No. 10-1029

APR 18 2011

In The
Supreme Court of the United States

ROBERT MARTINEZ, et al.,

Petitioners,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The California Supreme Court

BRIEF OF RESPONDENTS THE BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES AND MARSHALL DRUMMOND IN OPPOSITION

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QUESTIONS PRESENTED

A federal statute, 8 U.S.C. § 1623, expressly authorizes the States to give a postsecondary education benefit to an undocumented immigrant based on residence within a state as long as a nonresident citizen is eligible for the same benefit.

The questions presented are:

1. Whether Congress preempted a California tuition law that allows California high school graduates, nonresident citizens and undocumented immigrants alike, to pay in-state tuition.

2. Whether a court has failed to conduct a conflict preemption analysis where it holds that there was no conflict between state and federal law and that Congress expressly authorized the conduct at issue.

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The unanimous California Supreme Court opinion is reported at 50 Cal. 4th 1277, 241 P.3d 855 (Cal. 2010). Pet. App. 1-37. Contrary to statements in the Petition, the opinion of the California Court of Appeal is unreported. Under California law, an opinion is no longer considered published if the California Supreme Court grants review. Cal. Rules of Court 8.1105(e). The Court of Appeal opinion was originally reported and certified for partial publication at 166 Cal. App. 4th 1121 (Ct. App. 2008). Pet. App. 38-109. The trial court opinion granting a demurrer without leave to amend is unreported. Pet. App. 110-123.

JURISDICTION

This Court lacks jurisdiction to review this case because petitioners lack Article III standing to challenge the California statute in this case.

STATUTES INVOLVED

The pertinent text of the statutes involved in this case is set out in the appendix to this brief.

STATEMENT OF THE CASE

1. A federal immigration law, 8 U.S.C. § 1621(a), generally, prohibits states from providing

public benefits to undocumented immigrants but then proceeds to identify exceptions for emergency medical care and disaster relief, immunizations, emergency shelter, soup kitchens, and crisis counseling. 8 U.S.C. § 1621(b).

In addition, Congress expressly permit states to provide local public benefits to undocumented immigrants if a state enacts a law after August 22, 1996, that affirmatively provides for such eligibility. 8 U.S.C. § 1621(d).

To the extent states provide postsecondary education benefits to an undocumented immigrant on the basis of residence within a state, Congress requires a state to ensure that a nonresident citizen would be eligible for the same benefit: "[A]n alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for the benefit . . . without regard to whether the citizen or national is such a resident." 8 U.S.C. § 1623.

2. Students at California's public colleges and universities pay varying amounts of tuition. Generally, California residents pay lower tuition than nonresidents. *See* Cal. Educ. Code § 68040. Students are classified either as residents, *id.* § 68017, in which case they are charged a lower resident tuition, or as nonresidents, *id.* § 68018, in which case they are charged a higher nonresident tuition. *Id.* § 68050. Undocumented immigrants are classified as nonresidents. *Id.*

§ 68062(h) (aliens who cannot establish domicile under federal law are prohibited from establishing residence in California).

There are several thousand students who graduate from California high schools who, for various reasons, are not legal residents of the State. The California Secretary for Education estimates, for example, that there are about 500 children who attend California high schools but are residents of an adjoining state or country (Mexico), *see* Cal. Educ. Code §§ 48050-48051, or who attend California boarding schools but legally reside in another State. Pet. App. 77. In addition, about 5,000 to 6,000 children of undocumented immigrants – who are barred from establishing residency under California law, Cal. Educ. Code § 68062(h) – graduate each year from California high schools. Pet. App. 77.

Ten years ago, the California Legislature decided to exempt certain *nonresident* students from the higher, nonresident tuition rates; specifically, those who attend and graduate from California high schools. On October 12, 2001, the Governor signed into law California Education Code § 68130.5, which exempts all California high school graduates, including citizens and undocumented immigrant students, from paying nonresident tuition.

In enacting the exemption, the Legislature declared that California's collective productivity and economic growth would increase by creating for all of its high school graduates a tuition policy that ensures

access to its colleges and universities. Pet. App. 79-80. The Legislature recognized that California high school graduates showed academic promise by virtue of their graduation and their acceptance into California colleges and universities. *Id.*

Thus, § 68130.5 exempts from out-of-state tuition any nonresident student who is registered at a California public university or college and has attended for three years and graduated from a California high school. An undocumented immigrant may qualify for this exemption if he or she meets these threshold requirements and files an affidavit stating he or she has filed or will file an application to legalize his or her status. Cal. Educ. Code § 68130.5(a)(4).

3. Petitioners are United States citizens who are not California residents and do not qualify for the out-of-state tuition exemption. They pay higher, nonresident tuition to attend a California university or college because they do not meet the high school attendance and graduation requirements to qualify for the exemption afforded by § 68130.5. Petitioners filed a complaint in the superior court of California alleging that the state statutory exemption is preempted by §§ 1621 and 1623; that it violates their rights under the Equal Protection and Privileges and Immunities Clauses; and that it violates California's Unruh Civil Rights Act. Pet. App. 47-51. Petitioners sought damages, and injunctive and declaratory relief. *Id.*

Respondents, Regents of the University of California, Robert C. Dynes (collectively, UC), Board of Trustees of the California State University, and Charles B. Reed (collectively, CSU), and the Board of Governors of the California Community Colleges and Chancellor Marshall Drummond (collectively, Community Colleges), filed a demurrer to the complaint. The trial court sustained the demurrer without leave to amend. Pet. App. 110-123.

Although the trial court found that, at the pleadings stage, petitioners had established standing under state law, it ruled (1) that petitioners had no private right of action under 42 U.S.C. § 1983[1] to enforce the federal immigration laws; (2) that the federal immigration laws do not preempt § 68130.5; and (3) that petitioners could not state a violation of their rights under the Equal Protection or Privileges and Immunities Clauses, or under the Unruh Civil Rights Act. Pet. App. 110-123.

The California court of appeal reversed. Pet. App. 38-109. It concluded that § 1623 preempts the exemption because, *inter alia*, the high school attendance and graduation requirements were "de facto" residency requirements. Pet. App. 78. But in rulings favorable to the respondents, the court of appeal found that petitioners had forfeited any appeal of the ruling that they lacked a private right of action under

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[1] This case proceeded under a state law cause of action, Cal. Code Civ. Proc. § 1060, for declaratory relief.

§ 1983. Pet. App. 8. The court of appeal also recognized that respondents were immune from damages, tuition refunds or waivers, or other retroactive relief under the Unruh Civil Rights Act. Pet. App. 105.

The California Supreme Court reversed the court of appeal. It held that the federal immigration statutes did not expressly preempt § 68130.5 because the state exemption did not condition eligibility on residence within California but on other criteria. Pet. App. 6. In rejecting that state law made eligibility turn on residence, the court also found that the state law otherwise complied with § 1623, because both undocumented immigrants and nonresident citizens can be eligible: the exemption "is given to all who have attended high school in California for at least three years . . . and not all who have done so qualify as California residents for purposes of in-state tuition, . . . and further because not all unlawful aliens . . . are eligible. . . ." *Id.*

The state supreme court also concluded that there was no implied preemption. It recognized that Congress, generally, intended that the availability of public benefits not constitute an incentive for immigration. Pet. App. 20. But it reconciled this generalized intent with the more specific language of § 1623:

> This general immigration policy would have supported an absolute ban on unlawful aliens' receiving the exemption. But section 1623 does not impose an absolute ban. The general policy . . . cannot change section 1623's

> plain language or Congress's specific charge in this regard.

Id. The state supreme court noted, further, that § 1621 carved out exceptions to the general prohibition against availability of public benefits for undocumented immigrants permitting undocumented immigrants to receive emergency medical treatment, emergency disaster relief, immunizations, and other services such as soup kitchens, crisis counseling and intervention, and short-term shelters. *Id.*

REASONS FOR DENYING CERTIORARI

There are at least three major reasons certiorari should be denied.

First, petitioners have failed to establish Article III standing; this Court, therefore, lacks jurisdiction over their disagreement with the State. Regardless of establishing standing in state court, petitioners must meet federal standing requirements when seeking to invoke this Court's jurisdiction. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985). Petitioners complain merely that others receive a state benefit for which they do not qualify in any event. Even if they were successful on the merits, a favorable ruling would not reduce their tuition rates or confer any relief on them whatsoever. Fundamentally, they seek to advance a purely generalized grievance – an allegation that California is not in compliance with federal law – which this Court has rejected as a basis

for standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-574 (1992) (recognizing longstanding rule that plaintiff with only a generalized grievance seeking proper application of law states no case or controversy).

Second, this Court's intervention is not merited as there is no split among the circuit courts or state high courts on the questions presented in the certiorari petition. Indeed, only one circuit court has examined § 1623, and it ruled in the state's favor based on plaintiffs' lack of standing. *Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007), *rehearing and rehearing en banc denied*, 511 F.3d 1030 (10th Cir. 2007), *cert. denied*, 554 U.S. 918 (2008). Petitioners rely heavily upon a district court decision that they say conflicts with the California Supreme Court's decision. But, even if there were such a conflict, a single district court opinion does not create the level of conflict that warrants this Court's intervention.

Third, this case is a poor vehicle for reaching the second question presented – whether a court must conduct an implied preemption analysis. The California Supreme Court indeed performed an implied preemption analysis and found no preemption based on the express authorizations in §§ 1621 and 1623.

I. THIS COURT LACKS JURISDICTION BECAUSE PETITIONERS HAVE NO STANDING.

Petitioners lack Article III standing because the challenged state law does not injure them in any way that may be redressed by this lawsuit. Section 68130.5 provides an exemption from nonresident tuition to graduates of California high schools, regardless of residency. Petitioners, however, admit that they did not attend or graduate from a California high school. Pet. App. 45. Accordingly, even were the petitioners to obtain their desired outcome – to strike the exemption as it applies to undocumented immigrants – petitioners would receive no relief, as they would continue to not qualify for reduced tuition.

Although petitioners alleged sufficient standing in state court,[2] "[s]tanding to sue in any Article III court is, of course, a federal question which does not depend on the party's prior standing in state court." *Phillips Petroleum Co. v. Shutts*, 472 U.S. at 804 (citing *Doremus v. Bd. of Educ.*, 342 U.S. 429, 434 (1952); *Baker v. Carr*, 369 U.S. 186, 204 (1962)). In *Phillips*, this Court granted certiorari to review a state supreme court decision regarding gas company investors suing a natural gas producer for royalty payments. Before proceeding to the merits, this Court

[2] The trial court overruled the Community Colleges and CSU's demurrer based on petitioners' lack of standing, distinguishing Article III standing principles from state court requirements. Pet. App. 120.

examined whether plaintiffs met Article III standing requirements despite prior standing in state court. *See Arizona Christian Sch. Tuition Org. v. Winn*, No. 09-987, ___ U.S. ___, 2011 U.S. LEXIS 2612, at *7-*8 (Apr. 4, 2011) ("To obtain a determination on the merits in federal court, parties seeking relief must show that they have standing under Article III of the Constitution."); *Asarco v. Kadish*, 490 U.S. 605, 610-611 (1989) ("Before we may . . . consider whether the state legislation . . . is valid under federal law, we must rule on whether we have jurisdiction in this case" citing to Article III).[3]

To proceed in this Court, therefore, petitioners must show that they meet all three requirements of standing under Article III: (1) injury-in-fact; (2) causation between the injury and the alleged illegal conduct; and (3) a likelihood that a favorable decision will redress the alleged injury. *Northeastern Fla. Ch. of Associated Gen. Contractors of America v. Jacksonville, Fla.*, 508 U.S. 656, 663 (1993).

However, petitioners cannot satisfy the first requirement that they have suffered some threatened

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[3] *Asarco v. Kadish* is not to the contrary. 490 U.S. 605. There, this Court granted certiorari despite the fact that it determined that plaintiffs lacked Article III standing in state court. This Court, nonetheless, found the requirements for Article III were met in connection with the *defendants* who were the petitioning party, based on the concrete injury the defendants sustained as a result of the adverse state court judgment. *Id.* at 617-618. In contrast, petitioners, here, do not have any change in their obligations as a result of the adverse decision.

or actual injury resulting from the alleged illegal act. An injury for purposes of standing must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. That injury "must affect the plaintiff in a personal and individual way." *Loving v. Boren*, 133 F.3d 771 (10th Cir. 1998) (affirming dismissal for lack of standing, quoting *Lujan*, 504 U.S. at 574).

Petitioners claim that they have been illegally denied the exemption from nonresident tuition offered by § 68130.5, but do not claim that they attended a California high school or otherwise qualify for the exemption. Pet. App. 44-45. They cannot allege any personal harm flowing from § 68130.5 by virtue of the possibility that individuals other than themselves pay lower tuition under § 68130.5.[4] If the state law is invalidated, undocumented immigrants and other nonresident citizens who meet the exemption requirements will have to pay more in tuition, but petitioners' tuition will remain unchanged.

In a similar case alleging that §§ 1621 and 1623 preempted a state tuition law, the Tenth Circuit held that U.S. citizen plaintiffs lacked standing to challenge a Kansas law that permitted certain undocumented immigrants to qualify for in-state tuition rates. The trial court noted plaintiffs' lack of injury explaining:

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[4] Petitioners allege that they "have been injured by having paid nonresident tuition while illegal aliens have been unlawfully exempt. . . ." Pet. App. 47.

> When a law does not apply to a party, that party has no invasion of a legally protected interest. Here, none of the plaintiffs are subject to the provisions of K.S.A. 76-731a. Prior to the passage of the law, plaintiffs paid out-of-state tuition. With the passage of K.S.A. 76-731a, plaintiffs continued to pay out-of-state tuition. The law passed by the Kansas legislature does not apply to plaintiffs, and plaintiffs have made no argument that it does.

Day v. Sebelius, 376 F. Supp. 2d 1022, 1033 (D. Kan. 2005), *aff'd, Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007), *rehearing and rehearing en banc denied*, 511 F.3d 1030 (10th Cir. 2007), *cert. denied*, 554 U.S. 918 (2008).

The Tenth Circuit noted that plaintiffs' sole basis for any alleged injury to support their preemption claim rested on purported "rights" derived from § 1623. *Day v. Bond*, 500 F.3d 1136. Thus, to determine whether plaintiffs had standing, it proceeded to analyze whether § 1623 conferred a private right of action:

> Plaintiffs' only form of alleged injury for their preemption claim was "the invasion of a putative statutory right conferred on them by [8 U.S.C.] § 1623." [Citation omitted]. Therefore, if § 1623 did not confer such a right on Plaintiffs, they would lack standing for their preemption claim. Our standing analysis thus required us to analyze whether

> § 1623 confers a private right of action. [Citation omitted].

511 F.3d at 1032.

Any attempt by petitioners to allege standing derived from § 1621 or § 1623 must fail. Neither § 1621 nor § 1623 grants petitioners a private right of action to enforce their statutory commands. Indeed, petitioners did not appeal from the trial court's ruling that petitioners had no "private right of action to bring claims alleging violations of 8 U.S.C. §§ 1621 and 1623." Pet. App. 120-121; Pet. App. 8 (plaintiffs forfeited their claim that they have a private right of action to enforce § 1621 or § 1623).

Moreover, the Tenth Circuit addressed precisely this issue and concluded that U.S. citizen plaintiffs "held no legal right under § 1623 to assert preemption" and that their claim of "an individual legal right under § 1623 to support standing is legally invalid." *Day v. Bond*, 500 F.3d at 1139.

In short, petitioners' real complaint is that the California exemption purportedly is not in compliance with federal law. But Article III standing cannot be based on such generalized grievances. *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *see also United States v. Richardson*, 418 U.S. 166 (1974) ("[A] taxpayer may not 'employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System'"). Because petitioners have no legally protected interest or rights to enforce

immigration laws, they lack standing to pursue their claims. *Sadowski v. Bush*, 293 F. Supp. 2d 15 (D.D.C. 2003) (plaintiff lacked standing to enforce immigration laws); *see also Federation for Am. Immig. Reform, Inc. v. Reno*, 93 F.3d 897, 903 (D.C. Cir. 1996) (interest in limiting the effects of immigration was too widespread, and commonality of alleged injury to entire population prevented standing).

II. THERE IS NO CIRCUIT SPLIT, OR ANY SPLIT AMONG THE FEW COURT DECISIONS THAT HAVE INTERPRETED § 1623.

Review is unwarranted, further, because there is no appellate level conflict to warrant this Court's intervention and, indeed, to date, few courts have had an opportunity even to consider this issue. The California Supreme Court decision is the first appellate decision to reach the merits of whether § 1623 preempts a state law under which an undocumented immigrant may receive reduced tuition.

Petitioners create an illusory conflict citing to a district court decision in *Equal Access Educ. v. Merten*,[5] 305 F. Supp. 2d 585 (E.D. Va. 2004), that

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[5] Moreover, *Equal Access* involved a challenge to college admission criteria rather than college tuition. 305 F. Supp. 2d 585. That court found that neither § 1621 nor § 1623 involved access to higher education. Petitioners rely on language, Pet. 26, not central to the issue of whether a college may deny admission to undocumented immigrants: "public post-secondary institutions need not admit illegal aliens at all, but if they do, these

(Continued on following page)

purportedly conflicts with the California Supreme Court's decision here. Pet. 25-26. In fact, the decisions are consistent. Both the California Supreme Court and the district court concluded that under § 1623 "aliens cannot receive in-state tuition unless out-of-state United States citizens receive this benefit." Pet. 26 (citing *Equal Access* at 607); *see* Pet. App. 17-18 (California Supreme Court decision using the statutory term "eligible" instead of "receive"). In any event, a conflict between a single district court decision and a state supreme court decision does not merit this Court's intervention. *Cf.* Supreme Court Rule 10.

Only one circuit court of appeals has considered a claim of preemption under § 1623, and it ruled only on grounds of standing, not on the merits of the preemption question. *Day v. Bond*, 511 F.3d 1030. In *Day v. Bond*, the Tenth Circuit Court of Appeals "affirmed the district court's dismissal of the preemption claim after concluding that Plaintiffs lacked standing because § 1623 did not confer a private right of action." 511 F.3d at 1032, citing to 500 F.3d at 1139.

There is simply no conflict that warrants a grant of certiorari.

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aliens cannot receive in-state tuition benefits unless out-of-state United States citizens receive this benefit." *Id.* at 606.

III. THE CALIFORNIA SUPREME COURT CONDUCTED BOTH AN EXPRESS AND IMPLIED PREEMPTION ANALYSIS.

Review is not warranted of the second question presented, either. This case does not present the question of whether a court must undertake conflict preemption analysis after concluding that there is no express preemption. Here, the California Supreme Court *did*, in fact, conduct both an express and implied preemption analysis.[6] The state supreme court correctly determined that there was no preemption.

A. The California Supreme Court Correctly Concluded that § 1623 Does Not Expressly Preempt the State Tuition Law.

The California Supreme Court correctly found that the state tuition law is not expressly preempted by § 1623, but authorized by the clear and unambiguous text of federal law. Applying settled principles of statutory construction, the court rightly rejected petitioners' atextual reading of § 1623, which relies, primarily, on legislative history to contradict the statute's plain language.

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[6] Petitioners inaccurately assert that the California Supreme Court "refus[ed] to consider Petitioners' conflict preemption challenges," Pet. 28, concluded "that it could skip over the conflict preemption issues in this case," Pet. 29, avoided "conducting a conflict preemption analysis," Pet. 32, and "opted not to review the conflict preemption challenges in this case," Pet. 33.

1. The California Supreme Court Correctly Found No Express Preemption Based on the Clear and Explicit Text of § 1623.

The California Supreme Court found that "the actual statutory prohibition [in § 1623] is not absolute, but qualified." Pet. App. 23. The plain and unambiguous language of § 1623 does not flatly prohibit any undocumented immigrant from ever receiving a residence-based postsecondary education benefit. § 1623(a). Rather, it requires a state that decides to provide such a benefit to an undocumented immigrant, to also provide a nonresident citizen the same opportunity to be equally eligible. *Id.* Accordingly, the California Supreme Court examined whether the state tuition law's requirements granted a benefit to an undocumented immigrant "on the basis of residence within the state." Pet. App. 14-24. It was correct in finding that the exemption's criteria of high school attendance and graduation were not based on residence. *Id.* The court also appropriately concluded that both nonresident citizens and undocumented immigrants could qualify for the state exemption and fall within the explicit terms of § 1623. Pet. App. 18-19.

The exemption does not treat undocumented immigrants as residents. Rather, only nonresidents can qualify for the exemption. Cal. Educ. Code § 68130.5. Indeed, the court correctly noted that both before and after the passage of the state exemption, "the law has been that unlawful immigrants cannot

be deemed California residents for purposes of paying resident tuition." Pet. App. 17.

The Court further found that the exemption is not based on residence because, in fact, "many non-residents may qualify for it," explaining:

> Every nonresident who meets section 68130.5's requirements – whether a United States citizen, a lawful alien, or an unlawful alien – is entitled to the nonresident tuition exemption.
>
> Pet. App. 18. Some American citizens who are not residents of California may also be eligible for the exemption.
>
> . . . First, some students who live in an adjoining state or country are permitted to attend high school in California . . . even though they are not California residents. (Citations omitted.) Second, the children of parents who live outside of California but who attend boarding schools in California might attend California high schools for three years, yet not be California residents. Third, those who attended high school in California for three years but then moved out of the state and lost their residency status would apparently be eligible for the exemption if they decided to attend a public college or university in California.

Pet. App. 18-19.

Thus, the California Supreme Court correctly analyzed the clear and explicit text of § 1623 and

concluded that California's exemption is not residence-based and that it further complies with § 1623's requirement that a nonresident citizen also be eligible.

2. Petitioners' Reliance on Legislative History Does Not Support Preemption.

Petitioners' interpretation of § 1623 is strictly atextual – they wrongly assert that *every* citizen of the United States is required to receive the exemption if even one undocumented immigrant is provided the benefit. Pet. 4, 5, 11, & n. 5. This unsupported reading requires inserting language not otherwise present in the statute. The text of § 1623 speaks only in the singular with respect to both an undocumented immigrant and a nonresident citizen. To support petitioners' interpretation, this Court would have to rewrite the statute and replace "*a* citizen or national" with "*all* citizens or nationals." In addition, petitioners' version requires that the language, "*eligible* for such a benefit" be changed to "*all* citizens must *receive*" the exemption, not merely given the opportunity to qualify. Petitioners also misconstrue § 1623's language as prohibiting resident tuition rates to undocumented immigrants. Pet. 17-22. The explicit text is not a flat prohibition but a qualified one. Pet. App. 23.

Petitioners evade the actual text of federal law and begin their analysis with the legislative history. Pet. 18-22. They justify their detour into legislative

history by arguing alleged conformity with Congressional intent. Pet. 18. But where intent is clear from the face of the statute, there is no need to venture into legislative history. *Dean v. United States*, 129 S. Ct. 1849, 1853 (2009) (we start with the language of the statute); *Barnhill v. Johnson*, 503 U.S. 393, 401 (1992) (appeals to legislative history are well taken only to resolve statutory ambiguity); *United States v. Rone*, 598 F.2d 564, 569 (1979) (proper function of legislative history is to solve, not create, ambiguity). Courts need not consult external sources of legislative intent where the statutory language is clear and unambiguous.

The California Supreme Court examined and rightly rejected the three pieces of legislative history upon which petitioners rely: a conference committee report and statements by two individual legislators. Pet. App. 20-23; Pet. 20-21.

The conference committee report regarding § 1623 states: "This section provides that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education." Pet. App. 21. The state supreme court commented that the report "oversimplifies more nuanced statutory language." Pet. App. 22. In addition, the court stated that the report did not reliably show that Congress intended to prohibit states *entirely* from allowing undocumented immigrants to pay in-state tuition. *Id.* Petitioners' reliance on a conference report, cannot replace the actual text of the statute, itself:

> [T]he authoritative statement is the statutory text, not the legislative history. . . . judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members – or, worse yet, unelected staffers and lobbyists – both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.

Exxon Mobile v. Allpattah Services, 545 U.S. 546, 568-569 (2005).

Nor do the statements of two individual legislators accurately reflect the intent of Congress as a whole. *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979) (remarks of a single legislator, even a sponsor, are not controlling in analyzing legislative history).

Legislative history that generally summarizes, but fails to capture the nuances of the statute, cannot defeat the explicit text of the law. Pet. App. 23. As the state supreme court concluded "Section 1623's actual language prevails," not the legislative history. *Id.*

B. The California Supreme Court Correctly Found No Implied Preemption Where Congress Expressly Gave States Authority to Give Public Postsecondary Benefits to Undocumented Immigrants.

Implied preemption may occur when Congress expresses an intent to occupy the field of law, or

where the state law actually conflicts with federal law and it is either impossible to comply with both federal and state law or where the state law stands as an obstacle to Congressional purposes. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64-65 (2002).

Here, the California Supreme Court analyzed both field preemption and conflict preemption, and its discussion included analysis of both impossibility and obstacle preemption. Pet. App. 18-19, 30-32. The state court opinion specifically discussed obstacle and field preemption under a separate heading entitled "Implied preemption." Pet. App. 30-31. And in its general discussion of § 1623, the court analyzed whether it was possible to comply with both state and federal law. Pet. App. 18-19.

As to field preemption, the California Supreme Court referred to § 1621(d)[7] as highlighting Congress's explicit grant of authority to the states to provide public benefits to undocumented immigrants. Pet. App. 31. The state court concluded that "[t]his language shows Congress did not intend to occupy the field fully." *Id.*

Further, in its discussion of § 1623, the court also addressed how it was possible for the State law to comply with the federal law, concluding that both nonresident citizens and undocumented immigrants

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[7] The decision actually cites to § 1621(c), however, the correct subdivision is § 1621(d).

could attend California high schools.[8] The court noted at least three categories of nonresidents that could qualify for the exemption: 1) nonresidents who live in a state or country that borders California and attend California high schools; 2) children of nonresident parents who attend California boarding schools; and 3) former California residents who graduate from a California high school who may move out-of-state and later decide to return to California. Pet. App. 18-19.

Thus, the California Supreme Court not only correctly found that § 68130.5 was not based on residence, but it also concluded that the exemption further complied with § 1623 as it was possible for both undocumented immigrants and nonresident citizens to be eligible for the same benefit. Pet. App. 17-19.

Finally, the California Supreme Court discussed obstacle preemption when it analyzed the Congressional purpose of the immigration legislation. Pet. App. 20. The Court noted that although Congress announced a national policy to reduce the availability of public benefits to remove the incentive for illegal immigration, *id.*, such general policy cannot defeat Congress's exception in § 1623:

> The general immigration policy would have supported an absolute ban . . . [b]ut section

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[8] Although the California Supreme Court did not explicitly label this discussion as the impossibility prong of implied preemption, it effectively disposes of that analysis.

> 1623 does not impose an absolute ban. The general policy in section 1601 cannot change section 1623's plain language or Congress's specific charge in this regard.

Id. In discussing obstacle preemption, the state supreme court concluded that Congress did not create an exception from its general policy only to frustrate its own purpose. That is, the state court concluded, the ban against public benefits for undocumented immigrants in § 1601 is qualified by the saving clause in § 1621(d), which permits states to provide public benefits.[9] Congress then went a step further in enacting § 1623, by specifically stating that, to the extent a State allows an undocumented immigrant to be eligible for postsecondary education benefits based on residence within a State, it must also allow a nonresident citizen similar eligibility.

The California Supreme Court, therefore, analyzed implied preemption principles and concluded that the exemption was not impliedly preempted by § 1623. The question presented in the petition, then, does not arise in this case, let alone merit this Court's review.

[9] Amicus Eagle Forum agrees that "Congress allowed states to enact *new*, post-PRWORA benefits for illegal aliens under certain conditions." Eagle Br. 4.

CONCLUSION

The petition for writ of certiorari should be denied.

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Respectfully submitted,

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