

September 17, 2010

Re: **Support the DREAM Act (S. 729) (Amendment to S. 3454 – National Defense Authorization Act)**

Dear Senator:

On behalf of the American Civil Liberties Union (“ACLU”), a non-partisan organization with over half a million members, countless additional activists and supporters, and 53 affiliates nationwide, we urge you to support the Development, Relief, and Education for Alien Minors (DREAM) Act (S. 729). For 90 years the ACLU has protected the rights of immigrants by ensuring equal protection and fairness under our laws. To this end, the ACLU has fought to preserve the option for states to grant all its resident students, regardless of immigration status, the right to attend public universities at an affordable rate. Recent reports suggest the DREAM Act will be offered as a Senate amendment to S. 3454, the National Defense Authorization Act (NDAA) in the coming days or weeks. Because of this bill’s critical role in promoting fundamental fairness in access to public higher education, we urge you to support adoption of the DREAM Act amendment when it comes up for a vote.

At least 10 states¹ have enacted laws permitting undocumented students who

higher education remains closed and locked because they cannot afford to attend a public university without in-state tuition.

Legal challenges have been brought against tuition equality laws in Kansas and California by those who seek to invalidate them under section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRRA”) of 1996. The ACLU helped successfully defend the Kansas law against a legal challenge³ and is currently supporting defense of the California law before the California Supreme Court.⁴ Under IIRIRRA section 505, states are discouraged from providing in-state tuition without regard to immigration status. States that provide the reduced tuition rate based on attendance and graduation from state high schools to undocumented students in their states must offer the same to U.S. citizens in the same circumstances, even when those U.S. citizen students no longer reside in their state. Therefore, the 10 states that have enacted equal education laws all are constrained to provide the same in-state tuition rate to current residents of other states who previously went to high school and graduated in the state.⁵

However, the fact that these laws comply with section 505 has not stopped organizations opposed to such laws from claiming the contrary in litigation. The DREAM Act would repeal the section 505 requirement and prevent further litigation of this issue. DREAM would not require states to provide in-state tuition to undocumented students but rather would restore this decision to the states without encumbrance. States are, of course, prohibited from enacting laws that *restrict* constitutional rights or interfere with federal law. They nevertheless should be free to take into account the values and practical realities underlying enactment of policies that enhance immigrant civic participation and further the full realization of constitutional rights, including principles of equal protection.

The ACLU thus supports a state’s right to enact in-state tuition laws based on a view that such laws are appropriate and a matter of fairness for all those high-achieving students who graduated from state high schools and successfully gained admission to public universities, often against remarkable odds. Because the DREAM Act will ensure that states have this option without encumbrance, the ACLU supports its passage as a stand-alone measure or its amendment to the Defense Authorization bill.

Sincerely,

Laura W. Murphy
Director, Washington Legislativ

A handwritten signature in cursive script that reads "Joanne Lin". The signature is written in black ink and is positioned above a horizontal line.

Joanne Lin