

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

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SUMMARY

Plaintiffs are petitioning the U.S. Supreme Court to review the California Supreme Court's affirmation that nonresidents may pay in-state tuition at public colleges and universities.

If you have any questions regarding the *Martinez v. Regents* decision and the issues raised by this recent petition, please contact:

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PLAINTIFFS SEEK U.S. SUPREME COURT REVIEW OF DECISION ALLOWING TUITION WAIVERS FOR UNDOCUMENTED STUDENTS

On February 14, 2011, a petition to review the California Supreme Court's decision in *Martinez v. Regents of the University of California* was filed with the United States Supreme Court. In November 2010, the California Supreme Court unanimously sided with the University's position and upheld a California state law that allows certain nonresidents (including some undocumented students) who attend and graduate from a California high school to pay in-state tuition at the State's public colleges and universities. Because the case involves interpretation of federal law, the U.S. Supreme Court has jurisdiction to review the case further.

The California Legislature enacted the law at issue, AB 540 (Education Code Section 68130.5), in 2001. The law applies only to tuition. Undocumented students are not eligible for federal, state, or institutional financial aid, although certain bills pending before the California Legislature would make state and institutional financial aid available to the same students who qualify for in-state tuition under AB 540.

AB 540 applies to students who attend high school in California for at least three years and graduate. It has benefited documented students (U.S. citizens and legal residents), as well as undocumented students. In fact, documented students have accounted for over two-thirds of those benefiting from the exemption in every year since the program's introduction at UC in 2002-03. In 2008-09, for example, nearly 80 percent of the 2,019 students who qualified under the law for tuition exemptions at UC were documented students.

A group of nonresident students attending California's public colleges and universities filed the *Martinez* lawsuit as a class action in 2005. They named UC, the California State University, and the California Community Colleges as defendants. Among other things, the plaintiffs claimed that AB 540 conflicts with federal immigration laws that prohibit states from granting certain post-secondary educational benefits to undocumented aliens on the basis of residency without giving the same benefit to nonresident U.S. citizens. The California Supreme Court rejected that argument.

The U.S. Supreme Court rarely grants certiorari review, and, in the University's view, it is not warranted in this case. The California Supreme Court's decision was unanimous and carefully reasoned. Moreover, lower courts have not rendered conflicting opinions that warrant resolution of the issue by the U.S. Supreme Court. The University currently anticipates that the U.S. Supreme Court will decide whether to hear the case by the end of its term in June.