

## **In-State Tuition for Immigrant Students**

The Panel supports the initiative embodied in current proposed legislation (A194, S1036) that would provide for charging the full in-state tuition rate to persons who meet specified NJ residency requirements, regardless of their immigration status under federal law.

The Panel has examined the social and economic benefits of enabling academically qualified immigrant students who have lived in the state for much of their lives and who attended high school here to pay in-state tuition at New Jersey public institutions of higher learning. After reviewing current law and legal precedents for in-state tuition and examining models used in other states that grant certain immigrant students in-state status, the Panel has unanimously concluded that the expected benefits of a better-educated New Jersey population will far outweigh any fiscal or societal costs, and that New Jersey should quickly enact a solution substantially similar to those already introduced in the Legislature.

### ***The Benefits of a Well-Educated Work Force in New Jersey***

Maximizing the opportunities for all New Jersey's students to have access to higher education is desirable both from the individual and collective societal perspective. Individual students with the requisite academic ability will have the opportunity to maximize their intellectual and professional potentials. Conversely, denying a qualified student effective access to higher education imposes a lifelong disadvantage on that individual and deprives the state of that resident's intellectual capital.<sup>i</sup> A well-educated workforce is an inestimable benefit to the state economy, and New Jersey is particularly able to attract economic growth and investment because of its ability to offer myriad opportunities to such a workforce, 20 percent of which is foreign born.<sup>ii</sup>

Students who have the desire and ability to continue their education beyond the high school level may contribute substantially and positively to the social and economic make-up of New Jersey. Granting resident tuition status to undocumented graduates of New Jersey high schools will provide a powerful incentive for these students to successfully complete high school and go on to obtain a college degree. Students who obtain college degrees in New Jersey are more likely to stay in the state, join the formal labor force, and pay taxes.

Educating New Jersey's children is especially important as sharp increases in the educational attainment of America's global economic competitors will impact the working sector of New Jersey. A majority of the fastest-growing industries in the United States demand a more skilled, better educated workforce. Labor projections in California, for instance, anticipate a shortage of skilled labor by 2025.<sup>iii</sup> Maintaining a well-educated workforce is integral to New Jersey's economic vitality as demand for high-skilled labor begins to outpace supply. Furthermore, nearly two thirds of children in immigrant families in New Jersey are bilingual.<sup>iv</sup> People fluent in more than one language will be important assets to the State as it competes in a diverse global economy.

New Jersey is traditionally known for the high level of educational attainment of its residents, a characteristic achieved by offering students the opportunity to access higher education at an affordable rate. The state is therefore poised to meet demands for an increasingly well-educated workforce, including students with unauthorized immigrant standing. Perceptions about each

state's attainment in this area, however, are volatile,<sup>v</sup> and it is in New Jersey's competitive interests to insure that it is consistently perceived as retaining among the most educated workforces.

The Panel believes that extending the opportunity of higher education to academically qualified students who do not currently have lawful immigration status is the correct and necessary action, after balancing the impact on individual students and the practical benefits to society. The Panel further believes that increasing access to postsecondary education offers direct economic and social gains for the State. This position is premised on the notion that increasing educational attainment increases individuals' lifetime earnings and hence, makes them more productive members of society. Higher education is a necessary precursor to accessing higher paying jobs: according to the New Jersey Department of Labor and Workforce Development, householders with only a high school diploma have a median income of \$51,359 annually while those with a bachelor's degree or higher earn a median income of \$106,467.<sup>vi</sup>

Attainment in higher education makes it easier for previously undocumented students to adjust and regularize their immigration status. Under federal immigration statutes, receipt of a bachelor's degree allows an applicant to be classified as a "professional," which makes the individual eligible for an "E-B3" immigrant visa<sup>vii</sup> as well as an "H-1B" temporary work visa for specialty occupations.<sup>viii</sup> Receipt of a baccalaureate degree is an absolute condition for an E-B3 immigrant visa, however; education and experience may not be substituted for the degree.<sup>ix</sup> It is therefore essential for those immigrants seeking to regularize their immigration status by seeking professional/skilled worker status to receive a U.S. bachelor's degree. Moreover, the demand for such professionals and skilled workers is high, particularly in high technology industries that New Jersey hopes to attract.

Increasing the educational attainment of the workforce may therefore decrease unemployment rates, increase tax contributions from as many individuals as possible, and thus contributes directly to the support of in-state social services. Some of the extended social benefits may include lower rates of incarceration and increased civic participation.<sup>x</sup> Most importantly, education provides individuals with knowledge and values necessary for a competitive, well-functioning state.

### ***The Financial Challenges to Immigrants of Accessing Higher Education***

Each year, it is estimated that about 65,000 undocumented students graduate from high school after living in the United States for at least five years.<sup>xi</sup> Yet because undocumented students are subjected to substantial barriers in accessing higher education and are often unable to qualify for in-state tuition rates at public universities, state colleges, and community colleges, only five to ten percent of these graduates attend college, compared with 75 percent of their native-born classmates.<sup>xii</sup>

In New Jersey, approximately one-third of children in immigrant families — documented and undocumented — live in low-income families.<sup>xiii</sup> These financial barriers are magnified in undocumented families, however, whose average income is about 40 percent lower than that of legal immigrant and native families.<sup>xiv</sup> Recent research shows that undocumented students are rarely able to attend college and thereafter find employment appropriate to their level of

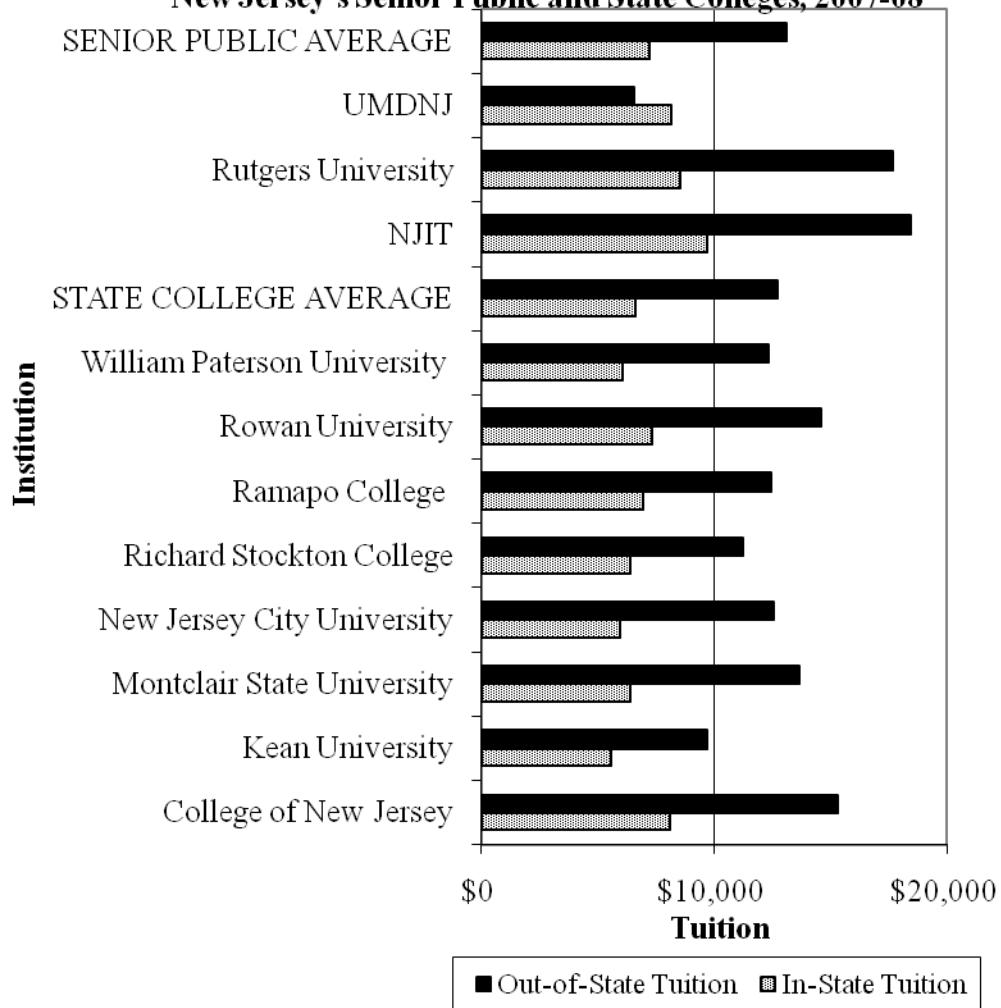
academic potential due to substantial legalization barriers and limited access to public services.<sup>xv</sup>

**Student Testimony: Marcos**

Marcos is a high school student from New Brunswick, a young believer in the American dream; a dedicated student hoping to one day attend college to study architecture. Upon arriving in America at age 12, Marcos was certain that he wanted to attend college after high school, and as his graduation nears, the prospect of paying out-of-state tuition is crippling. “I feel limited—this is my American nightmare,” says Marcos, whose family cannot afford the out-of-state rates at the state university. Despite these financial setbacks, Marcos is still optimistic about attending college: “I have the capacity. I have the grades. I have the dream.”

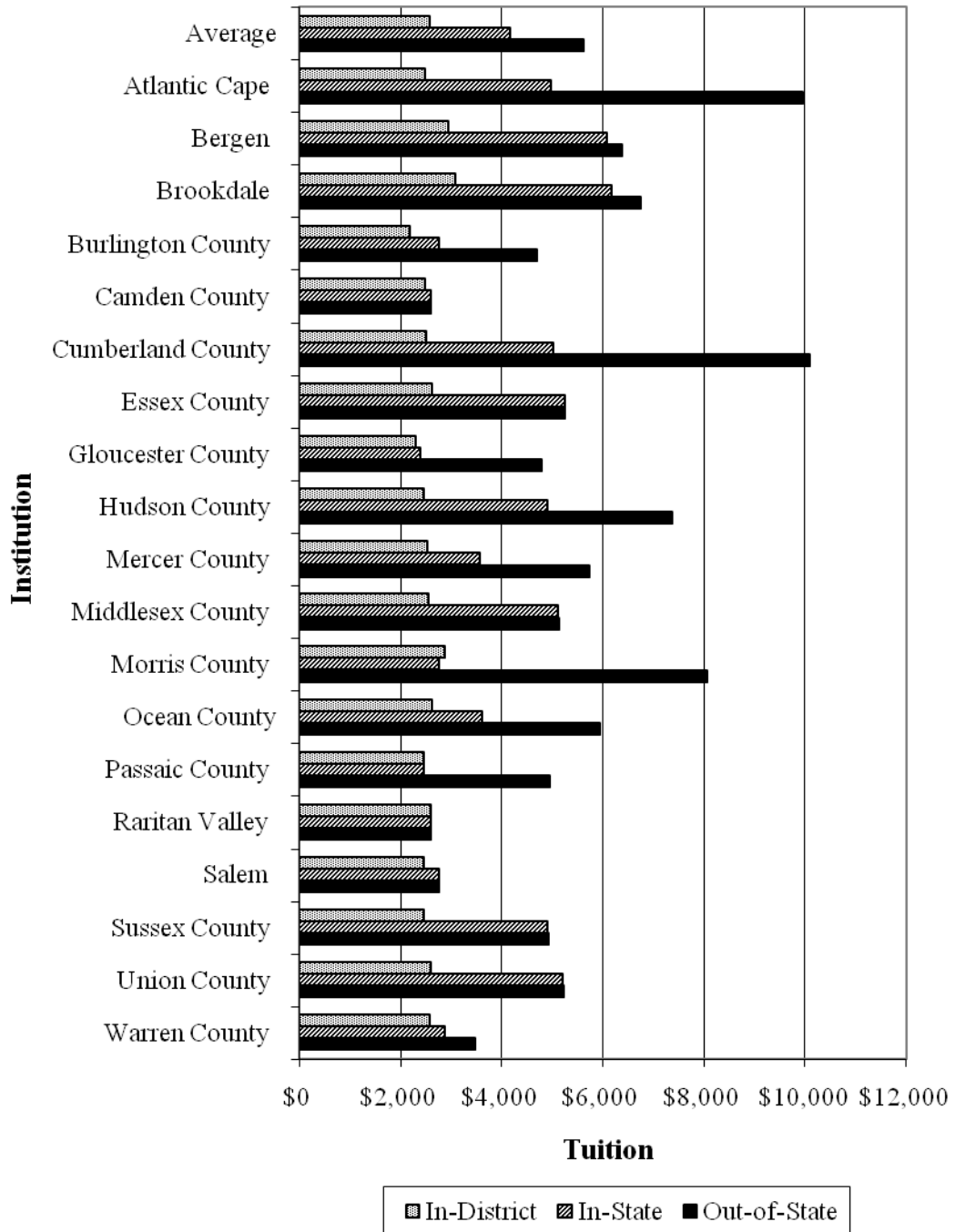
A comparison of tuition rates for in-state students versus out-of-state students in New Jersey’s state colleges and senior public institutions exemplifies the substantial financial barrier confronting students with unauthorized status (see Tables 1 and 2).<sup>xvi</sup> Tuitions at New Jersey’s public colleges and universities are already among the most costly when compared to public institutions in other states.<sup>xvii</sup> On average, the cost for out-of-state tuition and fees at state colleges and senior public institutions is over 90 percent higher than in-state costs.<sup>xviii</sup>

**Table 1**  
**Comparison of In and Out-of-State Undergraduate Tuition**  
**at**  
**New Jersey's Senior Public and State Colleges, 2007-08**



Source: NJ Commission on Higher Education, Tuition and Fees Required, FY 2007.

**Table 2**  
**Comparison of In-District, In and Out-of State Tuition in**  
**New Jersey's Community Colleges, 2007-08**



The Panel therefore forwards recommendations for your consideration, law reforms that will enable New Jersey's student population to continue to maintain a strong and competitive edge both nationally and globally. As the country faces increasing pressure by its citizenry to develop ways to attract and keep jobs at home, New Jersey has realized that part of this effort includes maximizing educational opportunities for all students, regardless of their immigration status.

### ***Current Law and Provisions***

In the 1982 landmark case of *Plyler v. Doe*, the U.S. Supreme Court held that it was "illegal for a state to deny school-aged undocumented aliens the right to a free education."<sup>xxix</sup> Founded upon the equal protection doctrine, the decision extended the right to a free education to "any 'person' (not just U.S. citizens)."<sup>xxx</sup> The Court held that children could not be penalized for the actions of their parents in bringing them into the country illegally, since "the children . . . can affect neither their parents' conduct nor their own status."<sup>xxxi</sup> The Court continued: "Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice."<sup>xxxii</sup> The court underlined the necessity of a *basic* (elementary and secondary) education:

By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation. In determining the rationality of § 21.031, we may appropriately take into account its costs to the Nation and to the innocent children who are its victims.<sup>xxxiii</sup>

Consistent with this federal constitutional principle, New Jersey laws and regulations provide that "Any student over five and under 20 years of age . . . shall be enrolled without regard to, or inquiry concerning, immigration status."<sup>xxxiv</sup> Though nearly one-third of all children in New Jersey live in immigrant families, approximately 87 percent of them are U.S. citizens.<sup>xxxv</sup> Nevertheless, there remains a fraction of undocumented children living in New Jersey who do not qualify for in-state tuition. Because many of them were brought to the United States at a young age, they may have acclimated culturally and socially to the local community, and may be, as a practical matter, indistinguishable from their native born peers. Once those students graduate from high school, however, their access to continued education changes dramatically. At that point, even though they have graduated from a New Jersey high school and may have lived in this state for most of their lives, they are treated as out-of-state students, and thus often are required to pay as much as double the in-state tuition rate.

Unlike out-of-state students who are U.S. citizens, and who would have access to in-state tuition in their home state but choose to attend a public institution in New Jersey, immigrant students who reside in New Jersey have no other option to affordable public education. The Panel believes that undocumented graduates of New Jersey high schools should be given a fair opportunity to obtain a college degree so they can contribute to and succeed in our competitive global economy. Depriving an academically eligible student of access to college imposes a lifetime hardship upon these young people, many of whom have lived in New Jersey most of

their lives.

The *Plyler v. Doe* decision was certainly correct for its time. Twenty-six years after that ruling, however, the reality of the demands of the current job market is that a high school diploma in itself is often insufficient to permit the student to be an effective and productive entrant in the state workforce. Whereas the *Plyler* decision was once enough to afford undocumented students the opportunity to obtain a sufficient education, in today's economy, a high school diploma is simply insufficient. Basic education should therefore embody post-secondary instruction beyond the high school years.

Federal law does not prohibit undocumented students from enrolling in post-secondary institutions and it does not bar states from granting in-state tuition to eligible students, including those with unauthorized status.<sup>xxvi</sup> Federal law does require that if state extends a postsecondary "education benefit" to undocumented students, it must extend the same benefit to any citizen.<sup>xxvii</sup> Since 2001, ten states have granted in-state tuition rates to certain undocumented students. As further described below, these states have based eligibility for in-state tuition not on residency per se but rather on whether the student attended high school in the state for some period of time prior to seeking to attend college.<sup>xxviii</sup> Moreover, it has not been established that assessing the full in-state tuition rate on a student, without any state grants or other financial aid, constitutes an "education benefit."

### ***Other In-State Tuition Programs***

Since 2001, ten states have succeeded in granting in-state tuition to immigrant students regardless of federal immigration status: Texas, California, Utah, Washington, New York, Illinois, Oklahoma,<sup>xxix</sup> Kansas, New Mexico, and Nebraska (see Table 1).<sup>xxx</sup> Four of these states—California, Texas, Illinois, and New York—rank alongside Florida and New Jersey as the top six states with the largest foreign born populations in the country.<sup>xxxi</sup> Of these six states, only New Jersey and Florida have yet to pass legislation granting undocumented students access to in-state tuition at public postsecondary institutions.<sup>xxxii</sup>

The states that have extended in-state tuition to immigrant students, regardless of their federal immigration status, use similar legislative models. First, the state requires state residency documentation in order to receive in-state tuition benefits.<sup>xxxiii</sup> Second, the state bases the law upon whether the student graduates from a state high school, rather than on their immigration status.<sup>xxxiv</sup> These requirements are very similar to those proposed in two bills currently pending in the New Jersey Legislature, A194 and S1036, which require: (1) residence in the state for a stated period of time, usually two or three years; (2) attendance at a secondary school in the state for a duration of that period; (3) graduation from a high school located in the state or attainment of a GED; and, (4) for those who do not have lawful immigration status, submission of an affidavit certifying that the student will seek to legalize his or her immigration status at the first available opportunity.<sup>xxxv</sup>

**Table 3  
States Granting In-State Tuition to Undocumented Students**

<b>State</b>	<b>Law</b>	<b>Year Enacted</b>	<b>High School Attendance Requirement</b>	<b>Graduation from state high school requirement</b>	<b>Affidavit requirement for undocumented students</b>
Texas	Tex. Educ. Code Ann. § 54.052(a)(3) (LexisNexis 2007); Tex. Educ. Code Ann. § 54.053(3)(B) (LexisNexis 2007)	2001	Yes, reside in state and attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes
California	Cal. Educ. Code § 68130.5(a) (Deering 2007)	2001	Yes, attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes
New York	N.Y. Educ. Law § 355(2)(h)(8) (Consol. 2008); N.Y. Educ. Law § 6206(7)(a) (Consol. 2008); N.Y. Educ. Law § 6301(5) (Consol. 2008)	2002	Yes, attend for 2 years and enroll at a state institution within 5 years of graduation	Yes, graduate or receive equivalent diploma	Yes
Utah	Utah Code Ann. § 53B-8-106 (LexisNexis 2008)	2002	Yes, attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes
Illinois	110 Ill. Comp. Stat. Ann. 305/7e-5 (LexisNexis 2008)	2003	Yes, attend for at least 3 years and reside with parent/guardian	Yes, graduate or receive equivalent diploma	Yes
Oklahoma	70 Okl. St. § 3242 and State Regents for Higher Education's 2008 revised Regent's policy (3.18.9)	2003	Yes, attend for at least 2 years and reside with parent/guardian	Yes, graduate. Equivalent diploma not accepted.	Yes



Washington	Wash. Rev. Code Ann. § 28B.15.012(2)(e) (LexisNexis 2008)	2003	Yes, reside in state and attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes
Kansas	Kan. Stat. Ann. § 76-731a(b)(2) (LexisNexis 2006)	2004	Yes, attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes
New Mexico	N.M. Stat. Ann. § 21-1-4.6 (LexisNexis 2008)	2005	Yes, attend for at least 1 year	Yes, graduate or receive equivalent diploma	Yes
Nebraska	Neb. Rev. Stat. Ann. § 85-502 (LexisNexis 2008)	2006	Yes, attend for at least 3 years	Yes, graduate or receive equivalent diploma	Yes

Source: Zaleski, *supra* note 42; Spiros Protopsaltis, “Undocumented Immigrant Students and Access to Higher Education; An Overview of Federal and State Policy,” <http://www.thebell.org/PUBS/IssBrf/2005/03UndocTuition.pdf>, 2005 Salsbury, *supra* note 435.

Bills aimed at extending in-state tuition benefits to undocumented students are currently being considered in a number of states. In 2007 alone, such legislation was considered in Iowa, Maryland, and Connecticut (whose provision was vetoed in spring 2007).<sup>xxxvi</sup> Further extensions and provisions were proposed to add to already existing in-state tuition statutes in Utah, California (proposed in 2008), New York, and New Mexico.<sup>xxxvii</sup> Furthermore, lowering the barriers to higher education for talented students has been of bipartisan interest: successful legislation granting in-state tuition has originated in both Republican and Democratic-majority states.<sup>xxxviii</sup>

### **Proposed Solution**

Lacking a uniform policy on in-state tuition, New Jersey postsecondary institutions have devised different approaches to granting in-state tuition to undocumented students.<sup>xxxix</sup> A 2005 survey conducted by *The Record* in Bergen County found that several institutions already grant in-state tuition to students with unauthorized status, basing residency status on their home address or high school.<sup>xl</sup> Other institutions altogether bar undocumented students from admission altogether, including William Paterson University and the County College of Morris. Given this variation between postsecondary institutions, a uniform policy from the State Legislature on in-state tuition is necessary and appropriate.

Two bills pending before the Legislature (A-194, Johnson/Huttle and S1036, Rice/Cunningham) would provide undocumented graduates of New Jersey high schools with the right to pay resident tuition rates at public colleges and universities, providing they meet certain criteria. Students would qualify if they:

1. Attended a NJ high school for three years;

2. Graduated from a NJ high school or received a G.E.D. in NJ; and
3. Submit an affidavit stating that they have, or will when eligible to do so, make application to legalize their immigration status.

It is important to stress that the bills would not change admission standards, and applicants would be required to meet the academic requirements of, and be admitted by, the institutions to which they apply. The bills would also not make the student eligible for state funded or assisted financial aid or grants.

***Student Population Statistics: Estimating the Number of New Jersey Students Affected***

Although estimates of the high school-aged undocumented population in New Jersey are variable at best, by some estimates there may be close to 28,000 such students.<sup>xli</sup> Yet the number of undocumented students who would be expected to apply to and matriculate at state colleges if in-state tuition were granted is substantially lower, given the comparative rate at which students with unauthorized status graduate from high school.<sup>xlii</sup> Moreover, because New Jersey does not record the number of undocumented students in its state colleges and universities, there is little hard data on which to base a state-level estimate of such students currently attending public colleges and universities.<sup>xliii</sup>

Because these statistics are not available for New Jersey, the number of non-resident students expected to receive in-state tuition should New Jersey pass such legislation, must be estimated based on other states' experiences. New Jersey and Illinois have similarly sized foreign-born and undocumented populations, which allows for a rather rough estimate of the number of students potentially eligible for in-state tuition (see Tables 4 and 5).

**Table 4  
Estimates of US Population of Unauthorized Immigrants by State**

State	DHS Estimated Undocumented Population, Jan 2006[i]	Percent of National Undocumented Population, Jan 2006	Pew Hispanic Center Estimated Undocumented Population, March 2002, 2003, 2004[ii]	Percent of National Undocumented Population, 2002-2004
California	2,830,000	25	2,400,000	24
Texas	1,640,000	14	140,000	14
Florida	980,000	8	850,000	9
Illinois	550,000	5	400,000	4
New York	540,000	5	650,000	7
New Jersey	430,000	4	350,000	4
National	11,550,000	100	10,000,000	100

Source: [i] Chirag Mehta and Asma Ali, "Education for All: Chicago's undocumented immigrants and their access to higher education," p. iii (University of Illinois Center for Urban Economic Development, 2003) (available at <http://www.uic.edu/cuppa/uicued/Publications/RECENT/undocumentedImmigrants.pdf>). [ii] Jeffrey Passel, "Estimates of the Size and Characteristics of the Undocumented Population," (Washington, DC: Pew Hispanic Center, March 21, 2005).

In their 2003 analysis of Illinois HB 60, Chirag Mehta and Asma Ali estimate that 2,226 students would be eligible for in-state tuition under the Illinois statute.<sup>xliv</sup> Applying this number directly to New Jersey, we might anticipate that about 2,000 students in New Jersey will be eligible for in-state tuition. The New Jersey Immigration Policy Network estimates that this number might be closer to 1200.<sup>xlv</sup> Whether all these students will matriculate at New Jersey postsecondary institutions remains to be seen. Based on other states' experiences, the number of eligible students matriculating will most likely be much lower: only 30 of an estimated 370 undocumented students registered at colleges in Kansas for the semester following the enactment of its in-state tuition program.<sup>xlvi</sup>

<b>Table 5</b>				
<b>New Jersey Relative to Top Six States with Largest Foreign-Born Populations</b>				
<b>State</b>	<b>Number Foreign Born, ACS 2006</b>	<b>Rank</b>	<b>Percent Foreign Born, ACS 2006</b>	<b>Rank</b>
California	9,902,067	1	27.2%	1
New York	4,178,962	2	21.6%	2
Texas	3,740,667	3	15.9%	7
Florida	3,425,634	4	18.9%	5
Illinois	1,773,600	5	13.8%	10
New Jersey	1,754,253	6	20.1%	3
Source: MPI Data Hub, "States Ranked by Percent Foreign Born," 2008; MPI Data Hub, "States Ranked by Number of Foreign Born," 2008.				

***Economic Impact***

Opponents of in-state tuition often rely upon arguments that because undocumented immigrants pay a disproportionately lower share of taxes, extending in-state tuition to undocumented students would put a substantial financial strain on the state, and undocumented immigrants will be attracted to the state because of its generous educational programs.<sup>xlvii</sup> Empirical research,

however, undermines these claims. First, although unauthorized immigrants earn less than their authorized counterparts, they nonetheless contribute to local, state, and federal government through property taxes — on either owned or rented residences — as well as sales and consumption taxes.<sup>xlviii</sup>

Second, based on the experiences in states already offering in-state tuition, these programs will not require heavy subsidization by the state.<sup>xlix</sup> Since legislation has passed in Kansas, for example, only 30 undocumented students registered for in-state tuition costs; in New Mexico, this number is 41; in Texas, undocumented students who registered for in-state tuition totaled less than 0.4 percent of all students attending higher education institutions in the state.<sup>1</sup> Moreover, some of the ten states which have enacted statutes to extend in-state tuition rates to undocumented individuals have reported the total number of beneficiaries, including those other than undocumented individuals (i.e. legal immigrants or U.S. citizens) who also qualify for in-state tuition rates under the provisions of the program (see Table 6).

**Table 6**  
**In-State Tuition at State Public Colleges and Universities**

State [See footnote]	Estimated Number of Students Granted In-State Tuition Under Provision or Estimated Number Eligible to Seek In-State Tuition Under Provision	Academic Year of Estimate
<u>Texas</u> [73]	393	2001-2002
<u>California</u> [74]	561	2002-2003
<u>New York</u> [75]	2000 (CUNY only)	2005-2006
<u>Utah</u> [76]	169*	2003-2004
<u>Illinois</u> [77]	2226**	2003-2004
<u>Kansas</u> [78]	221*	2005-2006
<u>New Mexico</u> [79]	41*	2005-2006

[73] Office of the Texas Comptroller, “Undocumented in Texas: A Financial Analysis of the Impact to the State Budget and Economy.” December 2006. Accessed March 19, 2008 from: <http://www.window.state.tx.us/specialrpt/>

[74] University of California Office of Personnel, “Annual Report on AB 540 Tuition Exemptions 2005-06 Academic Year.” November 2006. Accessed March 19, 2008 from: [www.ucop.edu/sas/sfs/docs/ab540\\_annualrpt\\_2007.doc](http://www.ucop.edu/sas/sfs/docs/ab540_annualrpt_2007.doc).

[75] Protopsaltis, supra note 46.

[76] Jennifer Robinson, “In-State Tuition for Undocumented Students in Utah,” Center for Public Policy and Administration (University of Utah, Feb., 2007) (available at [http://www.cppa.utah.edu/publications/higher\\_ed/Policy\\_Brief\\_2\\_13\\_07\\_In-state\\_Tuition.pdf](http://www.cppa.utah.edu/publications/higher_ed/Policy_Brief_2_13_07_In-state_Tuition.pdf)).

[77] Mehta and Ali, supra note 55.

[78] Robinson, supra note 68.

[79] Id.

\*Undocumented students *only*

\*\* Estimate of eligible students prior to enactment.

Rutgers University calculated estimates for the impact of in-state tuition on the university by specifying the number of New Jersey high school graduates residing in New Jersey and paying out of state tuition (see Table 7). Based on Rutgers calculations, if the 180 such students enrolled in the fall of 2007 qualified for in-state rather than out-of-state tuition, it would have resulted in \$1.63 million less in annual tuition revenue.

<b>Table 7</b>				
<b>Students Who Graduated from New Jersey High School but Pay Out-of-State Undergraduate Tuition at Rutgers University</b>				
<b>Academic Semester</b>	<b>Fall 2004</b>	<b>Fall 2005</b>	<b>Fall 2006</b>	<b>Fall 2007</b>
Students with No Visas	181	177	169	180
Students with Visas	93	101	126	109
<b>Total</b>	<b>274</b>	<b>278</b>	<b>295</b>	<b>289</b>
F-Visas	47	41	56	63
Total does not include student visa holders (F-visas) because they would be ineligible for in-state tuition. Source: Rutgers University				

Not all of these students, however, would meet all of the criteria under pending proposed legislation. For example, students would qualify for in-state tuition rates only if they attended high school in New Jersey for three or more years or obtained an equivalency degree in New Jersey. Furthermore, undocumented students would qualify only if they certify that they will seek permanent residency at their first opportunity. These statistics also include those who are in the United States on a student or temporary visa, and thus would not be eligible for in-state tuition under the proposed legislation because they do not plan to remain.

A long-term analysis of revenue loss associated with in-state tuition benefits conducted by the University of California examined this issue and found that both cohorts of eligible students and lost revenue have leveled off in recent years after initial increases.<sup>li</sup> In fact, expanding the total pool of eligible residents tends to *increase* the total school revenues because the undocumented student population is an untapped source of tuition revenue. This initiative could prove beneficial for state and county colleges, which generally have excess capacity for incoming students.<sup>lii</sup> Moreover, New Jersey has the highest rate of out-migration of high school graduates entering postsecondary institutions in the nation.<sup>liii</sup> In this sense, expanding the total pool of eligible residents can *increase* total school revenues and keep talented high school graduates in New Jersey at state institutions. By helping reverse the trend of out-migration of New Jersey high school graduates, this initiative can lessen an estimated \$1.5 billion revenue loss to New Jersey residents who attend college in other states.<sup>liv</sup>

### ***Conclusion***

Denying undocumented students access to affordable, in-state tuition costs is detrimental to the State and society at-large. A balanced analysis of this issue indicates that the benefits of such a policy far outweigh any cost. Given the state's large immigrant population – some of whom are undocumented graduates of the state's high schools – as well as the clear benefits of a educate populace and the ever increasing demands to maintain the state's highly educated and competitive workforce, New Jersey must ensure that all of its young people have the tools they need to reach their full potential in the marketplace.

## APPENDIX A

### Resolution on In-State Tuition

*Whereas*, Governor Jon S. Corzine on August 6, 2007 established the Governor's Blue Ribbon Advisory Panel on Immigrant Policy and charged that bi-partisan panel to present recommendations; and

*Whereas*, the panel has met and deliberated concerning the needs of New Jersey's immigrant students who have graduated from a High School in New Jersey and unanimously supports provisions to ensure that all such individuals who have graduated from a High School in New Jersey are able to receive the benefit of in-state tuition at institutions of higher education within the State; and

*Whereas*, at the present time, individuals who are not able to formally demonstrate proof of New Jersey residence are unable to receive the benefit of in-state tuition and are required to pay higher tuition rates rendering higher education a fiscal impossibility for many students; and

*Whereas*, many of these students were raised in New Jersey, attended New Jersey's public schools and attained high academic achievement at those schools; and

*Whereas*, failure to provide equal access to in-state tuition for children who were not born in New Jersey acts as a disincentive for achievement in our public schools; and

*Whereas*, New Jersey is one of six states that account for two thirds of all the immigrant students in the United States, and New Jersey is one two states among these six who have failed to provide an equitable and fair path to our state Colleges, Universities and County Colleges by enacting an in-state tuition program; and

*Whereas*, ten states currently allow certain immigrant students to be eligible for in-state tuition subject to eligibility criteria; and

*Whereas*, an educated workforce is in the best economic interest of the State of New Jersey now and in the future, and the cost to the state of providing in-state tuition rates to immigrant students who graduate from a High School in New Jersey is de minimis, particularly in comparison to the long term economic benefits of a higher earning workforce; and

*Whereas*, school tuition revenues could actually increase if such legislation were enacted, because money paid by these students represents income that would not otherwise be accrued by the public colleges; and

*Whereas*, courts in Kansas and California have upheld the validity of similar in-state tuition provisions; now, therefore

BE IT RESOLVED:

1. The Governor's Blue Ribbon Advisory Panel on Immigrant Policy hereby recommends a change in the law so that immigrant students are eligible to attend two and four year public colleges and universities at the same tuition rate as resident students.
2. The Governor's Blue Ribbon Advisory Panel on Immigrant Policy supports those bills pending before the New Jersey legislature that would provide in-state tuition rates for immigrant students.
3. The Governor's Blue Ribbon Advisory Panel on Immigrant Policy recommends that the Governor, Cabinet, other officials and the legislature implement all other necessary legislation and regulations that would allow for immigrant students to receive the benefit of in-state tuition rates.



## End Notes

<sup>i</sup> See generally, Immigration Policy Center, “Dreams Deferred: The Costs of Ignoring Undocumented Students,” <http://immigration.server263.com/images/File/factcheck/Access%20to%20Higher%20Ed%209-25%20FINAL.pdf>, (October 18, 2007).

<sup>ii</sup> Migration Policy Institute, “Fact Sheet on the Foreign Born: Workforce Characteristics, New Jersey,” <http://www.migrationinformation.org/DataHub/acscensus.cfm#> (accessed 22 July 2008).

<sup>iii</sup> Roberto Gonzales, “Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students,” <http://www.immigrationpolicy.org/index.php?content=f071001>, Oct. 2007.

<sup>iv</sup> Association for Children of New Jersey, “New Jersey Immigrant Kids Count 2007: A Profile of Child Well-Being,” p.4, <http://www.acnj.org/admin.asp?uri=2081&action=15&di=1151&ext=pdf&view=yes>, Feb. 7, 2007.

<sup>v</sup> In 2006 New Jersey was ranked by one industry publication as second in the nation in terms of educated workforce. 2006 Business Facilities Rankings Report,” *Business Facilities* (2006), [http://www.businessfacilities.com/bf\\_06\\_07\\_ranking3.php](http://www.businessfacilities.com/bf_06_07_ranking3.php) (accessed 4 Aug. 2008). In 2007, that ranking dropped to below ninth (“2007 Business Facilities Ranking Report,” *Business Facilities* (2007), [http://www.businessfacilities.com/bf\\_07\\_07\\_cover1a.php](http://www.businessfacilities.com/bf_07_07_cover1a.php)), and in 2008 New Jersey ranked twelfth. 2008 Business Facilities Rankings Report,” *Business Facilities* (2008) ([http://www.businessfacilities.com/bf\\_08\\_07\\_cover.php](http://www.businessfacilities.com/bf_08_07_cover.php), last accessed Aug. 5, 2008).

<sup>vi</sup> New Jersey Department of Labor and Workforce Development, Division of Labor Market and Demographic Research, “Annual Demographic Profile,” 2007 <http://lwd.dol.state.nj.us/labor/lpa/dmograph/adprof/t15.htm>, (2005-2006 data).

<sup>vii</sup> 8 U.S.C. § 1153(b) (3).

<sup>viii</sup> 8 U.S.C. § 1101(a) (15) (H) (i) (B); 20 C.F.R. § 655.700.

<sup>ix</sup> 8 U.S.C. § 1153(b) (3) (ii) (defining “professionals” for purposes of immigrant visa eligibility as “Qualified immigrants who hold baccalaureate degrees and who are members of the professions.”)

<sup>x</sup> Jennifer Frum, “Postsecondary Education Access for Undocumented Students: Opportunities and Constraints,” *American Academic* 3 (2007), available at [http://www.aft.org/pubs-reports/american\\_academic/issues/january07/Frum.pdf](http://www.aft.org/pubs-reports/american_academic/issues/january07/Frum.pdf)

<sup>xi</sup> Jeffrey Passel, “Further Demographic Information Relating to the DREAM Act,” (Urban Institute, 21 Oct. 2003), available at [http://www.nilc.org/immlawpolicy/DREAM/DREAM\\_Demographics.pdf](http://www.nilc.org/immlawpolicy/DREAM/DREAM_Demographics.pdf). Passel notes that this number, based on 2000-2002 data, is a substantial over-estimate of undocumented students graduating from high school after having resided in the United States for at least five years. This estimate has nonetheless been used by national and state-level policymakers. See Andorra Bruno, “Unauthorized Alien Students: Issues and ‘DREAM Act’ Legislation,” *CRS Report for Congress* (Congressional Research Service, 12 Dec. 2007).

<sup>xii</sup> Gonzales, *supra* note 4, at 1; The Mayor’s Immigration Study Commission, “Immigration: Legal and Illegal--Local Perspective: Charlotte, NC” <http://www.charmeck.org/Departments/Mayor/ImmigrationStudy/Home.htm> p.6.

<sup>xiii</sup> “Profiles by Geographic Area: New Jersey,” Kids Count Data Center, Annie E. Casey Foundation, January 2008, [http://www.kidscount.org/datacenter/profile\\_results.jsp?r=32&d=1&c=12&p=5&x=146&y=9](http://www.kidscount.org/datacenter/profile_results.jsp?r=32&d=1&c=12&p=5&x=146&y=9) (Accessed 7 August 2008).

<sup>xiv</sup> Jeffrey Passel, “Unauthorized Migrants: Numbers and Characteristics,” Jun. 14 2005, at p.30, available at <http://pewhispanic.org/files/reports/46.pdf>.

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<sup>xv</sup> Roberto Gonzales, “Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students,” *Immigration Policy in Focus* 5 no. 13, <http://www.immigrationpolicy.org/index.php?content=f071001>, Oct. 2007; “Children of Immigrants: Facts and Figures,” *Fact Sheet* (The Urban Institute, May 2006).

<sup>xvi</sup> NJ Commission on Higher Education, Tuition and Fees Required, FY 2007.

<sup>xvii</sup> Ana M. Alaya, “Tuition to spike at N.J. colleges and universities,” *The Star-Ledger*, August 5, 2008. [http://www.nj.com/news/index.ssf/2008/08/tuition\\_to\\_spike\\_at\\_nj\\_college.html](http://www.nj.com/news/index.ssf/2008/08/tuition_to_spike_at_nj_college.html) (accessed 19 August 2008).

<sup>xviii</sup> “Tuition and Required Fees, AY 2007,” NJ Commission on Higher Education, updated 9 July 2008, <http://www.state.nj.us/highereducation/statistics/Tuition2007sp.htm> (accessed 22 July 2008).

<sup>xix</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>xx</sup> *Id.*

<sup>xxi</sup> *Id.*

<sup>xxii</sup> *Id.* at 220.

<sup>xxiii</sup> *Id.* at 223-24.

<sup>xxiv</sup> N.J.A.C. 6A:22-3.3 (2008).

<sup>xxv</sup> Association of Children of New Jersey, “New Jersey Immigrant Kids Count 2007: A Profile of Child Well-Being,” Association of Children of New Jersey, October 2007, p.1 <http://www.acnj.org/admin.asp?uri=2081&action=15&di=1151&ext=pdf&view=yes>.

<sup>xxvi</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Sec. 505) prohibits states from providing a “postsecondary education benefit” to an alien not lawfully present unless any citizen or national is also eligible for such benefit. On December 23, 2008 the California Supreme Court granted review in *Martinez v. Regents of the University of California*, an in-state tuition to immigrant students case. The court will address the following issues: (1) Does Education Code section 68130.5, which authorizes undocumented aliens and other non-residents who attend and graduate from a California high school to pay in-state tuition for post-secondary education, violate 8 United States Code, section 1623 and/or section 1621? (2) Does section 68130.5 violate the rights of non-resident students under federal law in violation of the privileges and immunities clause of the Fourteenth Amendment? (unpublished) Notice of review available at [http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc\\_id=564781&doc\\_mo=5167791](http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=564781&doc_mo=5167791) A federal court challenge to Kansas’ in-state tuition statute was dismissed for lack of standing. *Day v. Bond*, 2007 U.S. App. LEXIS 20790 (10th Cir. Aug. 30, 2007). The court therefore was not required to address the substantive argument that a statute that requires a student to pay full in-state tuition does not confer a “postsecondary education benefit.” Calls upon the federal Department of Homeland Security to challenge in-state tuition programs have been unsuccessful, and the Department thus far appears to be unwilling to assert such a challenge.

For a discussion of the legality of state-granted in-state tuition in light of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), see Michael A. Olivas, “IIRIRA, the DREAM Act, and Undocumented College Student Residency,” *Journal of College and University Law* 30 (2004); Michael A. Olivas, “Lawmakers Gone Wild? College Residency and the Response to Professor Kobach,” forthcoming in *SMU Law Review* (2008), University of Houston Law Center, <http://www.ssm.com> (accessed 16 June 2008); Josh Bernstein, “Court Upholds California In-State Tuition Law,” National Immigration Law Center, <http://nilc.org> (accessed 22 July 2008).

<sup>xxvii</sup> For a discussion, see Michael A. Olivas, “A Rebuttal to FAIR,” *University Business*, June 2002; (“State A cannot give any more consideration to an undocumented student than to a nonresident student from state B.”)

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<sup>xxviii</sup> Alene Russell, “In-State Tuition for Undocumented Immigrants: States’ Rights and Educational Opportunity,” (Washington DC: American Association of State Colleges and Universities, August 2007), located at [http://aascu.org/policy\\_matters/pdf/in-state\\_tuition07.pdf](http://aascu.org/policy_matters/pdf/in-state_tuition07.pdf).

<sup>xxix</sup> Oklahoma HB 1804 of legislative session 2007 effectively repealed the state's earlier (2003) statute granting resident tuition to undocumented students. However, 70 Okl. St. § 3242 (2008) states: “The Oklahoma State Regents for Higher Education may adopt a policy which allows a student to enroll in an institution within The Oklahoma State System of Higher Education and allows a student to be eligible for resident tuition” if the student meets specific eligibility requirements, including: graduated from a public or private high school in the state; resided in the state with a parent or legal guardian while attending classes at a public or private high school in the state for at least two (2) years prior to graduation; secured admission to, and enrolled in, an institution within The Oklahoma State System of Higher Education; and provide to the institution a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Services to legalize the student's immigration status, or file an affidavit of such intent. The State Regents for Higher Education’s 2008 revised Regent’s policy (3.18.9) conforms to this law and allows for residency tuition to undocumented students as noted above.

<sup>xxx</sup> Alene Russell, “In-State Tuition for Undocumented Immigrants: States’ Rights and Educational Opportunity,” (Washington DC: American Association of State Colleges and Universities, August 2007). [http://www.aascu.org/media/pm/pdf/in-state\\_tuition07.pdf](http://www.aascu.org/media/pm/pdf/in-state_tuition07.pdf).

<sup>xxxi</sup> Migration Policy Institute, MPI Data Hub, “States Ranked by Percent Foreign-Born,” [http://www.migrationinformation.org/datahub/files/MPIDataHub\\_ACS\\_2006-PercentForeignBorn.xls](http://www.migrationinformation.org/datahub/files/MPIDataHub_ACS_2006-PercentForeignBorn.xls).

<sup>xxxii</sup> See generally, Ashley Zaleski, “In-State Tuition for Undocumented Immigrations,” *State Notes* (March 2008), Education Commission of the States, <http://www.ecs.org/clearinghouse/75/53/7553.pdf>, (accessed 9 June 2008);

<sup>xxxiii</sup> Jessica Salsbury, “Evading ‘Residence’: Undocumented Students, Higher Education, and the States,” 53 *American University Law Review* 459, 476 (2003).

<sup>xxxiv</sup> *Id.*

<sup>xxxv</sup> *Id.*

<sup>xxxvi</sup> Zaleski, *supra* note xxxii, at 2-3; Michael A. Olivas, “Recent Developments in Undocumented College Student Issues (2005-present),” Institute for Higher Education Law and Governance, University of Houston Law Center, 2008 <http://www.law.uh.edu/ihelg/> (accessed 25 July 2008).

<sup>xxxvii</sup> *Id.*

<sup>xxxviii</sup> Russell, *supra* note xxviii.

<sup>xxxix</sup> Miguel Perez and Elizabeth Llorente, “Tests Illegals Can’t Pass: Legal, financial hurdles block college for many aliens,” *The Record*, 28 Aug. 2005, A01 <http://www.freerepublic.com/focus/f-news/1481270/posts> (See appendix I for a break-down of policies by institution). The survey does not encompass all institutions in New Jersey and should not be considered exhaustive.

<sup>xl</sup> *Id.*

<sup>xli</sup> Susan James, “Borderline Dreams: Undocumented Teens Fight for an Education,” *Columbia Journalism News*, 2005, <http://web.jrn.columbia.edu/studentwork/youthmatters/2005/story.asp?course=youthmatters&id=420>. (Accessed 18 June 2008).

<sup>xlii</sup> Miguel Perez and Elizabeth Llorente, “Tests Illegals Can’t Pass: Legal, financial hurdles block college for many aliens,” *The Record*, 28 Aug. 2005, A01; Jeanne Batalova and Michael Fix, “New Estimates of Unauthorized Youth Eligible for Legal Status under the DREAM Act,” *Immigration Backgrounder* 1 (Oct. 2006), Migration Policy

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Institute, [http://www.migrationpolicy.org/pubs/Backgrounder1\\_Dream\\_Act.pdf](http://www.migrationpolicy.org/pubs/Backgrounder1_Dream_Act.pdf), (accessed 21 July 2008); Passel, “Further Demographic Information.” *supra* note 12 at 4.

<sup>xliii</sup> Conversation between Ronald Chen, Chair of the New Jersey Immigrant Policy Panel, and Jane Oates, Executive Director of the New Jersey Commission on Higher Education, October 18, 2007.

<sup>xliv</sup> Mehta and Ali, *supra* note **Error! Bookmark not defined.**, at iii.

<sup>xlv</sup> Perez and Llorente, *supra* note xlii, at 13.

<sup>xlvi</sup> Jennifer L. Frum, “Postsecondary Education Access for Undocumented Students,” p.90 (available at [http://www.aft.org/pubs-reports/american\\_academic/issues/january07/Frum.pdf](http://www.aft.org/pubs-reports/american_academic/issues/january07/Frum.pdf)).

<sup>xlvii</sup> “Taxpayers Should Not Subsidize College for Illegal Aliens,” FAIR, May 2003, [http://www.fairus.org/site/PageServer?pagename=iic\\_immigrationissuecenters6be3](http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters6be3) (accessed 25 July 2008).

<sup>xlviii</sup> Randy Capps and Michael Fix, “Undocumented Immigrants: Myths and Reality,” [http://www.urban.org/UploadedPDF/900898\\_undocumented\\_immigrants.pdf](http://www.urban.org/UploadedPDF/900898_undocumented_immigrants.pdf) (The Urban Institute: 25 October 2005). It is estimated that undocumented immigrants contribute 6-7 billion dollars a year to the Social Security Administration through payroll taxes, but are prevented from collecting any state benefits; Eduardo Porter, “Illegal Immigrants Are Bolstering Social Security with Billions.” New York Times, Apr. 5, 2005. <http://www.nytimes.com/2005/04/05/business/05immigration.html>.

<sup>xlix</sup> Frum, *supra* note 51.

<sup>1</sup> Id.

<sup>73</sup> Office of the Texas Comptroller, “Undocumented in Texas: A financial analysis of the impact to the state budget and economy.” December 2006. Accessed March 19, 2008 from <http://www.window.state.tx.us/specialrpt/>

<sup>74</sup> University of California Office of Personnel, “Annual Report on AB 540 Tuition Exemptions 2005-06 Academic Year.” November 2006. Accessed March 19, 2008 from [www.ucop.edu/sas/sfs/docs/ab540\\_annualrpt\\_2007.doc](http://www.ucop.edu/sas/sfs/docs/ab540_annualrpt_2007.doc)

<sup>75</sup> Protopsaltis, *supra* note 46.

<sup>76</sup> Jennifer Robinson, “In-State Tuition for Undocumented Students in Utah,” Center for Public Policy and Administration (University of Utah, Feb. 2007) (available at [http://www.cppa.utah.edu/publications/higher\\_ed/Policy\\_Brief\\_2\\_13\\_07\\_In-state\\_Tuition.pdf](http://www.cppa.utah.edu/publications/higher_ed/Policy_Brief_2_13_07_In-state_Tuition.pdf)).

<sup>77</sup> Mehta and Ali, *supra* note 55.

<sup>78</sup> Robinson, *supra* note 68.

<sup>79</sup> Id.

<sup>li</sup> University of California, Office of the President.

<sup>lii</sup> “New Jersey’s Growing Capacity Crisis,” New Jersey Association of State Colleges and Universities, 27 July 2007, <http://www.njascu.org/growing%20capacity.htm> (accessed 25 July 2008).

<sup>liii</sup> Id.

<sup>liv</sup> Id.