

**IN THE CIRCUIT COURT OF BOONE COUNTY  
THIRTEENTH JUDICIAL CIRCUIT  
STATE OF MISSOURI**

JOHN DOE,	)	
	)	
Plaintiff,	)	
	)	Cause No.
v.	)	
	)	Div.
THE BOARD OF CURATORS OF THE	)	
UNIVERSITY OF MISSOURI,	)	
	)	
	)	
Defendant.	)	

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

***Introduction***

1. Plaintiff, John Doe, brings this action for declaratory judgment, pursuant to § 527.020, RSMo., seeking a judgment finding that the preamble language to H.B. 3, 98th Gen. Assemb. 1st Reg. Sess. (Mo. 2015) (“House Bill 3”) is unenforceable and that Defendants are violating § 173.005, RSMo. (2014) and 6 CSR § 10-3.010 (2013) by billing at the nonresident rate for tuition and fees related to Plaintiff’s attendance at the University of Missouri-Kansas City (UMKC).

***Parties***

2. Doe is a resident of Kansas City, Wyandotte County, Kansas.
3. UMKC is part of the University of Missouri school system and is a Missouri public institution of higher education created by statutes of the State of Missouri and governed by Defendants, the Board of Curators of the University of Missouri.

***Facts***

4. Doe arrived in the United States with his parents in 1996, when he was just over

one year old.

5. Doe's parents instilled in him a desire to work hard and achieve a better life for himself. Doe has long planned on attending college to further his dreams.

6. Doe was a three-sport athlete in high school.

7. During high school, Doe volunteered with a youth basketball league where he coached elementary school children.

8. In 2013, Doe applied for and received a favorable Deferred Action for Childhood Arrivals (DACA) determination from the Department of Homeland Security (DHS). He renewed his application and received another favorable determination in 2015.

9. Upon graduation from high school, Doe attended Kansas City Community College (KCCC) in Kansas City, Kansas. While attending KCCC, he also worked at a bank in order to pay his tuition and save money so that he could apply to and attend UMKC.

10. Doe applied to UMKC in January 2015 and was accepted in April 2015. In July 2015, Doe enrolled and received his class schedule.

11. UMKC has a policy of offering resident tuition rates (i.e., in-state tuition) to both undergraduate and graduate students enrolled in certain programs who live in the following Kansas counties: Atchison, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Miami, Osage, Shawnee, and Wyandotte. UMKC considers these counties to be part of the Kansas City metro area and refers to this tuition offer as the "Metro Rate."

12. UMKC considers students who live in Wyandotte County, Kansas, eligible for resident tuition.

13. Doe lives in Wyandotte County, Kansas.

14. Doe is enrolled in an undergraduate program that is eligible for resident tuition or

the Metro Rate at UMKC.

15. Resident tuition at UMKC (in-state tuition) costs \$371.69 per credit hour.
16. Nonresident tuition at UMKC costs \$810.39 per credit hour.
17. Doe enrolled at UMKC based on the understanding that he would pay resident (in-state) tuition.
18. When Doe received his first tuition bill, however, it stated that he is a nonresident enrollee and is therefore required to pay nonresident tuition, which is over twice as much as resident tuition.
19. Charging Doe a tuition rate higher than what is charged to other residents who pay in-state tuition rates places an increased financial burden on Doe.
20. In addition to the burden of higher tuition rates, the burden on Doe is marked because he does not qualify for federal financial tuition assistance.
21. On May 8, 2015, Governor Jay Nixon signed House Bill 3.
22. House Bill 3 is an appropriations bill passed by the Missouri legislature that appropriates money to the Department of Higher Education.
23. Contained in the preamble of House Bill 3 is the following language: “no funds shall be expended at public institutions of higher education that offer a tuition rate to any student with an unlawful immigration status in the United States that is less than the tuition rate charged to international students[.]” *Preamble*, H.B. 3, 98th Gen. Assemb. 1st Reg. Sess. (Mo. 2015).
24. Defendant is charging Doe tuition at the nonresident rate solely because of the preamble language in House Bill 3.
25. Governor Jay Nixon signed House Bill 3 into law knowing the preamble language was not enforceable and was contrary to already existing law.

26. After Governor Nixon signed House Bill 3, his spokesperson stated that, “The Governor has been quite clear – in order to change the law, you have to pass legislation. The language in the enacting clause of House Bill 3 – or in the enacting clause of any other bill – is not legally binding nor is it enforceable. DACA students have worked hard, played by the rules, and been given a status by the federal government. Denying them the opportunity to receive an affordable college education is not fair, nor is it consistent with current state law.” *See* Ex. 1, Marshall Griffin, *Undocumented students in Missouri want to reverse suddenly higher tuition*, <http://news.stlpublicradio.org/post/undocumented-students-missouri-want-reverse-suddenly-higher-tuition> (Jul. 30, 2015).

27. Upon information and belief, Defendant will continue to follow the preamble language in House Bill 3 as if it were law unless and until this Court directs Defendant to discontinue its practice of following the preamble.

28. The language in the preamble is not found in the main text of the House Bill 3.

29. The language in the preamble was never intended to prevent Missouri schools from charging in-state tuition to DACA students, including Doe.

30. State Representative Scott Fitzpatrick, the bill’s sponsor, has “emphasized that universities can still charge DACA students in-state tuition; they just cannot use state funding to do so.” *See* Ex. 1, Aine O’Connor, *After three-word budget bill change, Missouri DACA students hit with higher tuition*, <http://news.stlpublicradio.org/post/after-three-word-budget-bill-change-missouri-daca-students-hit-higher-tuition> (Aug. 11, 2015).

31. State Representative Scott Fitzpatrick has further represented that, “[t]he budget bill does not prohibit in-state tuition. It just prohibits the dollars that we appropriated from being spent with the university who supplies in-state tuition to those students.” *See* Ex. 1.

**Count I**  
**Declaratory Judgment**

32. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

33. It is a well-established rule of statutory interpretation that preambles to statutes do not create substantive law. *See Lackland v. Walker*, 52 S.W. 414, 430 (Mo. 1899). When statutes are ambiguous, preambles can be used to interpret statutory enactments but, on their own, preambles are not binding statutory authority. *Lett v. City of St. Louis*, 948 S.W.2d 614, 617 (Mo. App. E.D. 1996).

34. House Bill 3 is unambiguous.

35. The preamble language in House Bill 3 does not have a binding—or any—statutory effect.

36. The preamble language in House Bill 3 is unenforceable.

37. Plaintiff's legal rights are affected by the current enforcement of the preamble language in House Bill 3.

38. In the absence of the preamble language in House Bill 3, Doe is a resident of the District and the State for purposes of regulations governing resident tuition.

WHEREFORE, Plaintiff prays for:

- A. Entry of judgment, including a declaratory judgment, that the preamble language to House Bill 3 does not have a binding effect on Defendant and is unenforceable by Defendant;
- B. Preliminary and permanent injunctions preventing Defendant from enforcing, threatening to enforce, or giving any legal effect to the preamble to Missouri House Bill 3; and

C. Such other and further relief as the Court deems just and proper.

**Count II**  
**Declaratory Judgment**

39. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

40. Plaintiff is a resident of Wyandotte County, Kansas.

41. Plaintiff possesses resident alien status, as determined by federal authority.

42. Pursuant to UMKC policy, § 173.005, RSMo., and 6 CSR § 10-3.010, Plaintiff is entitled to Metro rate tuition at UMKC.

43. Plaintiff's legal rights are affected by UMKC's failure to apply § 173.005, RSMo. and 6 CSR § 10-3.010.

WHEREFORE, Plaintiff prays for:

A. Entry of judgment, including a declaratory judgment, that Plaintiff is entitled to Metro rate tuition pursuant to UMKC policy, § 173.005, RSMo. and 6 CSR § 10-3.010;

B. In the alternative, entry of judgment, including a declaratory judgment, that Plaintiff is entitled to resident tuition pursuant to § 173.005, RSMo. and 6 CSR § 10-3.010; and

C. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert

Anthony E. Rothert, #44827

Jessie Steffan, #64861

ACLU of Missouri Foundation

454 Whittier Street

St. Louis, Missouri 63108

Phone: (314) 652-3114

arothert@aclu-mo.org

jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278

ACLU of Missouri Foundation

3601 Main Street

Kansas City, Missouri 64111

Phone: (816) 470-9938

gwilcox@aclu-mo.org

Attorneys for Plaintiff