

**No. 22-40225**

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IN THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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**YOUNG CONSERVATIVES OF TEXAS FOUNDATION**  
*Plaintiff - Appellee*

v.

**NEAL SMATRESK, PRESIDENT OF THE UNIVERSITY OF  
NORTH TEXAS; SHANNON GOODMAN, VICE PRESIDENT FOR  
ENROLLMENT OF THE UNIVERSITY OF NORTH TEXAS**  
*Defendants – Appellants*

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Appeal from the United States District Court  
For the Eastern District of Texas, Sherman Division  
No. 4:20-CV-973-SDJ

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**AMICUS BRIEF OF THE PRESIDENTS' ALLIANCE IN  
SUPPORT OF APPELLANTS**

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## **SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Fifth Circuit Rule 29.2, I hereby supplement the certificate of interested persons provided in the briefs of appellants and appellees by naming the following persons who have an interest in the outcome of this litigation:

### **Amici:**

The Presidents' Alliance on Higher Education and Immigration ("Presidents' Alliance") files this brief on its own behalf.

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## INTEREST OF AMICI

Amicus curiae<sup>1</sup> Presidents' Alliance on Higher Education and Immigration is a nonpartisan, nonprofit organization comprising over 550 presidents and chancellors of public and private colleges and universities, serving over five million students in 43 states, the District of Columbia, and Puerto Rico. Presidents' Alliance analyzes how immigration policies and practices impact students, campuses, and communities. In particular, the Presidents' Alliance includes 23 members from Texas, including many of the largest public institutions in the state.

The district court's decision, left undisturbed, is potentially devastating for public education in Texas, and likely too in many other states. For more than a century, public higher education institutions have distinguished between residents and non-residents in setting tuition fees. Non-residents pay more. The extra money non-resident tuition generates is a crucial part of the blend of revenues that allow universities and colleges to provide excellent and affordable public

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<sup>1</sup> Counsel certifies that: (1) no counsel for a party authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and (3) no person or entity—other than amicus curiae, its members, or its counsel—contributed money intended to fund the preparation or submission of this brief. *See* FIFTH CIR. R. 29(a)(4)(E). All parties have consented to the filing of this brief.



education. The Presidents' Alliance and its members are concerned how the district court's order will impact public universities' basic operations, budgets, and their ability to provide affordable public education to state residents. This amicus brief is intended to provide the Court with historical background about non-resident tuition, the economic and social importance of helping resident students pursue postsecondary education at home if they so choose, and hard numbers about the amount of revenue that state universities would lose if the district court's ruling were upheld.

## SUMMARY OF ARGUMENT

The district court permanently enjoined the University of North Texas “from applying the tuition rates prescribed by [s]ection 54.051(d) of the Texas Education Code to United States citizens at the University of North Texas.” ROA.1080. As a result, UNT cannot charge out-of-state tuition to *any* United States citizen, regardless of their residence.<sup>2</sup> The district court’s decision does not affect the tuition charged to alien students. This case is only about whether charging non-resident tuition to U.S. citizens is allowed.

Although the injunction only applies to the UNT on its face, if affirmed, the district court’s judgment will affect universities throughout Texas. The district court’s order enjoined UNT from enforcing the statute setting non-resident tuition for “general academic teaching institutions.” UNT is a “general academic teaching institution.” *See* TEX. EDUC. CODE § 54.051(d). That term includes at least another 37 public universities, including the University of Texas at Austin, Texas A&M University, Texas Tech University, and the University of Houston. *See* TEX. EDUC.

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<sup>2</sup> For purposes of this brief, the phrases “out-of-state” and “non-resident” will be used interchangeably.

CODE §§ 54.051(a)(2), 61.003(3). Meanwhile, the statute setting tuition for community colleges is similar and is also at risk in potential follow-up litigation. See TEX. EDUC. CODE § 54.051(n). The district court has therefore effectively upended Texas education policy at a stroke of its pen, substituting its “wisdom ... for that of 181 lawmakers.” *Morath v. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 833 (Tex. 2016).

In reaching its conclusion that out-of-state tuition cannot be charged to any U.S. citizen, the district court took no regard of either the history of public higher education or the consequences of its decisions on the everyday lives of American universities. Both those aspects of the case deserve careful scrutiny. American public universities have charged different (and higher) tuition for non-resident students from the earliest moments of institutionalized public higher education in the United States. This dual-track mechanism has long been used to generate extra revenue to help serve the state’s residents. Removing that long-established linchpin cannot help but have the most serious consequences. Tens of thousands of non-resident students attend Texas universities. Those students account for tens of millions of dollars of revenue for state universities. The numbers are even larger nationally. Yet the district

court pulled out that key block from the educational funding puzzle with no sense of how and where the money could be replaced, with no clear sense of the consequences for the state fisc, and without even any time for responsible implementation of its mandate. Nor did the district court consider Texas's long-stated public policy of increasing accessibility of education for Texans, a goal that will become harder to achieve if the tool of out-of-state tuition is taken away from Texas universities.

Amicus Curiae agrees with the sound arguments made by counsel for UNT in this litigation. The Presidents' Alliance writes separately to give this Court a broader perspective about the consequences of the district court's judgment. This is not a problem just for UNT, or even for Texas public universities. If the district court's judgment is right, then it could reverse a century of precedent and could require states around the country to dramatically reengineer their revenue models for public education. That is not a result the federal immigration statutes impose on the country.

## ARGUMENT

### **I. Providing affordable education to Texans in public universities is a central Texas public policy.**

Broadening access to higher education for Texans has long been fundamental Texas public policy. The Texas Constitution of 1876 created a state university, backed by the permanent university fund and a million acres of land. Tex. Const. art. VII, § 10. Since that early foundation, generations of Texas legislatures and government officials have continued to emphasize public higher education and the need to bolster Texas’s competitiveness by improving higher education. In October 2000, for instance, the Texas Higher Education Coordinating Board issued a plan to help increase “educational enrollment and success rates for all Texans” to maintain Texas’s competitiveness with its peers. See TEX. HIGHER EDUC. COORDINATING BD., *2015 Closing the Gap, the Texas Higher Education Plan*, available at <https://reportcenter.highered.texas.gov/agency-publication/miscellaneous/closing-the-gaps-by-2015/>. The state effectively achieved most of the ambitious goals of the “Closing the Gap” agenda, increasing enrollment and completions of higher education throughout the 15 years of the plan. See TEX. HIGHER EDUC.

COORDINATING BD., *Closing the Gaps, Final Progress Report*, available at <https://reportcenter.highered.texas.gov/reports/data/closing-the-gaps-final-progress-report-june-2016/>.

The 2015-2030 Texas Higher Education Plan redoubled Texas's commitment to the notion that helping "more students graduate with credentials of value . . . increase[s] Texans' opportunities to succeed while also bolstering Texas' ability to flourish." See TEX. HIGHER EDUC. COORDINATING BD., *2022–2030 Strategic Plan: Building a Talent Strong Texas*, <https://reportcenter.highered.texas.gov/agency-publication/miscellaneous/building-talent-strong-texas/>. Moreover,

Texas has long recognized that the benefits of broad-based higher education do not accrue just to those Texans receiving the education. Education "boosts our state's know-how and resourcefulness, and helps build a more productive workforce." See TEX. HIGHER EDUC. COORDINATING BD., *The Case for a Postsecondary Credential*, <http://www.60x30tx.com/why-60x30tx/>. Thus, Texas's goal is to make sure that 60% of all Texas students achieve some kind of higher education by 2030. See *id.* In Governor Greg Abbott's words, this is because "a skilled and educated workforce gives Texas a competitive advantage." See

TEX. HIGHER EDUC. COORDINATING BD., *Overview of 60x30TX Goals and Targets*, at 17, available at [https://tea.texas.gov/sites/default/files/60x30TX%20Overview%20THECB Gardner 04.04.2018.pdf](https://tea.texas.gov/sites/default/files/60x30TX%20Overview%20THECB%20Gardner%2004.04.2018.pdf). In Texas, immigrant-origin students (immigrants and the children of immigrants) comprise 32% of all students in higher education and are integral to achieving the state's goal that 60% of all Texans complete a post-secondary credential. See Jeanne Batalova & Miriam Feldblum, *Immigrant-Origin Students in U.S. Higher Education. A Data Profile*, Migration Policy Institute (October 2020), <https://www.higheredimmigrationportal.org/wp-content/uploads/2021/02/Immigrant-Origin-Students-in-Higher-Education-October-2020.pdf>

The Governor and the Texas legislature are right to say that education is the key to competitiveness in the modern economy. Since 2008, the majority of the new jobs created in the economy have gone to college-educated individuals, and the COVID pandemic exacerbated some of these trends. See Tamara Lytle, *Pandemic Takes a Toll on Workers Without College Degrees*, SHRM (Jan. 29, 2022), <https://www.shrm.org/hr-today/news/all-things-work/pages/pandemic->

[takes-a-toll-on-workers-without-college-degrees.aspx](https://files.eric.ed.gov/fulltext/ED544780.aspx). Research studies have shown that a postsecondary education can increase economic mobility and improve lives. See, e.g., U.S. DEP'T OF TREASURY, *The Economics of Higher Education* (Dec. 2012), <https://files.eric.ed.gov/fulltext/ED544780.pdf>. Over a career, an average high school graduate earns at least \$1.4 million; an associate's degree holder earns at least \$1.8 million; a bachelor's degree holder earns \$2.5 million; a master's degree holder earns \$2.9 million; a PhD holder earns \$3.5 million; and a professional degree holder earns at least \$4 million. Anthony P. Carnevale, *Reauthorizing the Higher Education Act: Accountability and Risk to Taxpayers*, Testimony Before the Committee on Health, Education, Labor and Pensions, U.S. Senate (Jan. 20, 2018), available at <https://www.help.senate.gov/imo/media/doc/Carnevale2.pdf>.

Leveraging the revenues from out-of-state tuition to support the college-going rates of Texans is critical to meeting state educational goals and addressing acute skills shortages. And by using that revenue to increase college attendance rates of all Texans, Texas public colleges and universities help fuel economic growth and prosperity across the state. The district court's decision will ultimately force universities and



legislators throughout Texas and even all around the country to make incredibly difficult budget decisions, disrupting policy choices that were made decades ago by the people and their representatives.

## **II. Charging out-of-state students higher tuition has a long history in American public education.**

The distinction between resident and non-resident tuition for state universities is not some novelty, easily removed without consequence from the edifice of higher education funding. Instead, from the very beginning of public university education in the United States, universities have charged non-residents higher rates. The story in nearly every state is the same. State universities were first founded to provide free or nearly-free education to residents. The California universities, for example, were founded with the promise that “admission and tuition shall be free to all *residents* of the state.” California Statutes of 1867-68, Chapter 244, Section 14 (emphasis added); *see also* Wisconsin General Laws, Chapter 114, Section 8 (April 6, 1866) (“and as soon as the income of the university will permit, admission and tuition shall be free to all *residents* of the state”) (emphasis added). The initial foundations did not directly address non-residents.

As universities became more established and began to draw students from neighboring states and even further abroad, administrators and legislators decided to admit these visitors on a more formal basis. Nearly every state ultimately chose to charge non-residents substantially higher tuition than residents, often charging non-residents the amount the non-resident's home state charged out-of-state students. Reviewing a representative sample of states shows that they adopted higher non-resident tuition at least a century ago. *See, e.g., Alabama, AUBURN UNIV., The Bulletin of the Alabama Polytechnic Institute at Auburn 1915-16* at 182 (1916) (“Tuition for students not resident of Alabama is \$20.00 per session... There is no charge for tuition for a resident of Alabama”); *California*, Political Code of California, ch. I, § 1394 1/2, 1921 Cal. Laws, 541 (repealed); *see also Bryan v. Regents of Univ. of Cal*, 205 P. 1071 (Cal. 1922) (noting California’s enactment of non-resident tuition); *Indiana*, Richard Rees Price, THE FINANCIAL SUPPORT OF STATE UNIVERSITIES, Harvard University Press, 93 (1924) (“It was in 1921, however, that Indiana University [began charging tuition fees]. In that year the fees for the College of Arts and Sciences were placed at \$50 for residents of Indiana and \$85 for non-residents”); *Michigan*,

Pearl G. Lewin, *The Differential in Fees between Resident and Non-Resident Students at the University of Michigan, 1821-1864*, in *STUDIES IN THE HISTORY OF HIGHER EDUCATION IN MICHIGAN* 49 (University of Michigan Press, Eggertsen, ed. 1950) (noting that the university’s by-laws were amended in March 1865 to require a higher fee from out-of-state students); *Missouri*, MO. GEN. ASSEMBLY, *Appendix to the House and Senate Journals Treasurer’s Biennial Balance Sheet*, app. at 178 (1914); *Nebraska*, Act of Apr. 23, 1923, ch. 57, 1923 Neb. Laws 178–79 (“All state educational institutions shall charge a non-resident fee to each non-resident of Nebraska ... [t]his fee shall not be less than the fee charged to residents of Nebraska[.]”); *Oklahoma*, UNIV. OF OKLA., *University of Oklahoma General Catalog 1918-1919*, at 94 (1919) (“All students who are not residents of the State of Oklahoma at the time of registration will be charged tuition at the same rate that would be charged a resident of Oklahoma taking the same courses in the state university of the state [the student came from]”); *Ohio*, THE OHIO STATE UNIV., *The Ohio State University Bulletin*, Vol. 26, No. 14 at 11 (1922) (“Every undergraduate student who is not a legal resident of the state of Ohio is required to pay a non-resident fee....”); *West Virginia*, W. VA.

UNIV., *West Virginia University Bulletin*, Series 9, No. 3 at 29 (1909) (listing resident and non-resident tuition rates); *Wisconsin*, Price, *supra* at 122 (“In 1895 we find that non-residents of Wisconsin were charged at the rate of \$30 a year... [while] there was no tuition fee for residents”).

Nor was the decision to charge higher non-resident tuition an accident. Public education administrators and legislators were clear that they chose to charge higher non-resident fees *precisely to benefit resident students* (who paid taxes to the state and were likely to stay to benefit the state after they completed their education) while still welcoming non-residents. On one hand, administrators and legislators recognized that attracting students from other states to the state’s education institutions was important both to the prestige of the state university and the broad education of the students. As the regents of the University of Michigan noted, “if foreign students were kept away from this University,” one consequence would be that “the student body would be much less inspiring, interesting, and helpful to the sons and daughters of Michigan...” THE UNIV. OF MICH., *The Non-Resident Student at the University of Michigan University Bulletin*, Vol. 24, No. 26 (1922). The President of the University of Minnesota agreed: “Undoubtedly, the

presence of students from the South, East, and West gives a national view to the University which makes for a larger point of view.” See THE UNIV. OF MINN., *The Bulletin of the University of Minnesota the President’s Report for the Year 1917-1918*, Vol. 22 No. 9 at 28 (1919) [below “Minnesota Bulletin”].

On the other hand, charging higher fees to non-resident students allowed universities to meet their goals of providing affordable public education to their residents. “There should be some differentials against non-resident students,” wrote one observer, so that “the principle of public education at public expense for the public good” can be upheld to “the utmost practical limits.” Price, *supra* at 180. In some cases, the extra tuition from non-residents could pay for the entire course of instruction for residents. See FORTY-NINTH ANNUAL REPORT OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MICHIGAN at 6 (1886). And again, the President of the University of Minnesota in 1919 considered the benefits of broader enrollment weighed against the fact that equalizing resident and non-resident tuition would “reduce our annual income from student fees by approximately \$9,000.” See Minnesota Bulletin at 28.

States resolved this debate in favor of charging non-resident tuition fees. See Carlton E. Spencer, *The Legal Aspects of the Nonresident Tuition Fee*, 33 W. VA. L. REV. 317, 350 (1926) (“Most of the tax supported higher educational institutions of the United States discriminate among their students in the matter of tuition fees . . . the purpose being to collect an additional fee from nonresidents”). In part, this was because residents of a state pay taxes to the state, and it makes sense that they should pay less in fees to the state university. In short, after much debate, universities and states made a reasoned decision to charge higher non-resident fees, and that decision has proven to be wise over a century of practice.

Texas universities did not stray from this broad historical trend. Again, the state legislature made the choice very early on in Texas’s history to charge lower tuition to Texas residents and higher tuition to those who chose to come to Texas from out of state for college. Texas has had a formalized, statutory system of in-state tuition and out-of-state tuition since 1933. See HB 322, 43rd R.S. (1933). From the beginning, Texas’s system recognized that other states also charged higher rates to out-of-state students. For that reason, starting in the original bill and

continuing to today, out-of-state tuition was set by determining what other states would charge Texas students for attending. *Id.*

The district court upset this century of precedent in Texas and around the country based on a misreading of federal immigration law. That long history should have been afforded more respect before the district court's unprecedented remedy was imposed on UNT and by implication other Texas universities.

### **III. Eliminating out-of-state tuition will devastate the public fisc.**

If affirmed, the district court's decision will not be cabined just to one campus of the UNT system. As the Court well knows, and plaintiffs surely intend, the same principles will require each public university in Texas (and likely in other parts of the Fifth Circuit) to change their tuition practices, including the rest of the University of North Texas, the University of Texas system, the Texas A&M system, the University of Houston system, and all the others. The consequences of this startling new regime are so large they nearly defy estimation: the courts would now "assume the role of super-laboratory" for deciding "intractable disagreements on fundamental questions" of public education budgeting. *See Morath*, 490 S.W.3d at 853.

The sheer numbers of non-resident students in Texas help tell the tale. In Fall 2020, Texas universities and community colleges enrolled 41,138 out-of-state American students—28,150 enrolled in public 4-year universities and 12,988 enrolled in public community colleges. See TEX. P-16 PUBLIC EDUC. INFO. RES., *Higher Education Statewide Fall Enrollment by Student Resident Type* [below “Enrollment by Resident Type”], *available* at <https://www.texaseducationinfo.org/Home/Topic/College%20Admissions%20and%20Enrollment?br=Higher%20Education> (last generated Aug. 1, 2022).<sup>3</sup> At particular institutions, out-of-state students represent an even more important percentage of students. For instance, the University of Texas at Austin reported 10.5% out-of-state students in Fall 2021. See THE UNIV. OF TEX., *Facts & Figures*, available at <https://www.utexas.edu/about/facts-and-figures> (last visited Aug. 1, 2022). These numbers have been stable for many decades. See

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<sup>3</sup> The Texas P-16 Public Education Information Resource, which generated this report, is a cross-agency project between the Texas Education Agency and the Texas Higher Education Coordinating Board. Enrollment data comes specifically from data reported to the Texas Higher Education Coordinating Board. The specific data referenced were generated by selecting “Public University” and “Public 2-Year College” along with “Fall 2020” under the “Higher Education Fall Enrollment Longitudinal Analysis-Statewide by Residence Type” category.



*Enrollment by Resident Type* (showing approximately 5% out-of-state students across the state in Fall 1990).<sup>4</sup>

Texas universities rely heavily on the higher tuition they can charge to out-of-state students to supplement the rest of their budgets. For four-year universities, the net amount of all non-resident tuition received in 2020 was about \$300 million—almost 35% of all statewide net tuition of about \$868 million. *See* Tex. Higher Educ. Data, Legislative Appropriations Requests, *available at* <http://www.txhighereddata.org/index.cfm?objectid=F6DE9EA0-D878-11E8-BB650050560100A9> (last visited Aug. 1, 2022).<sup>5</sup> For many universities, this amounts to additional tens of millions of dollars in tuition from non-residents—and Texas’s flagship institutions (the University of Texas at Austin and Texas A&M University) each annually

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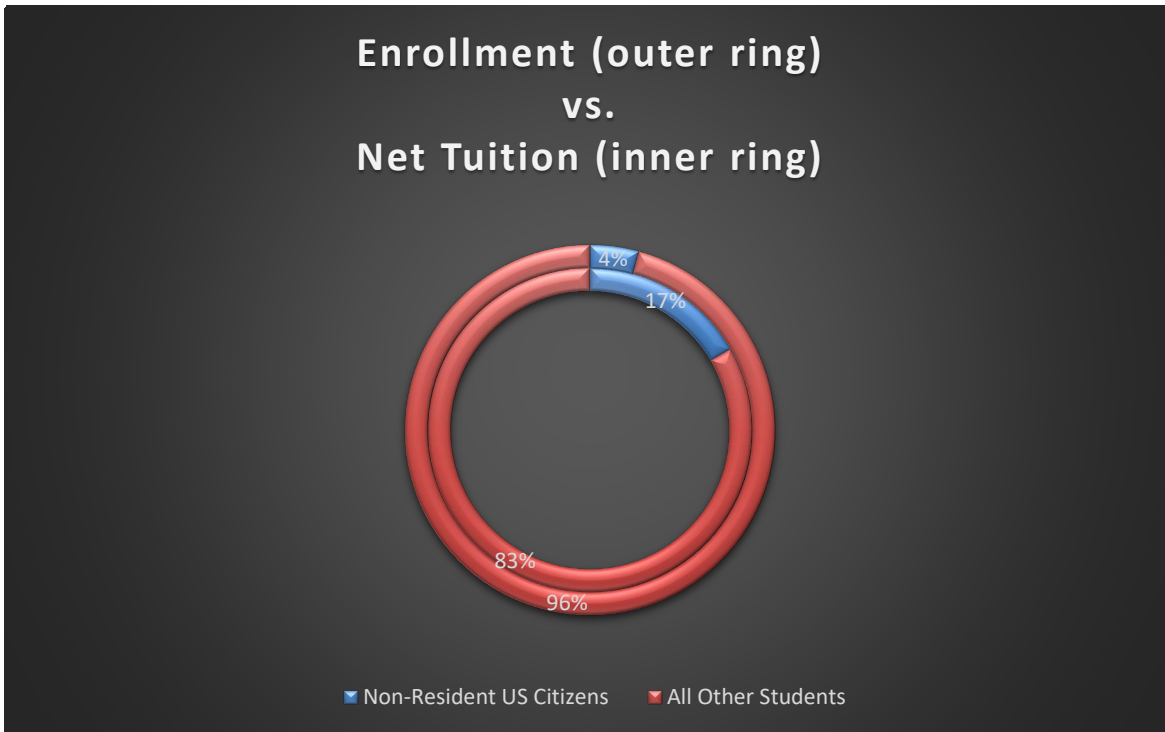
<sup>4</sup> The specific data referenced were generated by selecting “Public University” along with “Fall 1990” under the “Higher Education Fall Enrollment Longitudinal Analysis-Statewide by Residence Type” category.

<sup>5</sup> This data was collated from the 2022–23 legislative appropriations requests for each of Texas’s 37 public 4-year institutions, specifically the chart accompanying each request titled “Schedule 1A: Other Educational and General Income.” Net non-resident tuition was calculated by subtracting non-resident waivers and exemptions from gross non-resident tuition. For example, the University of Texas at Austin numbers are available at <https://reportcenter.highered.texas.gov/reports/data/financial-documents-2022003658lar/> at 179 ((Schedule 1A, listing estimated gross non-resident tuition revenue of \$ 109,000,000 for 2023).

receive over \$40 million in net tuition from non-residents. *See id.* Even adjusting these figures to estimate the tuition paid by international students—who would not be affected by the district court’s analysis—the tuition from out-of-state students still accounts for about 17% of all net tuition received by Texas four-year universities (as can be best estimated from public data). *Compare id., with Enrollment by Resident Type, supra.*<sup>6</sup> Each non-resident student in Texas provides well over their equal share in Texas tuition revenue every year, as shown in the figure below (derived from the calculations above) comparing the tuition and enrollment for Texas’s four-year public universities:

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<sup>6</sup> This number is an estimate arrived at by multiplying the net amount of non-resident tuition for Texas’s four-year public institutions in 2020 (\$302,484,572.00) by the percentage of all Texas four-year college non-resident students who were U.S. residents that year (47.8%), and then comparing that total to the total net tuition for all Texas public four-year colleges in that year (\$867,764,053.00).



Removing this budgetary advantage will prevent Texas universities—and any other university against which such an injunction is levied—from accomplishing their educational goals. For example, Texas law specifically requires universities to offset certain amounts of resident and non-resident tuition for Texas Public Educational Grants—a financial aid program. *Compare* TEX. EDUC. CODE § 56.033(a)(1)–(2) (setting the set-aside amounts), *with* TEX. EDUC. CODE § 54.051 (setting tuition rates & formulas), *and* TEX. HIGHER EDUC. COORDINATING BD., Memo. from Harrison Keller, Oct. 26, 2021, <https://reportcenter.highered.texas.gov/reports/data/tuition-rate-for-nonresident-and-foreign-students-ay-2022-2023/> (setting non-resident

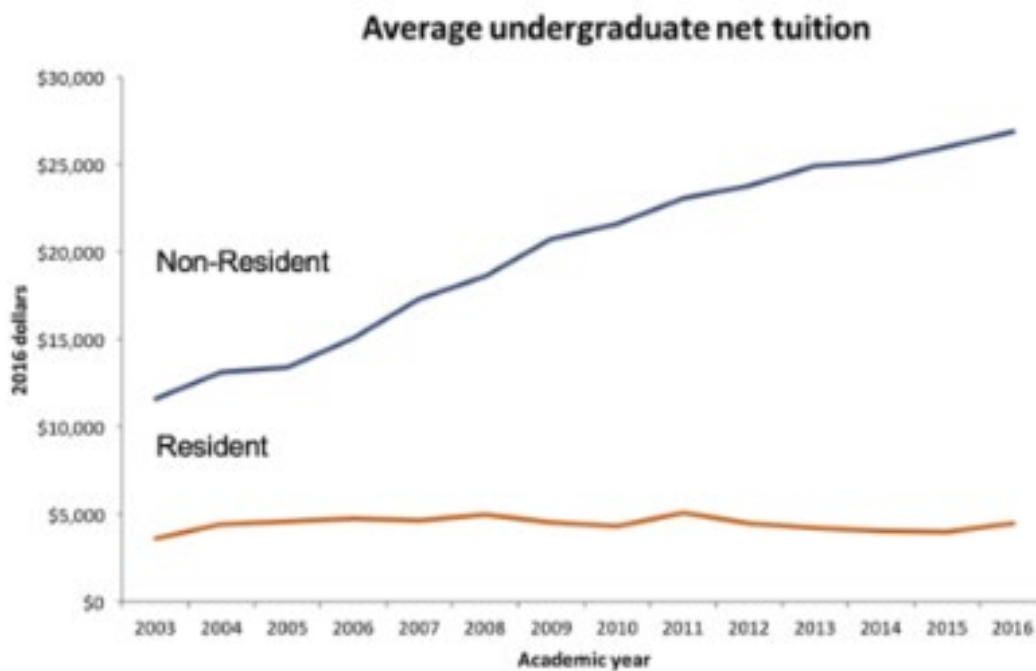
tuition based on the statutory formula).<sup>7</sup> When the COVID-19 pandemic led to a projected temporary decrease in non-resident enrollment, the University of Texas at Austin requested hundreds of thousands more dollars from the Legislature to make up for its budget for these grants. See THE UNIV. OF TEX. AT AUSTIN, *Legislative Appropriations Request* at 61 (Oct. 2020), <https://reportcenter.highered.texas.gov/reports/data/financial-documents-2022003658lar/> (last visited Aug. 1, 2022) (noting “projected temporary decrease in non-resident enrollment in fiscal year 2021”). If such a request was required for only a temporary blip in non-resident enrollment, one can only imagine the budgetary impact if non-resident tuition from other American students is zeroed out entirely.

And beyond the statutory financial aid program, removing hundreds of millions of dollars of tuition will hamper public universities’ ability to provide an affordable education to their constituents. Texas

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<sup>7</sup> For an additional explanation of the set-aside program, see generally TEX. HIGHER EDUC. COORDINATING BD, *Overview: Tuition Deregulation and Tuition Set Asides*, available at <https://reportcenter.highered.texas.gov/reports/data/tuition-and-fees-data-public-universities/#:~:text=education%20are%20required%20to%20%E2%80%9Cset-aside%E2%80%9D%20a%20portion%20of,is%2015%20percent%20of%20resident%20statutory%20tuition%20at> (last visited Aug. 1, 2022).

public universities’ ability to maintain affordable tuition prices for their residents has relied heavily on the ability to charge higher rates to out-of-state students. Indeed, as recently as 2017, Texas A&M University “ask[ed] its out-of-state students to carry more of the financial burden.” Matthew Watkins, *Texas A&M Raises Tuition — but only for Out-of-State Students*, TEXAS TRIBUNE (Feb. 9, 2017), <https://www.texastribune.org/2017/02/09/texas-m-raises-tuition-only-out-state-students/>. Before that, a chart documenting tuition at the University of Texas at Austin showed even further how non-resident tuition has become a consistent tool to maintain affordable in-state rates:



See ALCALDE, *TXEXplainer: Net Tuition and Affordability at UT Austin* (Jan. 15, 2019), <https://alcalde.texasexes.org/2019/01/txexplainer-net-tuition-and-affordability-at-ut-austin/>. This chart reflects a well-understood trend-line over the past 40 years of education policy, as states have reduced the amount of subsidy provided to universities and forced universities to rely on other sources of revenue (including non-resident tuition) to make up the gap. See Michael J. Rizzo & Ronald G. Ehrenberg, *Resident and Nonresident Tuition and Enrollment at Flagship State Universities in COLLEGE CHOICES: THE ECONOMICS OF WHERE TO GO, WHEN TO GO, AND HOW TO PAY FOR IT* at 304 (Hoxby ed. 2004) (charting lower state appropriations in the period from 1979 to 2000).

These facts all point to one conclusion: if non-resident tuition is eliminated in Texas, as the district court held, then the crucial goals articulated in decades of Texas public policy cannot be satisfied. Moreover, affirming the district court's opinion would place one district court, and then this Court, in the role of effectively running state higher educational policy. Barring the clearest possible textual command, that is a result this Court should reject.

## CONCLUSION

This Court should reverse the judgment of the district court.

Respectfully Submitted,

*/s/ Raffi Melkonian*

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## CERTIFICATE OF SERVICE

This is to certify that on August 1, 2022 a true and correct copy of the foregoing document was filed with the clerk of the court for the United States Court of Appeals for the Fifth Circuit, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. I also certify that a true and correct copy of the foregoing document was served on opposing counsel by mail and e-mail.

/s/ Raffi Melkonian  
Raffi Melkonian



## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,664 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2007 in Times New Roman (Scalable) 14 pt. for text and Times New Roman (Scalable) 12pt for footnotes.

/s/ Raffi Melkonian  
Raffi Melkonian

## ECF CERTIFICATION

I hereby certify (i) the required privacy redactions have been made pursuant to 5th Cir. R. 25.2.13; (ii) the electronic submission is an exact copy of any paper document submitted pursuant to 5th Cir. R. 25.2.1; (iii) the document has been scanned for viruses and is free of viruses; and (iv) the paper document will be maintained for three years after the mandate or order closing the case issues, pursuant to 5th Cir. R. 25.2.9.

/s/ Raffi Melkonian  
Raffi Melkonian

## CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with counsel for all parties in this litigation, and they consent to the filing of this brief.

*/s/ Raffi Melkonian*  
Raffi Melkonian