No. _____

IN THE
Supreme Court of the United States

EARL DE VRIES,
Petitioner,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Title 8, Section 1621(d) prohibits states from giving public benefits to unlawfully present aliens absent "the enactment of a State law ... which affirmatively provides for such eligibility." The California Legislature enacted three State laws that deferred to the Regents of the University of California whether to extend taxpayer-funded education benefits to unlawfully present aliens. Do the benefits violate Title 8, Section 1621(d)?

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INTRODUCTION

The error below was a simple one: in upholding education benefits provided by the Regents of the University of California ("Regents") to unlawfully present aliens, the California Court of Appeal read the words "affirmatively provides for such eligibility" out of Title 8, Section 1621(d). This Court should grant certiorari and reverse, because "the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content …." *DirecTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015) (reversing a prior decision of the California Court of Appeal, Second Appellate District).

Specifically, the Court of Appeal assigned no meaning to language deliberately chosen by Congress. The court could not have ruled as it did otherwise. The word "affirmatively" in Section 1621(d) means "with certainty." Black's Law Dictionary defines "affirmative" as "that which declares positively," BLACK'S LAW DICTIONARY, *Sixth Ed.*, and the word "positively" means "with certainty; so as to leave no room for doubt."[1] Accordingly, a state law that "affirmatively provides for such eligibility" is one that "positively declares" eligibility with certainty. None of the three California statutes examined by the Court of Appeal satisfies this standard. Instead, the statutes say unlawfully present students attending University of California ("UC") schools *might* be eligible for benefits, *if* the

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[1] OXFORD AMERICAN DICTIONARY, entry for "positively," available at http://plusdict.com/definition/positively.

Regents decide to make them eligible, and *if* the Regents take administrative steps to establish the students' eligibility. The statutes are a far cry from an affirmative, positive declaration of eligibility.

Instead, the Court of Appeal focused on the difference between the words "eligible" and "entitled." App. at 24a to 29a. The distinction is irrelevant. Whatever "eligible" means in Section 1621, the California Legislature did not "affirmatively provide" eligibility for the benefits. It merely deferred to the UC's governing body – the Regents. It asked the Regents to decide whether to make unlawfully present aliens eligible for the benefits. The Legislature's actions are exactly the kind of delegation Section 1621 was intended to prevent. In other words: the state statutes are *not* affirmative provisions of eligibility.

The Legislature did not affirmatively provide eligibility for the benefits because the State's Constitution prohibits it from doing so. Specifically, the California constitution vests virtually all governing authority over the UC system in the Regents. As result, the Legislature lacks authority to enact a state law affirmatively providing eligibility for the benefits.

Faced with this dilemma, the Court of Appeal chose to rewrite federal law. App. at 32a, 40a. Its decision to read inconvenient words out of Section 1621(d) undermines federal immigration law, conflicts with the law of three other states, and has

led to fragmentation in national immigration policy. This Court should accept review and reverse.

DECISIONS AND PARTIES BELOW

The California Supreme Court's decision to deny the petition for review is published as *De Vries v. Regents of the Univ. of Cal.*, No. S239558, 2017 Cal. Lexis 1387 (Cal. Feb. 22, 2017) and is reprinted in the Appendix (App.) at 1a. The opinion of the California Court of Appeal is published as *De Vries v. Regents of Univ. of Cal.,* 6 Cal. App. 5th 574 (Cal. Ct. App. 2016) and is reprinted at App. 2a. The unreported decision of the Los Angeles County Superior Court is reprinted at App. 43a. Petitioner Earl De Vries ("De Vries") and respondent Regents of the University of California ("Regents") were the only parties to these proceedings.

JURISDICTION

The California Court of Appeal, Second Appellate District issued its opinion on December 9, 2016. App. 2a. Petitioner filed a timely petition for review to the California Supreme Court, which that court denied on February 22, 2017. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS

8 U.S.C. § 1621(a) provides, in relevant part:

> Notwithstanding any other provision of law and except as provided in

> subsections (b) and (d), an alien ... is not eligible for any State or local public benefit...

8 U.S.C. § 1621(d) provides, in relevant part:

> 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) only through the enactment of a State law … which affirmatively provides for such eligibility.

STATEMENT OF THE CASE

A. Background

This case concerns federal limitations on States' power to give public benefits to unlawfully present aliens. Title 8, Section 1621 contains two relevant provisions. First, Section 1621(a) generally prohibits giving unlawfully present aliens state or local public benefits. 8 U.S.C. § 1621(a). Second, Section 1621 creates a narrow exception to this prohibition, allowing States to make unlawfully present aliens eligible for state or local benefits "only through the enactment of a State law ... which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d); *see also* App. at 4a. Most courts have held that Section 1621(d) requires passage of a state

statute that explicitly makes unlawfully present aliens eligible to receive the benefit in question.

Congress enacted Section 1621 as a part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), signed into law by President Bill Clinton on August 22, 1996. App. at 4a. 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 branch of government elects to opt out of the general prohibition on such benefits. Specifically, the state legislature must decide whether to extend eligibility for a benefit to unlawfully present aliens. To do so, the legislature must enact a state law that positively and unequivocally establishes unlawfully present aliens' eligibility for the benefit. Absent a clear and specific state law, a benefit may not be provided.

Through a series of three statutes, the California Legislature made unlawfully present aliens attending California State University ("CSU") schools and California Community College ("CCC") eligible to receive in-state tuition, state funded or administered financial aid, and state funded or administered student loans. App. at 5a, 21a to 23a; *see also Martinez v. Regents of the Univ. of California,* 50 Cal. 4th 1277 (Cal. 2010). Because of the Regents' constitutionally independent status, however, the Legislature lacks authority over tuition and student aid policies at UC schools. Cal. Const., art. IX, § 9; *see also* App. at 5a to 6a, 11a to 14a. The "power of the Regents to operate, control and

administer the University is virtually exclusive." *Regents of the Univ. of Cal. v. Superior Court of Alameda Cty.,* 17 Cal. 3d 533, 537 (Cal. 1976); *see also* App. at 5a to 6a, 11a to 14a. As a result, the California Legislature is constitutionally powerless to enact a state law affirmatively providing that unlawfully present aliens attending UC schools are eligible to apply for public education benefits.

Nonetheless, the Regents adopted policies purportedly making unlawfully present aliens attending UC schools eligible to apply for the same public education benefits as unlawfully present aliens attending CSU and CCC schools. App. at 6a ("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."); *see also* App. at 19a to 20a. The Regents currently provide all three types of public benefits to unlawfully present aliens attending UC schools. App. at 6a, 47a.

B. Proceedings Below

Earl De Vries, a California resident and taxpayer, filed a lawsuit in the Los Angeles County Superior Court alleging that the Regents were spending his tax dollars illegally by providing in-state tuition and other public, financial aid benefits to unlawfully present aliens attending UC schools. App. at 6a to 8a, 46a to 47a. De Vries' lawsuit alleges that no state law affirmatively makes

unlawfully present aliens attending UC schools eligible to apply for such benefits, and, therefore, the benefits are illegal under Title 8, Section 1621. *Id.* The Regents argue that three state laws, A.B. 540, A.B. 131, and S.B. 1210, provide eligibility for the benefits, or in the alternative, that the Regents' policies themselves are state laws. App. at 7a.

The Los Angeles County Superior Court sustained the Regents' demurrer to De Vries' Amended Complaint. App. at 7a, 49a. The Superior Court held that the Regents' policies themselves were "state laws" equivalent to acts of the California Legislature under the California Constitution, and therefore the Regents' policies standing alone satisfy Section 1621(d). App. at 46a to 49a. The Superior Court's holding put California state law into direct conflict with federal law, as Section 1621 specifies that only state legislative enactments may make unlawfully present aliens eligible for benefits. *See* U.S. Const. art. VI, cl. 2.

On appeal, the California Court of Appeal declined to adopt the Superior Court's reasoning. App. at 23a (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…"). Instead, the Court of Appeal found that A.B. 540, A.B. 131, and S.B. 1210 satisfy Section 1621(d). App. at 29a to 42a. The Court of Appeal recognized that the language used in the three California statutes to make CSU and CCC students eligible to apply for public benefits was very different from the language regarding the

UC. App. at 5a to 6a, 11a to 14a. The Court of Appeal also recognized that the three statutes used passive language when referencing the UC because the Legislature lacks authority under the California Constitution to affirmatively establish tuition and student aide policies for UC students.[2] App. at 5a to 6a, 11a to 14a.

The Court never found that A.B. 540, A.B. 131, and S.B. 1210 provide eligibility for UC students "affirmatively." It only found that the statutes "provide eligibility." App. at 32a ("Section 1621(d) "only requires that the Legislature *provide* '*eligibility*' for public benefits, which the Legislature has done through A.B. 540"), App. at 40a ("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). Following the Court of Appeal's decision, De Vries filed a timely petition for review with the California Supreme Court, which was denied. App. 1a.

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[2] Indeed, the three California statutes acknowledge that only the Regents can make UC students eligible to apply for benefits, and that the Legislature is powerless to do so. 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").

REASONS FOR GRANTING THE PETITION

The Court of Appeal's decision conflicts with the express language of Section 1621(d) and the decisions of several other state and federal courts interpreting that language. Until this conflict is resolved, it will remain an open question whether unlawfully present aliens can receive public benefits without the enactment of a state law by a state legislature positively and explicitly making such aliens eligible to apply for the benefits. Decisions applying Section 1621(d) have not been entirely consistent. In 2015, a New York appellate court held that the Tenth Amendment allows New York's Judiciary, not just its Legislature, to establish unlawfully present aliens' eligibility to become members of the New York State Bar.

The Court of Appeal's ruling has greatly exacerbated inconsistencies in Section 1621(d)'s application. The largest state in the nation has now determined that its Legislature need not "affirmatively provide" that unlawfully present aliens are eligibility for public benefits, but can defer that determination to other state entities. The Court of Appeal's decision misreads Section 1621 and is at odds with rulings in Florida, Illinois, and New York.[3] The proper interpretation of Section 1621(d) is ripe for this Court's resolution.

The issue is important because, unless resolved by this Court, the result is a patchwork of

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[3] Indeed, the conflicting interpretations run even deeper. *See infra* p. 15, note 5 and p. 16, note 7.

rules establishing how unlawfully present aliens can be made eligible for public benefits. Not only does the U.S. Constitution grant Congress the power to "establish an uniform Rule of Naturalization," but immigration law and policy bear directly on foreign relations and diplomacy, which also are the exclusive domain of the federal government. By finding that entities other than state legislatures can establish unlawfully present aliens' eligibility for public benefits, the Court of Appeal's decision weakened the federal government's powers over national immigration law and policy, foreign relations, and diplomacy. The decision also creates a further fracturing of immigration policy, transforming a law that allows 50 state legislatures to participate in immigration decisions into one that could allow 500 or 5,000 state agencies and local governments to participate in these decisions.

The question also is important because benefit programs can be costly. Without a final, definitive interpretation of Section 1621(d) by this Court, state agencies or local officials may claim the power to extend public benefits to unlawfully present aliens based only on the vaguest, most tenuous expressions (or purported expressions) of a state legislature's intent.

I. The California Court of Appeal Erred, and Created a Conflict with the States of Florida, Illinois, and New York, by Weakening a Federal Immigration Statute

Most courts applying Section 1621(d) have held that to "affirmatively provide" eligibility means a state statute enacted by the legislature must establish unlawfully present aliens' eligibility to apply for a public benefit in terms that are unequivocal, non-passive, and leave no room for doubt. The Court of Appeal's decision 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 require the Regents to decide eligibility status before the students may apply. The Court of Appeal also made this finding despite the indisputable fact that the California Legislature lacks the power to establish tuition and student aid policies for 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.

The Court of Appeal's decision has created a conflict nationally, between the law of the states California, Florida, Illinois, and New York. In 2014, the Supreme Court of Florida held that Section 1621 requires a state legislative act "affirmatively providing" that unlawfully present aliens seeking admission to the Florida Bar are eligible to apply for

law licenses. *Florida Bd. of Bar Exam'rs*, 134 So. 3d 432 (Fla. 2014). The Florida court explained:

> If the Florida Legislature were to ... **affirmatively provide** that such unauthorized immigrants are eligible for professional licenses … qualified individuals would be eligible….

Id. at 440 (emphasis added).

An Illinois appellate court also reached a conclusion contrary to the California Court of Appeal's ruling, holding that "affirmatively provide for eligibility" means the opposite of "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, 975 N.E.2d 667, 673 (Ill. App. Ct. 2012), *review denied*, 981 N.E.2d 997 (Ill. 2012).

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:

> [N]othing 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, 975 N.E.2d at 677 (italics added).

Finally, a New York appellate court also agreed with Florida's and Illinois' interpretation of Section 1621. The New York court stated that Section 1621 prohibits benefits to unlawfully present aliens unless "an individual state has enacted legislation affirmatively authorizing" the benefits. *Matter of Application of Vargas,* 131 A.D.3d 4, 5 (N.Y. App. Div. 2015). However, the split between New York and California is even more compelling. The New York appellate court went on to find that, even though the New York legislature had not affirmatively provided eligibility for the state public benefit in question (law licenses), Section 1621(d)'s "legislative enactment" requirement conflicted with the Tenth Amendment because 1621(d) unlawfully intrudes into the organization of state governments. *Matter of Application of Vargas*, 131 A.D.3d at 25-27; U.S. Const. amend. X. The California Court of Appeal did not reach this question, which the Regents nevertheless argued at all stages of the proceedings.

Additionally, even if the New York appellate court were correct in finding that Section 1621(d) conflicts with the Tenth Amendment, the doctrine of severability would not allow the Court to invalidate half of Section 1621(d), as the New York court did. Rather, it would require Section 1621(d) be stricken in its entirety. Striking the words "only" and "the enactment of" from 1621(d) gets the severability analysis wrong, as doing so would nullify both 1621(a) and 1621(d) by eviscerating Congress' intent to create a general prohibition on unlawfully present aliens receiving state or local public benefits unless certain conditions are satisfied. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1999) ("The inquiry into whether a statute is severable is essentially an inquiry into legislative intent."). Accordingly, if Section 1621(d) conflicts with the Tenth Amendment, Section 1621(a)'s general prohibition on benefits would remain intact and states would lose *all* powers to extend benefits to unlawfully present aliens. This would be the only result consistent with Congress' explicit policy statement adopted in PRWORA, and any reasonable reading of the text of 1621(a) and (d). *See* 8 U.S.C. § 1601 (it is "the immigration policy of the United States that aliens within the Nation's borders not depend on public resources to meet their needs…"). Should this Court accept review and find in favor of the Regents' interpretation of Section 1621(d), the Court should also strike all of Section 1621(d) based on conflict with the Tenth Amendment.[4]

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[4] This potential constitutional conflict is further reason for the Court to find that Petitioner's reading of Section 1621 is correct. *INS v. St. Cyr*, 533 U.S. 289, 299-300 (2001) ("[I]f an

The California Court of Appeal's holding, combined with the California Supreme Court's denial of review, creates a split in California, Florida, Illinois, and New York as to whether Section 1621(d) requires state legislatures to "affirmatively provide" eligibility in any meaningful way.[5] The California Court of Appeal's decision is now binding precedent throughout California. *Auto Equity Sales, Inc. v. Superior Ct.*, 369 P.2d 937, 940 (Cal. 1962) ("Decisions of every division of the District Courts of Appeal are binding upon all the … superior courts of this state."). Florida's court of last resort has already spoken, and the appellate decisions in Illinois and New York are also binding in their respective states. *See People v. Harris*, 526 N.E.2d 335, 340 (Ill. App. Ct. 1988) ("It is fundamental in Illinois that the decisions of an appellate court are binding precedent on all circuit courts regardless of locale."); *Mountain View Coach Lines, Inc. v. Storms*,

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otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible,' we are obligated to construe the statute to avoid such problems.") (internal citations omitted).

[5] Although not binding throughout its state, a recent Maine Superior Court decision also conflicts with the California Court of Appeal, holding that Section 1621(d) requires a state statute that affirmatively and "positively" makes unlawfully present aliens eligible to apply for public benefits. *Maine Mun. Ass'n v. Maine HHS,* 2015 Me. Super. Lexis 197 (Me. Super. Ct. June 9, 2015). The Maine court also reached a conclusion contrary to the New York appellate court, holding that the Tenth Amendment could not operate as a bar against Section 1621(d) because the U.S. Constitution explicitly reserves all immigration powers to the federal government. *Id.* at *22.

102 A.D.2d 663, 664, (N.Y. App. Div. 1984) ("The Appellate Division is a single State-wide court … and, therefore, the doctrine of *stare decisis* requires trial courts in this department to follow precedents set by the Appellate Division of another department …").

The Court should grant review to resolve this conflict and should not allow these states' highest courts to evade further review by themselves refusing review of their intermediate state appellate courts' decisions.[6] These appellate decisions – particularly from California and New York – essentially create a conflict among state courts of last resort that satisfies Supreme Court Rule 10(b).[7]

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[6] In the New York case, a bar committee presented the case as an *in re* matter directly to the intermediate appellate court with no adverse party. *Matter of Application of Vargas,* 131 A.D.3d at 8.

[7] 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*, 997 F. Supp. 1244, 1253 (C.D. Cal. 1997) (Section 1621(d) provides "a description of state legislative options in the area of immigrant eligibility for state or local benefits"). This conflicts with the decision of the trial court in this case, which held that either state legislative action or actions of an independent state board like the Regents satisfy Section 1621(d). App. at 49a. The Court of Appeal determined that it "need not decide" this issue and so did not address it, leaving the conflict in place. App. at 23a.

II. This Case Presents Several Important Issues Affecting National Immigration Policy

Certiorari also is warranted under Supreme Court Rule 10(c) as, given the widening split among the states over the proper application of Section 1621(d), only review by this Court can provide a single, national, uniform, and authoritative interpretation of this important question of federal law. The question is important for at least three reasons. First, the cost of the challenged benefits is substantial – at least $27 million in taxpayer dollars in 2015. Second, the decision effectively eliminates Section 1621's bright line rule – 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. 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.

The $27 million annual cost of the benefits could increase in the future, and, without redress by this Court, other state agencies or municipalities could soon decide to spend additional millions of

dollars of public money for unlawfully present aliens in ways never intended nor approved by Congress or the 50 state legislatures. 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 political agendas free from state legislative control. These fiscal issues alone demonstrate the importance of the issue and justify review.

Second, the California Court of Appeal's decision replaces a strict bright-line rule – one that required a law enacted by the state legislature affirmatively and explicitly opting out of the general prohibition on benefits – with a rule that is vague and has little fixed meaning. In enacting Section 1621, Congress chose to authorize only the highest and most politically accountable level of state government to opt out of the general prohibition on giving public monies to unlawfully present aliens. Congress further directed that, to the extent a state elects to opt out of this prohibition, the state's legislature must assume full political responsibility for that decision 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* 104 H. Rept. 725, 104th Cong., 2d Sess. (July 30, 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].").[8] The law prohibits political buck-passing to anonymous state officials (such as the Board of Regents). 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 to authorize government benefits for unlawfully present aliens. 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 despite longstanding case law holding that the California Legislature cannot enact policy affirmatively binding on the Regents or 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 broadens when and how unlawfully present aliens may become eligible to apply for public benefits. State, county, and local officials may now claim legislative authorization to offer benefits based on vague or generalized language in a statute that only hints at

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[8] 104 H. Rept. 725, available at https://www.congress.gov/congressional-report/104th-congress/house-report/725/1.

or suggests such benefits. This defeats the purpose and function of Section 1621.[9]

And finally, the Court of Appeal's decision interferes with Congress's carefully crafted plan to keep the state governments on a short 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 50 state governments 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 public benefits to aliens. In Section 1621(d), Congress gave back limited power to the states, but only under a very narrow 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.

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[9] It bears consideration that strict adherence to Section 1621(d)'s express language not only is required, but also satisfies one of the purposes of PRWORA. PRWORA was a welfare reform bill enacted in part to reduce the availability of benefits for immigrant aliens generally. 8 U.S.C. § 1601 ("Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes. It continues to be the immigration policy of the United States that aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and [that] the availability of public benefits not constitute an incentive for immigration to the United States....") (internal headings and punctuation omitted).

The Court of Appeal's decision undermines Congress' carefully crafted compromise by allowing state agencies to extend benefits to unlawfully present aliens based on something less than a state law affirmatively providing eligibility. Local officials or state agencies could begin to use the Court of Appeal's reasoning to usurp state legislative powers and make eligibility determinations themselves. This in turn will open a Pandora's box of state and local bureaucrats using their authority to advance their own immigration policy preferences in ways Congress has expressly prohibited.

The danger of this kind of fragmentation of federal immigration policy – as the California Court of Appeal decision has wrought – is a matter of obvious national importance. As two federal appellate courts have recently held, "a fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy." *Washington v. Trump,* 847 F.3d 1151, 1166-1167 (9th Cir. 2017), *citing Texas v. United States* 809 F.3d 134, 187-88, (5th Cir. 2015), *aff'd*, 136 S. Ct. 2271 (2016).

As the Florida Supreme Court further 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*, 134 So. 3d at 434, *citing Arizona v. U.S.*, 132 S. Ct. 2492,

2498 (2012) (internal punctuation omitted). This need for "uniformity" in immigration policy explains 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 are 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 power to establish a national immigration policy. And immigration policy is one fundamental piece of the federal government's broad powers to conduct unified diplomacy with foreign nations on behalf of the United States. As this Court recently explained:

> 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, 132 S. Ct. at 2498.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: May 23, 2017

Court of Appeal, Second Appellate District, Division Seven – No. B264489

S239558

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EARL DE VRIES, Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, Defendant and Respondent.

The request to appear as counsel pro hac vice is granted.

The petition for review is denied.

Supreme Court
F I L E D
FEB 22 2017
Jorge Navarrete Clerk

_____
Deputy

CANTIL-SAKAUYE

_____
Chief Justice

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.
F I L E D
Dec 09, 2016
Joseph A. Lane, Clerk
Derrick L.Sanders Deputy Clerk

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

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 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

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

"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 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,

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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.

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.)

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

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

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 8 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 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

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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.)

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 there from 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 quasilegislative 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

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

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: "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 fulltime 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 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

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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.

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 "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].)

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 & 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.)

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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.

Thus, Business and Professions Code section 6064 "remov[ed] any federal statutory barrier" to admitting undocumented 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]

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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

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]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 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.

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).)

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

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

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 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.*

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

RULING

HEARING DATE: **March 13, 2015**

TRIAL DATE: Not Set

CASE: **Earl De Vries v. Regents of the University of California**

CASE NO.: **BC555614**

Opposed: **Yes.**

FILED
Superior Court of California
County of Los Angeles
MAR 13 2015
Sherri R. Carter, Executive Officer/Clerk
By Deputy A. Barton

(1) APPLICATION TO APPEAR PRO HAC VICE;
(2) DEMURRER TO FIRST AMENDED COMPLAINT

MOVING PARTY: (1) Plaintiff on behalf of Attorney Chris Fedeli;
(2) Defendant The Regents of the University of California

RESPONDING PARTY(S): (1) No opposition filed.
(2) Plaintiff Earl De Vries

PROOF OF SERVICE:

- Correct Address: (1) Yes; (2) Yes.
- 16/21 (CCP § 1005(b)): (1) OK. Served by mail on October 1, 2014; continued to this date per November 4, 2014 minute order; (2) OK. Served by mail on November 25, 2014.

  - **GRANT application to appear pro hac vice;**
  - **SUSTAIN demurrer to entire Complaint with leave to amend.**

ANALYSIS

Application To Appear Pro Hac Vice
Attorney: Chris Fedeli

1. X The application is verified. Id. at 9 .40(c)(1).
2. X The application is accompanied by a proof of service by mail in accordance with CCP § 1013a. CRC Rule 9.40(c)(1).
3. X Notice of hearing has been given at the time prescribed in CCP §1005. CRC Rule 9.40(c)(1).
4. n/a The application was served in prescribed. CRC Rule 9.40(c)(1).
5. X The application shows service on all parties who have appeared and the State Bar of

California at its San Francisco office. CRC Rule 9.40(c)(1).

6. X Proof that applicant paid a reasonable fee not exceeding $50 to the State Bar of California with the copy of the application and the notice of hearing. CRC Rule 9.40(e).
7. X The applicant is not a resident of the State of California. Id. at 9.40(a)(1).
8. X The applicant is not regularly employed in the State of California. Id. at 9.40(a)(2).
9. X The applicant is not regularly engaged in substantial business, professional, or other activities in the State of California. Id. at 9.40(a)(3).
10. X The application states the applicant's residence and office address. Id. at 9.40(d)(1).
11. X The application states the courts to which the applicant has been admitted to practice and the dates of admission. Id. at 9.40(d)(2).
12. X The application states that the applicant is a member in good standing in the courts to which the applicant has been admitted to practice. Id. at 9.40(d)(3).
13. X The application states that the applicant is not currently suspended or disbarred in any court. Id. at 9.40(d)(4).
14. n/a The application states the title of court and cause in which the applicant has filed an application to appear as counsel pro hac vice in this state in the preceding two years, the date of each application, and whether or not it was granted. CRC Rule 9.40(d)(5).
15. X The applicant has not made repeated appearances pursuant to CRCR 9.40(b).

16. n/a Any special circumstances for repeated appearances pursuant to CRC rule 9.40(b). "Absent special circumstances, repeated appearances by any person under this rule is a cause for denial of an application." CRC Rule 9.40(b).
17. X The application states the name, address, and telephone number of the active member of the State Bar of California who is attorney of record. CRC Rule 9.40(d)(6).

The application to for the admission of Chris Fedeli to appear pro hac vice on behalf of Plaintiff is GRANTED.

Demurrer

As an initial matter, the Court acknowledges that it has granted the parties permission to file oversized briefs (30/30/15). September 30, 2014 Stipulation and Order.

Plaintiffs lawsuit is premised on the following language in 8 U.S.C. § 1621(d): 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." 1AC, ¶ 9.

Defendant's demurrer that the Regents of the University of California's (hereinafter "UC Regents") actions alone satisfy 8 U.S.C. § 1621(d) is well-taken. The central premise of Plaintiffs lawsuit, as

articulated in his opposition, is as follows: Because the California Legislature does not have legislative authority over the constitutionally independent UC Regents[1], despite the Legislature's enactment of AB 540 (in-state tuition benefits), AB 131 (state-administered financial aid benefits) and SB 1210 (student loan benefits), no "state law" exists as required by 8 U.S.C. § 1621(d) for the tuition, financial aid and student loan benefits the UC Regents are providing to UC students, and such benefits are unlawful.

However, Plaintiffs premise fails to recognize that the policies and procedures of the UC Regents have the force and effect of a statute:

> The University is a statewide administrative agency with constitutionally derived powers. (Cal. Const., art. IX, § 9, subd. (a); Regents of University of California v. City of Santa Monica (1978) 77 Cal. App. 3d 130, 135 [143 Cal. Rptr. 276] (Santa Monica).) Its employees are public employees. (See Ishimatsu v. Regents of University of California (1968) 266 Cal. App. 2d 854, 860-861 [72 Cal. Rptr. 756].) The University is administered by the Regents. (Cal. Const., art. IX, § 9, subd. (a).) **Regents have rulemaking and policymaking power in regard to the University; <u>their policies and procedures have the force and effect of statute</u>**. (*Santa Monica*, *supra*, 77

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1 Cal. Const., art. IX, § 9(a).

Cal. App. 3d at p. 135.)

Kim v. Regents of University of California (2000) 80 Cal.App.4th 160, 164-65 (bold emphasis and underlining added).

> The Regents have been characterized as "a branch of the state itself" (*Pennington v. Bonelli* (1936) 15 Cal.App.2d 316,321 [59 P.2d 448]) or "a statewide administrative agency" (*Ishimatsu v. Regents of University of California* (1968) 266 Cal.App.2d 854, 864 [72 Cal.Rptr. 756]). It is apparent that the Regents as a constitutionally created arm of the state have virtual autonomy in self-governance (Cal. Const., art. IX, § 9). "The corporation known as the Board of Regents constitutes the highest administrative authority of the University of California. '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 ... .' (*Goldberg v. Regents of University of California* (1967) 248 Cal.App.2d 867, 874 [57 Cal.Rptr. 563]; *Newmarker v. Regents of Univ. of Cal.*, ... , 160 Cal.App.2d 640, 645 [325 P.2d 558].) '[The] power of the Regents to operate, control, and administer the University is virtually exclusive.' (30 Ops.Cal.Atty.Gen. 162, 166; Cal. Const., art. IX,§ 9.) ..."

> (*Regents of University of California v. Superior Court* (1970) 3 Cal.3d 529, 540, fn. omitted [91 Cal.Rptr. 57, 476 P.2d 457].) As a consequence, **policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes** (*Hamilton v. Regents* (1934) 293 U.S. 245 [79 L.Ed. 343, 55 S.Ct. 197]).

Regents of University of California v. City of Santa Monica (1978) 77 Cal.App.3d 130, 135 (bold emphasis added).

The Court finds that, in this regard, the UC Regents' 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).

The demurrer to the entire Complaint is SUSTAINED with leave to amend. Plaintiff will only be given one more opportunity to amend.