

The State of Texas
Texas House of Representatives



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LEO BERMAN

State Representative

District 6 ★ Smith County

September 18, 2008

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OPINION COMMITTEE

FILE # ML-45833-08
I.D. # 45833

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0742-GA

Dear General Abbott: *Greg*

On Tuesday, September 16, 2008, the Third District Court of Appeals in California ruled that California law conflicts with federal law and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, by allowing instate tuition at California colleges and universities for illegal aliens.

Congressman Lamar Smith of Texas introduced and passed Public Law 104-208, Division C, the "Illegal Immigration Reform and Responsibility Act of 1996." Section 505 of the act reads as follows:

(a) In general

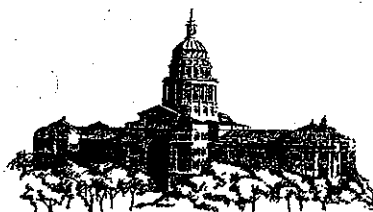
Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any post secondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

I respectfully request an opinion of your office as to whether the State of Texas is in violation of federal law and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, by allowing illegal aliens in Texas the benefit of instate tuition in state colleges and universities to the exclusion of nonresident United States citizens.

Sincerely,

A handwritten signature in black ink that reads "Leo".

Leo Berman



Chairman - House Committee on Elections
Government Reform Committee