows 50 state legislatures to make decisions into a law that allows 500 or 5,000 state and local institutions to do so.

As the Florida Supreme Court explained: "[t]he federal statute at issue here, 8 U.S.C. § 1621, was adopted pursuant to Congress's constitutional power to establish an uniform Rule of Naturalization due, in part, to its inherent power as sovereign to control and conduct relations with foreign nations." (*Florida Bd. of Bar Exam'rs*, *supra*, 134 So. 3d at p. 434, *citing Arizona v. U.S.* (2012) 132 S. Ct. 2492, 2498 (internal punctuation omitted).) This need for "uniformity" in immigration policy demonstrates the compromise Congress reached when it decided to give state legislatures the power to determine unlawfully present aliens' eligibility for state or local benefits. While different policies by 50 state legislatures may have been a tolerable level of divergence in eligibility determinations, different determinations by hundreds if not thousands of state, county, and local

officials and other public entities is not. A patchwork immigration policy that devolves into thousands of different jurisdictions essentially conducting their own foreign policy with respect to foreign nationals within their boundaries undermines the federal government's broad Constitutional powers to establish a national immigration policy, which is part and parcel of the federal government's power to conduct unified diplomacy with foreign nations on behalf of the United States. As the U.S. Supreme Court recently observed:

> The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. This authority rests, in part, on the National Government's constitutional power to "establish an uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations.

(*Arizona*, *supra*, 132 S. Ct. at p. 2498.)

CONCLUSION

For the foregoing compelling reasons, Petitioner respectfully requests that this Court grant review of the Court of Appeal's December 9, 2016 ruling.

Dated: January 17, 2017

Respectfully submitted,

By: */s/ Sterling E. Norris**

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* Signed electronically pursuant to Cal. Rules of Court 8.77(b) and 8.204(b)(9).

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, I hereby certify that this brief, including footnotes, is proportionally spaced, has a typeface of 13 points or more, and contains 4,611words, which is less than the 8,400 words permitted. Counsel relies on the word count of the computer program used to prepare the brief.

Dated: January 17, 2017 By: */s/ Sterling E. Norris**
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Attorney for Petitioner

* Signed electronically pursuant to Cal. Rules of Court 8.77(b) and 8.204(b)(9).

Addendum

Filed 12/9/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.
FILED
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EARL DE VRIES, Plaintiff and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Defendant and Respondent.	B264487 (Los Angeles County Super. Ct. No. BC555614)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Judicial Watch, Inc., Sterling E. Norris and Chris Fedeli (admitted *pro hac vice*) for Plaintiff and Appellant.

Office of the General Counsel University of California, Charles F. Robinson, Karen J. Petrulakis and Margaret L. Wu; Munger, Tolles & Olson, Bradley S. Phillips (Los Angeles) and Benjamin J. Horwich (San Francisco) for Defendant and Respondent.

INTRODUCTION

Federal law makes undocumented immigrants ineligible for state and local public benefits, but allows a state to "affirmatively provide[] for such eligibility" through "the enactment of a State law." (8 U.S.C. § 1621(d).) The California Constitution generally gives the Regents of the University of California plenary authority to establish rules and policies to govern the internal affairs of the University of California. The issue in this appeal is whether three California legislative "enactments" affirmatively provide "eligibility" under federal law for postsecondary education benefits to qualified undocumented immigrants who attend the University of California, even though the statutes require only the California State University and California community colleges to provide such benefits. We conclude that, even though the California Constitution may preclude the Legislature from actually conferring postsecondary education benefits on undocumented immigrants attending the University of California, the Legislature has made these students "eligible" for such benefits within the meaning of the federal statute. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which, among many other things, made undocumented immigrants[1] ineligible

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[1] The Personal Responsibility and Work Opportunity Reconciliation Act refers to undocumented immigrants as

for certain state and local public benefits, including benefits related to postsecondary education. (8 U.S.C. § 1621 (section 1621).) The same law, however, gives states authority to make undocumented immigrants "eligible for any State or local public benefit for which such [undocumented immigrant] would otherwise be ineligible under [section 1621] only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." (*Id.*, § 1621(d) (section 1621(d)).)

The California Legislature subsequently enacted three laws addressing postsecondary education benefits for certain qualified undocumented immigrants. These laws include (1) Assembly Bill No. 540 (2001-2002 Reg. Sess.) (A.B. 540), which makes qualified undocumented immigrants eligible for exemption from

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"alien[s]" who are not qualified for public benefits under various federal laws. (See 8 U.S.C. § 1621(a).) We use the term "undocumented immigrant" to refer to "a non-United States citizen who is in the United States but who lacks the immigration status required by federal law to be lawfully present in this country and who has not been admitted on a temporary basis as a nonimmigrant" (*In re Garcia* (2014) 58 Cal.4th 440, 446, fn. 1), which encompasses the category of persons referred to as unqualified "aliens" in title 8 United States Code section 1621. Assembly Bill No. 540 (A.B. 540), one of the California statutes at issue in this case, used both "undocumented immigrant" and "nonimmigrant alien" to refer to the same class of people. (See Stats. 2001, ch. 814, §§ 1, subd. (a)(4), 2, subd. (a).) The current version of Education Code section 68130.5, which A.B. 540 added, refers to the same class of people as "nonimmigrant foreign national[s] within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code." (Educ. Code, § 68130.5, subd. (a).)

nonresident tuition (Stats. 2001, ch. 814, §§ 1-2); (2) Assembly Bill No. 131 (2011-2012 Reg. Sess.) (A.B. 131), which makes qualified undocumented immigrants eligible for student financial aid programs (Stats. 2011, ch. 604, § 3); and (3) Senate Bill No. 1210 (2013-2014 Reg. Sess.) (S.B. 1210), which makes qualified undocumented immigrants eligible for student loan benefits (Stats. 2014, ch. 754, § 3).

The California Constitution limits the Legislature's power to regulate the University of California (UC) and the Regents of the University of California (the Regents),[2] which administers the University of California. (Cal. Const., art. IX, § 9, subd. (a).) Those limits traditionally extend to matters "involving internal university affairs," with a few exceptions. (*San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d 785, 789 (*Labor Council*); *People v. Lofchie* (2014) 229 Cal.App.4th 240, 250.)[3] Because of its constitutional autonomy, the Regents (rather than the Legislature) adopted three policies to provide the benefits identified in A.B. 540, A.B. 131, and S.B. 1210 to qualified undocumented immigrant students attending the University of California. (Regents of U.C., Policy 3106.1.C; Policy 3202.2; Policy 3202.3.)

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[2] We refer to "the Regents" in the singular because the California Constitution created a "corporation known as 'The Regents of the University of California,'" a singular noun. (Cal. Const., art. IX, § 9, subd. (a).) Some decisions, statutes, and legislative materials we quote in this opinion refer to "the Regents" as a plural noun.

[3] Neither party contends that any of these exceptions apply here.

Earl De Vries, a California taxpayer, filed this action against the Regents, alleging that none of its policies qualifies under section 1621(d) as a "State law" making undocumented immigrants eligible for postsecondary education benefits. De Vries further alleged that the Legislature has not enacted any statute that "affirmatively provid[es]" eligibility for the benefits the University of California now gives to undocumented immigrants, as required by section 1621(d). Indeed, De Vries alleged that the Legislature could never confer such eligibility because the Constitution prohibits the Legislature from regulating the University of California. De Vries sought to enjoin the Regents "from expending or causing the expenditure of taxpayer funds and taxpayer-financed resources to exempt unlawfully present aliens from paying nonresident supplemental tuition and to allow unlawfully present aliens to apply for and participate in state-administered financial aid programs."

The Regents demurred. It argued that the California Supreme Court's decision in *Martinez v. Regents of the University of California* (2010) 50 Cal.4th 1277 (*Martinez*), which held the exemption in A.B. 540 from nonresident tuition complies with the "affirmatively provides" requirement of section 1621(d), forecloses De Vries's current challenge, and that the analysis in *Martinez* applies equally to the financial aid program in A.B. 131 and the student loan program in S.B. 1210. Alternatively, the Regents argued that the laws enacting A.B. 540, A.B. 131, and S.B. 1210 nevertheless satisfy the requirements of section 1621(d) with respect to UC students and, even if they did not, the policies of the Regents satisfy section 1621(d) because they have the force and effect of "state law." In opposition to the demurrer, De Vries argued that the Supreme Court in *Martinez* did not address the

University of California's "unique, constitutionally independent status," nor did the Supreme Court determine "whether the Regents's resolution purportedly making AB 540 applicable to [the University] satisfies Section 1621" because the parties in that case stipulated that A.B. 540 applied to the University of California.

The trial court sustained the demurrer with leave to amend, concluding that the Regents's policies satisfy section 1621(d). The court cited California and United States Supreme Court authorities stating that '"policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes."' (Emphasis deleted.) (See, e.g., *Hamilton v. Regents of the University of California* (1934) 293 U.S. 245, 258; *Kim v. Regents of University of California* (2000) 80 Cal.App.4th 160, 164-165; *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135.) Thus, the trial court ruled that the Regents's policies "adopting the exemption codified in AB540, the eligibility for state-administered financial aid programs codified in AB131 and eligibility for the student loan program codified in SB1210 would qualify as a 'State law . . . which affirmatively provides for such eligibility' of State or local benefit for purposes of 8 U.S.C. § 1621(d)."

After De Vries failed to file an amended complaint, the trial court dismissed the action with prejudice and entered judgment for the Regents. De Vries timely appealed.

DISCUSSION

De Vries makes two principal arguments. First, he argues that the Legislature has not passed any statutes affirmatively providing eligibility for benefits to UC students who are undocumented immigrants. Second, he contends the trial court erred by concluding that the Regents's policies constitute "state laws" that comply with section 1621(d).

"On review from an order sustaining a demurrer, 'we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose.'" (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; accord, *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We also review de novo questions of statutory construction. (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232; *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261, 275.) "'We affirm if any ground offered in support of the demurrer was well taken but find error if the plaintiff has stated a cause of action under any possible legal theory. [Citations.] We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale.'" (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 433; accord, *Acuna v. San Diego Gas & Electric Co.* (2013) 217 Cal.App.4th 1402, 1411.)

A. *Statutory and Constitutional Framework*

1. *Title 28 United States Code Section 1621*

Congress enacted section 1621 as part of the Personal Responsibility and Work Opportunity Reconciliation Act. (Pub.L. No. 104-193 (Aug. 22, 1996) 110 Stat. 2105.) The Act has over 900 sections, including section 1621, which appears in a chapter entitled "Restricting Welfare and Public Benefits for Aliens."

Section 1621(a) provides: "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),[4] [¶] (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

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4 Title 8 United States Code section 1641 defines the term "qualified alien" as "(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.], [¶] (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. § 1158], [¶] (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. § 1157], [¶] (4) 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 a period of at least 1 year, [¶] (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. § 1253] . . . or section 241(b)(3) of such Act [8 U.S.C. § 1251(b)(3)] . . . , [¶] (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. § 1153(a)(7)] as in effect prior to April 1, 1980; or [¶] (7) an alien who is a Cuban [or] Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980)." (Fn. omitted.)

than one year, [¶] is not eligible for any State or local public benefit (as defined in subsection (c) of this section)." This case concerns undocumented immigrants who do not fall within any of the exempt categories of "aliens" listed in section 1621(a).

Section 1621(c) defines "State or local public benefit" to include, among other things, "any . . . postsecondary education . . . benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government." The parties do not dispute that the resident tuition exemption in A.B. 540, the financial aid programs in A.B. 131, and the student loan programs in S.B. 1210 are "State or local public benefits" within the meaning of section 1621(c).

Section 1621(d) states: "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*." (Italics added.) As noted, De Vries contends that neither A.B. 540, nor A.B. 131, nor S.B. 1210 "affirmatively provides for such eligibility" for UC students, and that policies the Regents adopted to implement A.B. 540, A.B. 131, and S.B. 1210 are not "enactments of State law" within the meaning of section 1621(d).

2. *The University's Status Under the California Constitution*

The University of California is a public trust established pursuant to article IX, section 9, of the California Constitution as

follows: "(a) The University of California shall constitute a public trust, to be administered by the existing corporation known as 'The Regents of the University of California,' with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services." Article IX, section 9(f), further provides, in part: "The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs."

"The California Supreme Court has recognized that '[a]rticle IX, section 9, grants the regents broad powers to organize and govern the university and limits the Legislature's power to regulate either the university or the regents.' [Citation.] This constitutional grant of power to the Regents includes both quasi-judicial and quasi-legislative powers, according [the Regents] 'virtual autonomy in self-governance.' [Citation.] '"The Regents have the general rule-making or policy-making power in regard to the University . . . and are . . . fully empowered with respect to the organization and government of the University."'" (*People v. Lofchie*, *supra*, 229 Cal.App.4th at pp. 248-249, fn. omitted, quoting *Regents of University of California v. Superior Court* (1970) 3 Cal.3d 529, 540, and *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135.)

As a result, "[t]he Regents may . . . exercise quasi-legislative powers, subject to legislative regulation. Indeed, '[p]olicies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes.'" (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320, quoting *Regents of University of California v. City of Santa Monica*, *supra*, 77 Cal.App.3d at p. 135; see, e.g., *Hamilton v. Regents of the University of California* (1934) 293 U.S. 245, 258 [a Regents order making military instruction compulsory "is a statute of the state within the meaning of [a statute establishing federal jurisdiction]"]; *Campbell v. Regents of University of California*, at p. 321 [a Regents policy for handling whistleblower claims under its power to govern and organize the University is treated as a statute in order to determine whether the exhaustion doctrine applies]; see also *Lachtman v. Regents of University of California* (2007) 158 Cal.App.4th 187, 207; *Kim v. Regents of University of California*, *supra*, 80 Cal.App.4th at p. 165.)

In some circumstances, state legislation concerning matters outside those specifically enumerated in the Constitution may apply to the University of California. The Supreme Court has deemed some such laws "matters of statewide concern" and has considered whether the law in question "would infringe upon sovereign governmental powers." (*Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 536; see *Labor Council*, *supra*, 26 Cal.3d at p. 789 ["legislation regulating public agency activity not generally applicable to the public may be made applicable to the university when the legislation regulates matters of statewide concern not involving internal university affairs"]; *Regents of University of California v. Superior Court*,

at p. 536.) Neither side argues that A.B. 540, A.B. 131, or S.B. 1210 addresses "matters of statewide concern."

3. *State Enactments Making Undocumented Immigrants Eligible for Postsecondary Education Benefits*

a. *A.B. 540 and nonresident tuition*

Education Code section 68040 provides,[5] "Each student shall be classified as a resident or nonresident at the University of California, the California State University, or the California Maritime Academy or at a California community college." Section 68050 provides, "A student classified as a nonresident shall be required, except as otherwise provided in this part, to pay, in addition to other fees required by the institution, nonresident tuition." "Thus, nonresidents must generally pay nonresident tuition at public universities and colleges in California." (*Martinez*, *supra*, 50 Cal.4th at p. 1286.)

In 2001 the Legislature enacted A.B. 540. Section 1 of A.B. 540 states in relevant part: "The people of the State of California do enact as follows: [¶] (a) The Legislature hereby finds and declares all of the following: [¶] (1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates." (Stats. 2001, ch. 814, § 1, subd. (a)(1).) Section 1, subdivision (a)(4), states:

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[5] Statutory references are to the Education Code unless otherwise indicated.

“This act . . . allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California’s colleges and universities.” (Stats. 2001, ch. 814, § 1, subd. (a)(4).)

Section 2 of A.B. 540 added section 68130.5 to Part 41, article 11 of the Education Code. Section 68130.5, as amended, provides:

“(a) A student, other than a nonimmigrant foreign national within the meaning of paragraph (15) of subsection (a) of section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

“(1) Satisfaction of either of the following:

“(A) High school attendance in California for three or more years.

“(B) Attainment of credits earned in California from a California high school equivalent to three or more years of full-time high school coursework and a total of three or more years of attendance in California elementary schools, California secondary schools, or a combination of those schools.

“(2) Graduation from a California high school or attainment of the equivalent thereof.

“(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year.

“(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution

of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

"(b) A student exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.

"(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.

"(d) Student information obtained in the implementation of this section is confidential."

Section 68134 is part of Part 41, Chapter 1, article 11 of the Education Code. Section 68134, which predates the enactment of A.B. 540, provides: "No provision of this part shall be applicable to the University of California unless the Regents of the University of California, by resolution, make such provision applicable."

b. *A.B. 131 and financial aid programs*

In 2011 the Legislature enacted A.B. 131. (Stats. 2011, ch. 604.) The bill separately addressed financial aid programs administered by the University of California (commonly referred to as "UC Grants") and those administered by the State of California (commonly referred to as "Cal Grants"). Section 1 of A.B. 131 added section 66021.6 regarding eligibility for UC Grants. It provides in relevant part: "Notwithstanding any other law, and except as provided for in subdivision (b), the Trustees of the California State University and the Board of Governors of the California Community Colleges shall, and the

Regents of the University of California are requested to, establish procedures and forms that enable persons who are exempt from paying nonresident tuition under Section 68130.5, or who meet equivalent requirements adopted by the regents, to apply for, and participate in, all student aid programs administered by these [schools] to the full extent permitted by federal law. The Legislature finds and declares that this section is a state law within the meaning of Section 1621(d) of Title 8 of the United States Code."

Section 3 of A.B. 131 added section 69508.5 regarding eligibility for Cal Grants. It provides in relevant part: "Notwithstanding any other law, and except as provided for in subdivision (c), a student who meets the requirements of subdivision (a) of Section 68130.5, or who meets equivalent requirements adopted by the Regents of the University of California, is eligible to apply for, and participate in, any student financial aid program administered by the State of California to the full extent permitted by federal law. The Legislature finds and declares that this section is a state law within the meaning of [section 1621(d)] of Title 8 of the United States Code."

c. *S.B. 1210 and student loan programs*

Most recently, in 2014, the Legislature enacted S.B. 1210 (referred to as the California DREAM Loan Act) to make undocumented immigrants eligible for certain student loan programs. (Stats. 2014, ch. 754.) Section 2 of S.B. 1210 states: "Since 2002, students have been exempt from paying nonresident tuition and fees at the California Community Colleges, the California State University, and the University of California pursuant to Section 68130.5. Commencing in 2011, these

students were eligible for state financial aid or financial aid offered by these public institutions. Nevertheless, many of these students remain ineligible for federal student aid for reasons beyond their control. Lack of access to federal student loans presents a substantial barrier for these students to obtain a baccalaureate degree from the California State University or the University of California." (Stats. 2014, ch. 754, § 2, subd. (b).) "The California DREAM Loan Act addresses this barrier by providing access to additional state aid so students may take full advantage of the educational opportunities offered at the California State University and the University of California." (§ 2, subd. (c).)

Section 3 of S.B. 1210 added several provisions to the Education Code, including sections 70032 and 70033. Section 70032, subdivision (i), defines "Participating institution" to include "any campus of the . . . University of California that elects to participate in the DREAM Program pursuant to the requirements specified for a qualifying institution." Section 70033, subdivisions (a) and (a)(1), provide, "Commencing with the 2015-16 academic year, a student attending a participating institution may receive a loan under the DREAM Program if the student satisfies all of the following requirements," including that the "student is exempt from paying nonresident tuition under Section 68130.5, or meets equivalent requirements adopted by the Regents of the University of California."

4. *The Regents's Policies Making Undocumented Immigrants Eligible for Postsecondary Education Benefits*

The Regents adopts standing orders and policies for the University of California. (Regents of U.C., Policy 1000.) Following the Legislature's enactments of A.B. 540, A.B. 131, and S.B. 1210, the Regents adopted corresponding policies for UC students. Regents Policy 3106.1.C addresses nonresident tuition and provides: "The University of California shall exempt students from tuition and/or fees or waive tuition and/or fees, as set forth below. . . . [¶] [¶] . . . as provided in [Education Code] Section 68130.5 (AB 540)." (Regents of U.C., Policy 3106.1.C.)

Regents Policy Nos. 3202.2 and 3202.3 address financial aid and student loan programs for students who qualify under A.B. 540 for nonresident tuition. Policy 3202.2 provides in part: "The University of California shall extend financial aid to any student exempt from paying nonresident tuition under California Education Code Section 68130.5 and Regents Policy 3106." (Regents of U.C., Policy 3202.2.) Policy Nos. 3202.2 and 3202.3 identify the statutory programs through which eligible students may receive financial aid and student loans, including the programs established under section 66021.6 and the California DREAM Loan Program. (Regents of U.C., Policy Nos. 3202.2, 3202.3.)

B. *Enactments and Eligibility Under Section 1621(d)*

As noted, section 1621(d) allows a state to make undocumented immigrants eligible for postsecondary education benefits "through the enactment of a State law . . . which affirmatively provides for such eligibility." De Vries argues that

A.B. 540, A.B. 131, and S.B. 1210 do not provide eligibility for UC students because those measures apply only to students of California State University and California community colleges. ~(AOB 15)~ In so doing, De Vries suggests that the requirement of section 1621(d) that state laws provide "eligibility" for state or local public benefits means that such laws must actually confer benefits on qualified undocumented immigrants. De Vries further argues that, because the University of California's constitutional status precludes the Legislature from making UC students eligible for benefits under section 1621(d), no legislative enactment can ever comply with section 1621(d) with respect to UC students.

The Regents contends that *Martinez* controls this case because the Supreme Court's opinion in *Martinez* "directly addressed and upheld the nonresident tuition exemption that [De Vries] challenges here." The Regents further contends that, because the legislative enactments making undocumented immigrants eligible for the financial aid and student loan programs De Vries challenges are "materially indistinguishable from the nonresident tuition exemption," *Martinez* dictates that those "parallel authorizations" also satisfy section 1621(d). In the alternative, the Regents argues that its policies are "state law" within the meaning of section 1621(d) and that, at a minimum, the acts of the Legislature in combination with Regents policies satisfy federal law.

1. *Martinez Is Not Controlling*

Preliminarily, we agree with De Vries that *Martinez* is not controlling. In *Martinez* the Supreme Court considered a challenge to A.B. 540 under section 1621 and another provision of

the Personal Responsibility and Work Opportunity Reconciliation Act that prohibits undocumented immigrants from receiving postsecondary education benefits on the basis of their residence. (*Martinez*, *supra*, 50 Cal.4th at pp. 1284, 1294; see 8 U.S.C. § 1623).) With respect to section 1621, the plaintiffs alleged the defendants, including the Regents, the Board of Trustees of the California State University, the California Community Colleges, and officials representing those entities, unlawfully exempted undocumented immigrant students from nonresident tuition because A.B. 540 did not "affirmatively provide" eligibility for that benefit. (*Martinez*, at p. 1294.) The parties stipulated that "the Regents have, by resolution, made [A.B. 540] applicable" to undocumented immigrants. (*Martinez*, at p. 1287, fn. 1.)

The Supreme Court held that A.B. 540 satisfies the requirement of section 1621(d) that a state law "affirmatively provide" eligibility for undocumented immigrants to receive State or local public benefits.[6] (*Martinez*, *supra*, 50 Cal.4th at p. 1295.) The court, however, did not define or interpret the term "eligibility." Moreover, unlike De Vries, the plaintiffs in *Martinez* did not argue that the Legislature could not make UC students eligible for public benefits because of the University of

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6 The Supreme Court in *Martinez* also held that a state statute does not comply with section 1621(d) unless it "'expressly state[s] that it applies to undocumented aliens, rather than conferring a benefit generally without specifying that its beneficiaries may include undocumented aliens.'" (*Martinez*, *supra*, 50 Cal.4th at p. 1296; see *Garcia*, *supra*, 58 Cal.4th at p. 458.) De Vries does not argue that either A.B. 131 or S.B. 1210 fails to comply with this standard; indeed, he appears to concede that each statute does comply.

California's constitutional status. The Supreme Court in *Martinez* did not address that specific question in connection with A.B. 540, and it did not decide that or any other issue in connection with A.B. 131 or S.B. 1210. *Martinez*, therefore, does not control the outcome of this case.

2. *A.B. 540, A.B. 131, and S.B. 1210 Are "Enactments of State Law"*

The Personal Responsibility and Work Opportunity Reconciliation Act does not define the phrase "enactment of a State law" in section 1621(d). De Vries argues that these words require "an enactment of the state legislature," while the Regents argues that the phrase is broader and includes measures such as the quasi-legislative acts of the Regents. We need not decide whether the Regents's broader view is correct because, even under De Vries's narrower standard, A.B. 540, A.B. 131, and S.B. 1210 are "enactments of State law."

The Legislature enacted A.B. 540, A.B. 131, and S.B. 1210, and the Governor signed all three measures into law. (Stats. 2001, ch. 814 [approved by the Governor Oct. 12, 2001]; Stats. 2011, ch. 604 [approved by the Governor Oct. 8, 2011]; Stats. 2014, ch. 754 [approved by the Governor Sept. 27, 2014].) Even under De Vries's theory, they qualify as enactments under section 1621(d), and De Vries does not contend otherwise. Indeed, each of the three measures contains the prefatory language, "The people of the State of California do enact as follows," confirming that it is an "enactment of a State law." (See *Branch v. Smith* (2003) 538 U.S. 254, 264 ["[a]n 'enactment' is the product of legislation, not adjudication," citing the definition of "enact" in Webster's New Internat. Dict. (2d ed. 1949) p. 841 as

"'[t]o make into an act or law; esp., to perform the legislative act with reference to (a bill) which gives it the validity of law'"]; see also *Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal.App.4th 72, 86 [an uncodified section of an act "is fully part of the law" and "must be read together with provisions of codes"].)

3. *The Meaning of "Eligibility" Under Section 1621(d)*

The Personal Responsibility and Work Opportunity Reconciliation Act also does not define or interpret the word "eligibility" in section 1621(d). "When a term goes undefined in a statute, we give the term its ordinary meaning." (*Taniguchi v. Kan Pacific Saipan, Ltd.* (2012) ___U.S.___, ___ [132 S.Ct. 1997, 2002] (*Taniguchi*); see *Crawford v. Metropolitan Government of Nashville and Davidson County, Tenn.* (2009) 555 U.S. 271, 276 ["[t]he term 'oppose,' being left undefined by the statute, carries its ordinary meaning"]; *Hardt v. Reliance Standard Life Ins. Co.* (2010) 560 U.S. 242, 251 [we assume that "'the ordinary meaning of [a statute's] language accurately expresses the legislative purpose'"]; see also *People v. Barros* (2012) 209 Cal.App.4th 1581, 1593 [using "[t]he plain meaning of the word 'proceeding'" where the phrase was "not defined in the statute"]; *Arnall v. Superior Court* (2010) 190 Cal.App.4th 360, 369 ["we look first to the term's 'plain meaning' for guidance" when the statute does not define the term]; *In re Eureka Reporter* (2008) 165 Cal.App.4th 891, 897 [turning to the "plain and commonsense meaning" of a term not defined in the statute].)

In divining a term's "ordinary meaning," courts regularly turn to general and legal dictionaries. (See, e.g., *Freeman v. Quicken Loans, Inc.* (2012) ___U.S.___, ___, 132 S.Ct. 2034, 2041-

2042; *Taniguchi*, *supra*, ___U.S. at p. ___, 132 S.Ct. at p. 2002; *Lopez v. Gonzales* (2006) 549 U.S. 47, 53-54; *MCI Telecommunications Corp. v. American Tel. & Tel. Co.* (1994) 512 U.S. 218, 225 (*MCI Telecommunications*); see also *Outfitter Properties, LLC v. Wildlife Conservation Bd.* (2012) 207 Cal.App.4th 237, 244 ["[w]e use the ordinary dictionary meaning of terms when terms are not defined in the statute"]; *County of Sacramento v. State Water Resources Control Bd.* (2007) 153 Cal.App.4th 1579, 1592 ["'[a] dictionary is a proper source to determine the usual and ordinary meaning of a word or phrase in a statute'"]; *Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 539 ["'courts . . . turn to general dictionaries when they seek to ascertain the "ordinary" meaning of words used in a statute'"].) Merriam-Webster's Collegiate Dictionary defines "eligible" (the adjective form of the noun "eligibility") as "qualified to participate or be chosen." (Merriam-Webster's Collegiate Dict. (11th ed. 2014) p. 404; see American Heritage Dict. (2d ed. 1985) p. 446 ["eligible" means "[q]ualified, as for an office or position"]; 5 Oxford English Dict. (2d ed. 1989) p. 140 ["eligibility" means "[f]itness to be chosen or preferred"].) Black's Law Dictionary similarly defines "eligible" as "[f]it and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status." (Black's Law Dict. (10th ed. 2014) p. 634, col. 1; see also Ballentine's Law Dictionary (3d ed. 1969) p. 396 ["eligibility" means "[f]itness for selection"].) Thus, the ordinary meaning of "eligibility" connotes qualification for a benefit, not entitlement to that benefit.[7]

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[7] Webster's New International Dictionary and its abridged version published as Webster's New Collegiate Dictionary include

Another provision of the Personal Responsibility and Work Opportunity Reconciliation Act enacted at the same time as section 1621 confirms this interpretation of the word "eligibility" as used in section 1621(d). (See *Taniguchi*, *supra*, ___U.S. at p. ___ [132 S.Ct. at pp. 2004-2005] [considered together, other provisions of the same act provide "strong contextual clue[s]" of a term's ordinary meaning]; *Dyna-Med, Inc. v. Fair Employment &*

"entitled" among several meanings of "eligible," including "qualified to be chosen" and "permitted under football rules to catch a forward pass." (Webster's Third New International Dictionary (2002) p. 736; Webster's Ninth New Collegiate Dict. (1984) p. 404; see *MCI Telecommunications*, *supra*, 512 U.S. at p. 226, fn. 2 ["Webster's New Collegiate Dictionaries . . . are essentially abridgments of that company's Webster's New International Dictionaries"].) "That a definition is broad enough to encompass one sense of a word does not establish that the word is *ordinarily* understood in that sense." (*Taniguchi*, *supra*, U.S. at p. ___ [132 S.Ct. at p. 2003]; see *Mallard v. United States Dist. Court for Southern Dist. of Iowa* (1989) 490 U.S. 296, 301 [relying on the "most common meaning" and the "ordinary and natural signification" of the word "request," even though it may sometimes "double for 'demand' or 'command'"].) No other common or legal dictionary we consulted defines "eligible" as "entitled." (See *Taniguchi*, *supra*, ___ U.S. at p. ___ [132 S.Ct. at p. 2004] ["[b]ased on our survey of the relevant dictionaries, we conclude that the ordinary or common meaning of 'interpreter' does not include those who translate writings [as suggested by Webster's Third]"].) Thus, we reject the definition of "eligible" in Webster's Third New International and New Collegiate Dictionaries as including "entitled." (See *ibid.*; *MCI Telecommunications*, at p. 227 [rejecting the suggested meaning of a word in one dictionary and its progeny where that definition "contradicts one of the meanings contained in virtually all other dictionaries," italics omitted].)

Housing Com. (1987) 43 Cal.3d 1379, 1387 ["[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible"]; *Sutter Health v. Superior Court* (2014) 227 Cal.App.4th 1546, 1555 [looking to "the context and ordinary meaning" of a term "not defined in the statute"].) Section 1621 is contained in United States Code title 8, chapter 14, which consists of four subchapters. One subchapter includes a provision entitled "Statutory construction," which states: "Nothing in this chapter may be construed as an *entitlement* or a determination of an individual's *eligibility* or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this chapter, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage." (8 U.S.C. § 1643(a)(1), italics added.)

The juxtaposition of "entitlement" and "eligibility" makes clear that these words are not synonymous as they are used in title 8 United States Code section 1643(a)(1). Indeed, that provision indicates that "eligibility" is broader than "entitlement" and describes a person who may qualify to receive a benefit but has no legal right to it. (See *Immigration and Naturalization Service v. Cardoza-Fonseca* (1987) 480 U.S. 421, 444 ["those who can only show a well-founded fear of persecution are not *entitled* to anything, but are *eligible* for the discretionary relief of asylum"]; *Jarecha v. Immigration and Naturalization Service* (5th Cir. 1969) 417 F.2d 220, 223 [as 8 U.S.C. § 1255 "is now construed, an applicant who meets the objective prerequisites is merely eligible for adjustment of status, he is in no way entitled

to such relief"].) Because """identical words used in different parts of the same act are intended to have the same meaning,""" we construe "eligibility" in section 1621(d) to mean "qualified to receive a benefit" as that term is used in title 8 United States Code section 1643(a)(1). (See *Taniguchi*, *supra*, ___ U.S. at p. ___ [132 S.Ct. at pp. 2004-2005] ["interpreter" as used in 28 U.S.C. § 1920 has the same meaning as used in 28 U.S.C. § 1827]; accord, *Gustafson v. Alloyd Co.* (1995) 513 U.S. 561, 570; *Department of Revenue of Ore. v. ACF Industries, Inc.* (1994) 510 U.S. 332, 342; see also *Gustafson v. Alloyd Co.*, at p. 568 ["[a] term should be construed, if possible, to give it a consistent meaning throughout [an] Act"].)

De Vries suggests that section 1621(d) requires state laws to actually confer benefits on qualified undocumented immigrants. ~(AOB 15, 18; ARB 1)~ That is not what section 1621(d) says. Section 1621(d) requires only that state laws make undocumented immigrants "eligible" for public benefits.

C. *A.B. 540, A.B. 131, and S.B. 1210 Provide Eligibility for UC Students To Receive Postsecondary Education Benefits*

In construing a statute, """our fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.' . . . We begin by examining the statutory language because it generally is the most reliable indicator of legislative intent. We give the language its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.' . . . If, however, the statutory language is ambiguous, 'we may resort to extrinsic sources, including the

ostensible objects to be achieved and the legislative history.'"'" (*Lee v. Hanley*, *supra*, 61 Cal.4th at pp. 1232-1233; accord, *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors*, *supra*, 48 Cal.4th at p. 45; *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321.) Extrinsic sources include "'the statutory scheme, the apparent purposes underlying the statute and the presence (or absence) of instructive legislative history.'" (*County of San Diego v. Alcoholic Beverage Control Appeals Bd.* (2010) 184 Cal.App.4th 396, 401; see *Mt. Hawley Insurance Company v. Lopez* (2013) 215 Cal.App.4th 1385, 1400 (*Mt. Hawley*).) "'"Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute."'" (*Lee v. Hanley*, at p. 1233; accord, *Mays v. City of Los Angeles*, at p. 321.)

1. *A.B. 540*

a. *The language of A.B. 540 is unambiguous*

A statute's language is ambiguous when it is subject to more than one reasonable interpretation. (See *Bruns v. E– Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724; *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1162-1163; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) Here, the language of A.B. 540 broadly applies to make "all persons" attending any "accredited institution of higher education in California" eligible for an exemption from nonresident tuition," including undocumented immigrant students who meet the requirements set forth in Section 68130.5." (See *Martinez*, 50 Cal.4th

at p. 1295.) "All persons" means all persons, including UC students. Nothing in A.B. 540, including the requirements set forth in section 68130.5, can be reasonably interpreted to limit or restrict UC students from eligibility for the exemption from nonresident tuition. The language is unambiguous.

De Vries contends that A.B. 540 does not make UC students eligible for the exemption from nonresident tuition because it does not "apply to" the University of California. In support of his argument, De Vries cites section 68134, which states: "No provision of this part shall be applicable to the University of California unless the Regents of the University of California, by resolution, make such provision applicable." De Vries notes that the Supreme Court in *Martinez* cited section 68134 in observing that, "[b]y its terms, [A.B. 540] applies only to the California State University and California Community Colleges, and not to the University of California." (*Martinez*, *supra*, 50 Cal.4th at p. 1287, fn. 1.)

Section 68134, however, does not negate UC students' eligibility for the exemption from nonresident tuition under A.B. 540, nor does it render the language of A.B. 540 ambiguous. As the Regents argued in its demurrer, A.B. 540 makes all qualified students *eligible* for the exemption from nonresident tuition. Pursuant to section 68134, UC students are not *entitled* to that benefit unless the University of California elects to provide it. Indeed, section 68134 and the Supreme Court's reference to that statute in *Martinez* address whether A.B. 540 "applies to" the University of California, not whether it "applies to" UC students or makes them "eligible" for certain benefits. Whether A.B. 540 "applies to" the University of California is not relevant to whether A.B. 540 makes UC students eligible for the

exemption from nonresident tuition. As noted, section 1621(d) requires only that state law provide eligibility for undocumented immigrants to receive public benefits. It does not require that state law confer such benefits on eligible persons or mandate that any other entity do so.

De Vries also argues that, because section 68130.5, subdivision (a), which provides that qualified undocumented immigrants "shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges," makes no mention of the University of California, A.B. 540 must exclude UC students from eligibility for the exemption from nonresident tuition. The absence of language in section 68130.5 referring to the University of California, however, does not eliminate UC students from eligibility for that benefit. Section 68130.5, subdivision (a), merely requires California State University and California community colleges to exempt their qualifying students from paying nonresident tuition. (See § 68130.5, subd. (c) ["[t]he Board of Governors of the California Community Colleges and the Trustees of the California State University *shall* prescribe rules and regulations for the implementation of this section," italics added].) It may be, as De Vries argues, that A.B. 540 (and A.B. 131 and S.B. 1210) "cannot require the Regents to provide eligibility" for UC students. But section 1621(d) does not place that burden on the Legislature. It only requires that the Legislature provide "eligibility" for public benefits, which the Legislature has done through A.B. 540.

In re Garcia, *supra*, 58 Cal.4th 440 presented an analogous, though not identical, scenario. That case involved a state statute making undocumented immigrants eligible for membership in

the State Bar. Although the California Constitution gives the Supreme Court "ultimate authority" for establishing policies relating to admission to the Bar,[8] the Legislature enacted Business and Professions Code section 6064, subdivision (b), which provides that "the Supreme Court *may admit* [an] applicant [who is not lawfully present in the United States] as an attorney at law in all the courts of this state and *may direct* an order to be entered upon its records to that effect." (*Garcia*, at p. 451, fn. 9, italics added.) *Garcia* held that Business and Professions Code section 6064 satisfied the requirements of section 1621(d) because the former section "explicitly authoriz[es] a bar applicant 'who is not lawfully present in the United States' to obtain a law license." (*Garcia*, at p. 458.)

Business and Professions Code section 6064, however, merely made undocumented immigrants eligible for admission to the Bar. The Supreme Court retained authority to confer or deny membership "as a matter of state law" or for reasons specific to the applicant. (*Garcia*, *supra*, 58 Cal.4th at p. 459.) Thus, Business and Professions Code section 6064 "remov[ed] any federal statutory barrier" to admitting undocumented

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[8] *Garcia* explained: "Although both the Legislature and this court possess the authority to establish rules regulating admission to the State Bar, under the California Constitution this court bears the ultimate responsibility and authority for determining the issue of admission." (*Garcia*, 58 Cal.4th at p. 451; see *id*. at p. 452, fn. 11.) Thus, the Legislature arguably exercises more authority over policies affecting admission to the State Bar than it does over policies affecting tuition rates at the University.

immigrants to the State Bar, and the Supreme Court ultimately conferred that benefit on qualified applicants. (*Ibid.*)

Similarly, A.B. 540 removed the federal barrier to making undocumented immigrants eligible for the exemption from nonresident tuition, and the Regents conferred that benefit on qualified UC students. Nothing in section 1621(d), California's Constitution, or A.B. 540 requires more. In short, legislative deference to the University's constitutional status does not affect the Legislature's express intent to make UC students eligible for the exemption from nonresident tuition. De Vries's suggestion that A.B. 540 does not provide "eligibility" for UC students within the meaning of that term under section 1621(d) is not reasonable and does not cast doubt on the clarity of A.B. 540. (See *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, *supra*, 34 Cal.4th at p. 737 [language is unambiguous unless it is subject to more than one "reasonable interpretation"].)

b. *The legislative history of A.B. 540 confirms that UC students are eligible for the exemption from nonresident tuition*

Although it is not necessary to look to legislative history and other extrinsic sources because A.B. 540 is unambiguous, the legislative history and subsequent legislative enactments confirm our interpretation. (See *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1335 [although the meaning of language in a statute "is plain, it is helpful to look at [the statute's] legislative history"]; *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046 ["we [may] look to legislative history to confirm our plain-meaning construction of statutory language"]; *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 613, fn. 7 ["courts may always test

their construction of disputed statutory language against extrinsic aids bearing on the drafters' intent"]; *United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 79 ["'[r]eviewing courts may turn to the legislative history behind even unambiguous statutes when it confirms or bolsters their interpretation'"].) "We look to the Legislative Counsel's digest and other summaries and reports indicating the Legislature's intent." (*Mt. Hawley*, *supra*, 215 Cal.App.4th at p. 1401; see *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors*, *supra*, 48 Cal.4th at p. 56, fn. 15 ["'[w]e have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent'"]; *Valley Vista Services, Inc. v. City of Monterey Park* (2004) 118 Cal.App.4th 881, 889 ["[w]hen construing a statute, we may consider its legislative history, including committee and bill reports, and other legislative records"].)

Several enrolled bill reports for A.B. 540 refer repeatedly to tuition and "eligibility" rates for UC students in assessing the impact of A.B. 540 on the state and its student population. For example, the Enrolled Bill Report of the Office of the Secretary of Education notes that the estimated percentage of the student population "who may qualify for a nonresident tuition exemption under provisions of [the] bill . . . is less than 1% of the total student population at the three public higher education institutions, the UC, the CSU [California State University], and the CCC [California community colleges]." (Off. of the Sect. for Educ., Rep. on Assem. Bill. No. 540 (2001-2002 Reg. Sess.) Oct. 3, 2001, p. 5.) The Enrolled Bill Report goes on to state, "The UC and the CSU estimate minor, absorbable costs based on the

low number of students who would qualify for a nonresident tuition exemption under the provisions of this bill." (*Id.* at p. 6; see also Dept. of Finance, Rep. on Assem. Bill No. 540 (2001-2002 Reg. Sess.) Oct. 10, 2001, pp. 2-3; Dept. of Finance, Rep. on Assem. Bill No. 540 (2001-2002 Reg. Sess.) July 3, 2001, pp. 1-3; Assem. Republican Bill Analysis, Higher Educ. Com., Rep. on Assem. Bill No. 540 (2001-2002 Reg. Sess.) Sept. 13, 2001, p. 2.) If A.B. 540 did not provide eligibility for UC students to benefit from the nonresident tuition exemption, there would be no need for the Legislature to consider the impact of A.B. 540 on the University of California and its students.

De Vries argues that a sentence in the Legislative Counsel's Digest of A.B. 540 supports his contention that A.B. 540 provides eligibility only to students of California State University and California community colleges. He points to language stating, "These provisions are applicable to the University of California only if the Regents of the University of California act to make them applicable." (Legis. Counsel's Dig., Assem. Bill No. 540 (2001-2002 Reg. Sess.) 2001 Stats. ch. 814, p. 93.) As discussed with respect to the almost identical language in section 68134, however, the fact that A.B. 540 does not "apply to" the University of California does not affect UC students' "eligibility" for the nonresident tuition exemption.

Moreover, the sentence De Vries cites from the Legislative Counsel's Digest refers not to A.B. 540, but to language in section 68062, described by the Legislative Counsel's Digest as "existing law," which provided that an "alien" may establish "residence" in California unless precluded by federal law. (§ 68062, subd. (h).) In *Regents of University of California v. Superior Court* (1990) 225 Cal.App.3d 972 (*Regents v. Superior Court*) the court held

that federal law prohibited California colleges and universities (including the University of California) from classifying undocumented immigrants as "residents" under section 68062. (*Id.* at p. 980.) The court in that case acknowledged that section 68134 made section 68062 applicable to the University of California "only to the extent its Regents adopt it" (*Regents v. Superior Court*, *supra*, at p. 976, fn.1), meaning that the Regents could, but was not required to, classify qualified "aliens" as "residents" under section 68062. A.B. 540 now allows California colleges and universities to make undocumented immigrants eligible for the exemption from nonresident tuition based on factors other than their "residence," thus complying with federal law. (*Martinez*, *supra*, 50 Cal.4th at p. 1290; see 8 U.S.C. § 1623 [prohibiting "an alien who is not lawfully present in the United States" from eligibility for postsecondary education benefits "on the basis of residence"].) As was the case with section 68062, section 68134 allows the Regents to adopt the nonresident tuition exemption provided by A.B. 540 if it chooses to do so.

We assume the Legislature knew of section 68134 and its effect on other provisions of the Education Code when the Legislature enacted section 2 of A.B. 540, which added section 68130.5. (See *People v. Scott* (2014) 58 Cal.4th 1415, 1424 ["the Legislature "'is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof'""].) We also assume the Legislature intended section 68134 to have the same effect on section 68130.5 that it had on section 68062. (See *People v. Scott*, at p. 1424 ["[c]ourts may assume . . . that the Legislature intended to maintain a consistent body of rules and to adopt the meaning of statutory terms already construed"].) That effect is to

acknowledge the University of California's special status under the California Constitution and to allow the University to decide whether to confer on its students the benefits for which they are eligible under state law.[9]

Finally, S.B. 1210, which the Legislature enacted in 2014, acknowledges that A.B. 540 applies to UC students even if it does not apply to the University. S.B. 1210 states, "Since 2002, students have been exempt from paying nonresident tuition and fees at the California Community Colleges, the California State University, and the University of California pursuant to Section 68130.5."[10] (Stats. 2014, ch. 754, § 2, subd. (b).) While not binding, "'a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration.'" (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th

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[9] Other Education Code statutes follow a similar pattern. For example, section 68075.5, subdivision (a), exempts certain members of the Armed Forces stationed in California from paying nonresident tuition at the California State University and California community colleges. Even though that provision does not reference the University of California, another subdivision of section 68075.5, subdivision (c), asks the University of California to adopt policies regarding tuition rates for eligible veterans that conform to the requirements of section 68075.5, subdivision (a). Thus, through section 68075.5, subdivision (c), the Legislature intended to make veterans attending a UC school eligible for the benefit of in-state tuition.

[10] The same provision also acknowledges that A.B. 131 makes UC students "eligible for state financial aid or financial aid offered by [that] public institution." (Stats. 2014, ch. 754, § 2, subd. (b).)

914, 922; see *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 724 ["'[w]hile "subsequent legislation interpreting [a] statute . . . [cannot] change the meaning [of the earlier enactment,] it [does supply] an indication of the legislative intent which may be considered together with other factors in arriving at the true intent existing at the time the legislation was enacted"'"].) Here, S.B. 1210 confirms that A.B. 540 makes UC students eligible for the nonresident tuition exemption.

2. *A.B. 131 and S.B. 1210*

A.B. 131 and S.B. 1210, like A.B. 540, make undocumented immigrants attending the University of California eligible for financial aid and student loan programs and rely on the Regents to confer these benefits on qualified students. The language of A.B. 131 and S.B. 1210, like the language of A.B. 540, does not exclude from eligibility any qualified students on the basis of the institution they attend. Indeed, by specifically referencing the University of California and its students, those measures provide eligibility for the specified benefits to those students, regardless of whether the University ultimately confers such benefits on them.

For example, section 3 of A.B. 131, which added section 69508.5, addresses eligibility for Cal Grants and states that "a student who meets the requirements of subdivision (a) of Section 68130.5, or who meets equivalent requirements adopted by the Regents of the University of California, is eligible to apply for, and participate in, any student financial aid program administered by the State of California to the full extent permitted by federal law." The plain language of this provision makes clear that UC students are eligible to participate in the

Cal Grant program.[11] Section 1 of A.B. 131, which added section 66021.6, applies to UC Grants and states that "the Regents of the University of California are requested to . . . establish procedures and forms that enable persons who are exempt from paying nonresident tuition under Section 68130.5, or who meet equivalent requirements adopted by the [R]egents, to apply for, and participate in, all student aid programs administered by these [schools] to the full extent permitted by federal law." Thus, section 1 of A.B. 131 makes undocumented UC students eligible to participate in the UC Grant program.

De Vries argues that the reference in A.B. 131 to "requirements adopted by the Regents of the University of California" means that "its terms do not apply to UC students." Putting aside the fact that the Regents is not involved in the Cal Grants program, De Vries's argument lacks merit. Section 1621(d) does not require an enactment of state law to specify the terms under which eligible beneficiaries may receive certain benefits. Section 1621(d) merely requires the enactment of state law to make undocumented immigrants eligible for those benefits, and A.B. 131 satisfies that requirement, regardless of whether, as De Vries argues, UC students' eligibility for UC Grants requires them to meet certain conditions adopted by the Regents.

In terms even plainer than A.B. 540 and A.B. 131, S.B. 1210 provides eligibility to qualified UC students to benefit from certain student loan programs. Section 3 of S.B. 1210, which added section 70033, subdivision (a)(1), states: "Commencing

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[11] The Regents notes that it plays no role in conferring Cal Grants on any students, including UC students.

with the 2015-16 academic year, a student attending a *participating institution* may receive a loan under the DREAM Program if the student satisfies all of the following requirements: [¶] (1) The student is exempt from paying nonresident tuition under Section 68130.5, or meets equivalent requirements adopted by the Regents of the University of California." (Italics added.) A "participating institution" is defined as "any campus of the . . . University of California that elects to participate in the DREAM Program pursuant to the requirements specified for a qualifying institution . . . ." (§ 70032, subd. (i).) Thus, UC students are eligible to participate in the DREAM Program established by S.B. 1210.

DISPOSITION

The judgment is affirmed. The Regents is to recover its costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE

I am a citizen of the United States and employed by Judicial Watch, Inc. in the City of Washington, District of Columbia. I am over the age of 18 and am not a party to the within action. My business address is 425 Third Street SW, Suite 800, Washington, DC 20024.

On January 17, 2017, I served a copy of the foregoing document described as:

PETITION FOR REVIEW

on the parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

See Attached Service List

I delivered said documents to an authorized courier or driver authorized to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person to whom it is to be served on the next business day.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on January 17, 2017 in Washington, DC.

*/s/ Chris Fedeli**
Chris Fedeli

* Pursuant to Cal. Rules of Court 8.77(a), a copy of the original signed, printed form of this document will be kept on file.

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