

constitutional officer of the state.

3. Defendant Rutherford is the Illinois State Treasurer, whose offices are located at: Capitol Building, 219 Statehouse, Springfield, Illinois, 62706; and 100 West Randolph, Suite 15-600, Chicago, Illinois, 60601, among other locations. He is a constitutional officer of the State.
4. This Court has subject matter jurisdiction over this case as federal question pursuant to 28 U.S.C. §1331. The taxpayer state law claim(s) implicate significant federal issues regarding the proper interpretation of 8 U.S.C. §1623.
5. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this Court because all of the Defendants have offices that are located in this district (Chicago, Illinois), and a substantial part of the transactions from which the cause of action arises takes place in this district, including the following: the Defendants have offices located in Chicago, Illinois and conduct official business in Chicago; Plaintiff resides in this district (and pays his state taxes from this district).

FACTUAL BACKGROUND OF CLAIM

6. This case involves the Defendants' illegal disbursement of public funds to subsidize post-secondary education tuition for individuals who are deemed "Illinois residents,"² including illegal aliens.
7. The State of Illinois provides reduced tuition benefits for post-secondary education to any individual "deemed" an "Illinois resident." 110 ILCS 305/7e-5

² References to the "Illinois resident tuition program" or "the program" will refer to the state's subsidization of tuition for post-secondary education for individuals who meet the residency criteria (listed herein) at public universities and colleges located in Illinois (including the specific colleges/university listed below), as well as any other benefit that results in lower tuition rates that are not available to non-residents (such as the Truth-in-Tuition Program, *see, e.g.*, 110 ILCS 305/25).

(in-state tuition charge). An individual is deemed to be an “Illinois resident” if the following conditions are met:

(a) Notwithstanding any other provision of law to the contrary, for tuition purposes, the Board of Trustees shall deem an individual an Illinois resident, until the individual establishes a residence outside of this State, if all of the following conditions are met:

(1) The individual resided with his or her parent or guardian while attending a public or private high school in this State.

(2) The individual graduated from a public or private high school or received the equivalent of a high school diploma in this State.

(3) The individual attended school in this State for at least 3 years as of the date the individual graduated from high school or received the equivalent of a high school diploma.

(4) The individual registers as an entering student in the University not earlier than the 2003 fall semester.

(5) In the case of an individual who is not a citizen or a permanent resident of the United States, the individual provides the University with an affidavit stating that the individual will file an application to become a permanent resident of the United States at the earliest opportunity the individual is eligible to do so.

Id. (emphasis added).

8. This program disburses Illinois tax revenue to subsidize/pay for reduced tuition rates for individuals attending public universities/colleges located in Illinois.

See, e.g., 110 ILCS 63/15.

9. Per § (5) specifically makes this program available to illegal aliens. Accordingly, this program disburses Illinois tax revenue, in part, to help subsidize/pay for reduced tuition rates for illegal aliens at public universities located in Illinois, in direct violation of federal law.

10. The program is available at most (if not all) public universities and colleges in

Illinois (post-secondary education), on the same terms described above, including the following: University of Illinois (*see* 110 ILCS 305/7e-5); Southern Illinois University (*see* 110 ILCS 520/8d-5); Chicago State University (110 ILCS 660/5-88); Eastern Illinois University (*see* 110 ILCS 665/10-88); Governors State University (*see* 110 ILCS 670/15-88); Illinois State University (*see* 110 ILCS 675/20-88); Northeastern Illinois University (*see* 110 ILCS 680/25-88); Northern Illinois University (*see* 110 ILCS 685/30-88); Western Illinois University (*see* 110 ILCS 690/35-88); and Illinois Public Community Colleges (*see* 110 ILCS 805/6-4a).

11. As the Comptroller and State Treasurer, respectively, Baar Topinka and Rutherford are responsible for disbursing state money to fund this program. The State Comptroller, as the chief fiscal control officer, orders all payments into and out of the funds held by the State Treasurer. The State Treasurer is charged with maintaining and securing state funds.
12. Additionally, pursuant to 110 ILCS 979/5, the purpose of this program is the following:

The General Assembly finds and declares that the general welfare and security of the State are enhanced by access to higher education for *all residents of the State* who desire that education and who demonstrate the qualifications necessary to pursue that education. Furthermore, it is desirable that *residents of the State* who seek to pursue higher education be able to choose attendance at the higher education institution that offers programs and services most suitable to their needs....

During the past decade, students have been paying more and borrowing more to finance the increasing cost of higher education at Illinois colleges and universities...Consequently, the intent of this Act is to both encourage and better enable Illinois families to help themselves finance the cost of higher education, specifically through a program that provides Illinois

families with a method of State tax-free and federally tax-exempt savings for higher education (emphasis added).

13. State funds, however, are scarce. The State of Illinois is currently in great financial debt and it has been well-reported that the Governor and General Assembly recently raised state income tax 66% to pay for the state's budgetary shortfall. *See, e.g.*, <http://chicago.cbslocal.com/2011/01/12/illinois-lawmakers-approve-66-tax-hike/> (last accessed on 03/23/2012).

COUNT I:
STATUTORY CAUSE OF ACTION FOR A DECLARATORY JUDGMENT AND
PERMANENT INJUNCTION AGAINST THE DEFENDANTS
TO PREVENT THE MISUSE OF PUBLIC FUNDS

14. Paragraphs 1-13 are incorporated herein as though set forth in full.
15. The Illinois resident tuition program is funded (at least in part) by, Illinois State tax dollars.
16. 8 U.S.C. §1623 states:
 - (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 postsecondary 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.
17. The disbursement of state funds to subsidize post-secondary education tuition/benefits to illegal aliens on the basis of residency, violates federal law, 8 U.S.C. §1623, because such benefits are not available to every citizen of the United States, regardless of residency. For example, a resident of Alabama is not

eligible to receive reduced tuition at Illinois public universities. Nor is a resident of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, etc., eligible either.

18. Therefore, Plaintiff, an Illinois resident and taxpayer, seeks an injunction against the Defendants for the purpose of halting the illegal and unauthorized disbursement of public funds/misuse of funds described herein.

19. Specifically, Plaintiff seeks to enjoin the Defendants from administering the program and disbursing taxpayer funds to subsidize/pay for reduced in-state tuition benefits to illegal aliens.

20. Plaintiff has a right to enjoin the Defendants pursuant to 735 ILCS 5/11-301 and 735 ILCS 5/11-303, which states, in pertinent part:

Who may file action. An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State.

...

Action by private citizen. Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State....

21. Plaintiff also has a right to enjoin the misuse of public funds based upon his ownership of these funds, including his equitable interest therein, and his liability to replenish the public treasury for the deficiency caused by such misappropriation(s).

22. The Defendants' misuse of these funds for illegal and/or unauthorized purposes is an injury which entitles Plaintiff to sue.

23. On information and belief, the misuse of public funds through the program is

occurring routinely, as this program is administered regularly and periodically, and public funds continue to be disbursed to subsidize/pay for reduced post-secondary education tuition benefits to illegal aliens. Without an injunction and judicial intervention, Plaintiff will continue to be harmed and state revenue will continue to be depleted.

24. An injunction is the only form of relief that will prevent the Defendants' misuse of these funds. Once the Defendants disburse these funds, there is no remedy available to retrieve such funds. There is no other adequate remedy available to Plaintiff.
25. The granting of an injunction would prevent/redress any future harm completely, immediately, and prospectively.

COUNT II:
COMMON LAW CAUSE OF ACTION FOR AN INJUNCTION AGAINST THE
DEFENDANTS TO PREVENT THE MISUSE OF PUBLIC FUNDS

26. Paragraphs 1-13 are incorporated herein as though set forth in full.
27. It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds, and that right is based upon the taxpayer's ownership of such funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation.
28. The misuse of these funds, as described above, for illegal purposes prohibited by federal law entitles citizens and taxpayers to sue to enjoin the illegal expenditures.
29. On information and belief, the misuse of public funds through this program is occurring routinely, as these programs are administered regularly and periodically, and public funds continue to be disbursed to pay reduced post-

secondary tuition benefits to illegal aliens. Without an injunction and judicial intervention, Plaintiff will continue to be harmed and state revenue will continue to be depleted in violation of federal law.

30. An injunction is the only form of relief that will prevent Defendants' misuse of these funds. Once Defendants disburse these funds, there is no remedy available to retrieve such funds. There is no other adequate remedy available to Plaintiff.
31. The granting of an injunction would prevent continued future harm.

COUNT III:
PLAINTIFF'S CLAIM FOR A DECLARATORY JUDGMENT

32. Paragraphs 1-13 are incorporated herein as though set forth in full.
33. Plaintiff requests relief in the form of a declaratory judgment Pursuant to 28 U.S.C. §2201, that the Defendants are expending state funds in violation of federal law.

PRAYER FOR RELIEF FOR ALL COUNTS

WHEREFORE, Plaintiff Steven A. Marderosian, requests a declaratory judgment pursuant to 28 U.S.C. §2201 in his favor and against the Defendants as follows:

- a) That the Court enter a declaratory judgment in Marderosian's favor and against the Defendants declaring that Defendants are violating federal law by administering and disbursing state funds to pay for the program to illegal aliens;
- b) That the Court grant a permanent injunction against Defendants from administering and disbursing the program to illegal aliens, as described above;
- c) That the Court award Plaintiff his costs, including his attorneys fees; and

d) Any other relief the Court deems just and proper.

Plaintiff,

Steven A. Marderosian

By counsel,

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