

**IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

| | | |
|------------------------------|---|-----------|
| JANE DOE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Cause No. |
| v. |) | |
| |) | Div. |
| ST. LOUIS COMMUNITY COLLEGE, |) | |
| |) | |
| Defendant |) | |

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiff, Jane 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 Defendant is 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 St. Louis Community College.

Parties

2. Doe is a resident of St. Louis County and the State of Missouri. She has resided in St. Louis County for the past ten years.

3. Defendant, St. Louis Community College, is a Missouri public institution of higher education created by statutes of the State of Missouri.

Facts

4. Doe arrived in the United States with her parents in the mid-2000s, when she was a nine-year-old child.

5. Since arriving in this country, Doe has dreamed of reaching what is, in her mind,

the pinnacle of the American promise: attending and graduating from an American institution of higher education.

6. Doe has done everything within her power to realize that dream. She achieved excellent grades in high school. She also participated in extracurricular activities, ranging from the athletic to the theatric, and she volunteered in the community.

7. In 2012, Doe received a favorable Deferred Action for Childhood Arrivals (DACA) determination from the Department of Homeland Security (DHS).

8. In 2014, Doe renewed her DACA application and received another favorable determination.

9. After receiving her 2012 favorable DACA determination, Doe was able to take a part-time job outside of school hours and began saving for college.

10. Doe graduated from high school and has now enrolled at St. Louis Community College, the next step on her path towards a four-year degree.

11. Doe was accepted to a number of four-year universities but is attending a community college because she does not qualify for federal financial aid and can afford to continue her education only if she works her part-time job and lives at home.

12. Doe paid her deposit to St. Louis Community College on July 23, 2015.

13. Doe paid her deposit to St. Louis Community College based on the expectation that she would be receiving the tuition rate charged to other residents of the St. Louis Community College District.

14. Residents of the St. Louis Community College District pay \$103.00 per credit hour to attend St. Louis Community College.

15. Missouri residents pay \$149.00 per credit hour to attend St. Louis Community

College.

16. Out-of-state residents pay \$205.00 per credit hour to attend St. Louis Community College.

17. International students pay \$215.00 per credit hour to attend St. Louis Community College.

18. Doe resides in the St. Louis Community College District and the State of Missouri. She has resided in the District for ten years. She intends to continue residing in the District throughout college and after graduation.

19. After paying her deposit, Doe received a tuition bill.

20. A review of Doe's tuition bill revealed that Defendant is charging her \$2,795.00 for 13 credit hours, which amounts to \$215.00 per credit hour, the international student rate.

21. Charging Doe a tuition rate higher than what is charged to other residents of the District and the State places an increased financial burden on Doe.

22. In addition to the burden of higher tuition rates, the burden on Doe is marked because she does not qualify for federal financial tuition assistance.

23. On May 8, 2015, Governor Jay Nixon signed House Bill 3.

24. House Bill 3 is an appropriations bill, passed by the Missouri legislature, which appropriates money for the Department of Higher Education.

25. 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).

26. Defendant is charging Doe tuition at the nonresident rate solely because of the

preamble language in House Bill 3.

27. 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).

28. 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.

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

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

31. 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. 2, 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).

32. 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. 2.

Count I
Declaratory Judgment

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

34. 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).

35. House Bill 3 is unambiguous.

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

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

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

39. 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**

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

41. Plaintiff is a resident of the St. Louis Community College District.

42. Plaintiff is a Missouri resident and possesses resident alien status, as determined by federal authority.

43. Pursuant to § 173.005, RSMo. and 6 CSR § 10-3.010, Plaintiff is entitled to District tuition at St. Louis Community College. In the alternative, Plaintiff is entitled to resident tuition at public institutions of higher education in Missouri, including St. Louis Community College.

44. Plaintiff's legal rights are affected by St. Louis Community College'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

District tuition pursuant to SLCC 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

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