

## Hope and Despair: In-State Tuition Policies for Undocumented Students in the United States

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**ABSTRACT:** The issue of immigration has long been part of American politics; often considered the land of immigrants, policies regarding immigration have sharply divided the country along party lines and ideologies. These and other factors have prevented the federal government coming out with a comprehensive immigration plan. Considering these challenges, some States have taken the initiatives on immigration such as the establishment of sanctuary cities and in-state tuition rates for undocumented college immigrants. This paper will focus on the latter to analysis the factors that influence States to take these decisions. Currently, at least 18 States have policies allowing in-state tuition rates for undocumented immigrants. On the surface, it might seem that this legislation fares better with liberal States than conservative States. But that cannot explain why in-state tuition legislation is allowed by law in conservative States such as Utah and Nebraska but not allowed in a liberal state like Delaware and Vermont. To get a deep understand of the phenomena, I used two liberal States as case studies-- California and Delaware, to gain insight on the underlining factors that contributes to these liberal States taking different stands on undocumented immigrants' education.

**Keywords:** Undocumented students, In-state tuition, Coalition, Immigration, System Theory, Advocacy Coalition Framework

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### I. INTRODUCTION

In his 1951 poem, "Harlem" Langston Hughes asked two important questions related to the predicaments of African-Americans living amid racial segregation and social exclusion: What are the consequences of excluding individuals and communities, and what effect does social alienation have on the individual inner being? These questions showed what it meant to be African-American in the United States especially in the northern cities during the early 1950s-- no longer in the hands of the Jim Crow South yet not fully enjoying the rights and privileges as an American citizen. Today, another group of young 'Americans' finds themselves caught in a quandary, pondering the same sorts of questions with families and friends. Each year, tens of thousands of undocumented high school graduates who have lived most of their lives in the United States are left with little or no option to participate in American society. In some way, similar to the fate of their African-American counterparts in the 1950s, factors such as institutional barriers limit their ability to fully realize their educational dreams. Their unique social position as children of undocumented immigrants puts them on the peripherals of the American society, unable to benefit from the educational rights and privileges beyond the high school level (Gonzales, 2009). Policymakers and legislators both at the state and federal levels of government face the dilemma of either granting or not granting in-state tuition to undocumented students with pressure groups, citizens and interest groups providing evidence to buttress their claim.

This research is built on a study that was conducted Dougherty, Kenny, and Blanca (2010), who compared two conservative States- Texas and Arizona, to understand the factors that shape their policies towards undocumented immigrants. Looking at the other side of the coin, I compared two liberal States in my analysis (California and Delaware) to examine the politics that go into making laws about whether to grant in-state tuition to undocumented students. This examination helped me to study the research question—what factors influence some liberal States to implement in-state tuition for undocumented students while other States do not?

There are two main sides in the debate concerning the policy of in-state tuition, though there are different subgroups with diverse interests within the groups. Supporters of the policy among other things argue that States end up paying more in the long run for not providing undocumented students access to college education. This position is supported by research conducted by American Association for State College and Universities (AASCU). In its 2005 report on this subject, AASCU revealed that failing to make college education accessible to undocumented students has a long-term effect on the state's prison and welfare system.

It explains that a large proportion of undocumented college-age individuals are likely to stay in the United States even if they do not have access to higher education. It is likely that these individuals will continue to be in the poverty cycle which comes at significant cost to the state in terms of welfare provisions and the prisons system (American Association of State Colleges and Universities, 2015). This position is however, countered by States and organizations which oppose in-state tuition for undocumented immigrants. It is argued that granting in-state tuition rates to undocumented students is too costly, and tax dollars should not be used to support undocumented students. Organizations such as the Federation for American Immigration Reform (FAIR) contend that, undocumented students should not have access to publicly funded benefits, including postsecondary education because they are not citizens and as such a drain on the public purse (Federation for Immigration Reforms, 2015).

Though supporters and opponents of the policy provide compelling reasons to buttress their position, these debates pay little attention to the politics that determine the positions of states-- mechanisms that were used to either approve or disapprove in-state tuition eligibility at the state level of policymaking. For instance, given the strength of liberal sentiment in Delaware, why was the vote for the in-state tuition legislation unfavorable, with almost all Democrats and Republicans joining not to support it? To shed light on this situation, I analyzed the effects of the social, the economic, and the political structures on the politics of in-state tuition. In terms of the social and economic structures, a full analysis of the politics of in-state tuition in both Delaware and California considered in depth the nature of undocumented immigration: the size of the state and its immigrant population, the timing of the legislation of concerning the policy, and the reactions of native-born citizens. Particularly important here is the attitude of the business community, given its possible stake in higher immigration. Also, an understanding of the ideological cast and political strategy of the Delaware Democrat party is needed to comprehend why it opposed in-state tuition, given that support for immigration had emerged as a major theme in liberal politics in the 1980s and 1990s (Freeman, 1997).

Also, I examined the constitutional structure of both states. Doing this allowed me to understand how it shapes the political expression of social demands. A key difference between California and Delaware politics is that the California constitution allows initiatives to be put on the ballot without requiring legislative approval (National Conference of State Legislatures, 2009b). This provision allows California supporters of immigration a much greater capacity to translate their views into public policy. In Delaware, supporters of the policy must depend on their representative to initiate the bill (Schildkraut, 2001). The next paragraphs define the major terms used in this paper for clarity.

In this paper, an undocumented student is defined by the Center for Higher Education and Policy Analysis (CHEPA) refers to students born outside of the United States, many of whom have lived in this country for a significant portion of their lives, and who reside here without the legal permission of the federal government. Many undocumented students and their families entered the country legally on valid visas and decided to stay in the country after their visas run out while some entered without any form of documentation (CHEPA, 2015). The term "liberal state" in this research also refers to states that prioritize the causes and wellbeing of individuals—when individual rights come into conflict with states' rights, liberal states are likely to support individual rights while "conservative states" refers to states that have a dislike to change a belief that tradition and predominant social norms contain within them handed down wisdom; and mistrust of efforts to recreate society so that it conforms to an abstract account of what would be just or efficient.

Irrespective of the actions or inactions of the federal government, States will continue to play pivotal roles in granting or not making higher educational accessible to undocumented immigrants. It is, therefore important to understand the determinants of these policies at the state level and perhaps streamline the processes at both the state and federal levels to make it less cumbersome. The next sections of the research talk about the literature review, the method, the analysis and finding, and conclusion.

#### LITERATURE REVIEW

Immigration issues have long been part of American politics; often considered the land of immigrants, policies regarding immigration (integration of minorities groups) have however, sharply divided the country along party and ideological lines. These and other factors have prevented the Federal government coming out with a comprehensive immigration plan to address these challenges. In the light of these challenges, some States have taken the initiative on immigration such as the establishment of sanctuary cities and in-state tuition rates for undocumented college immigrants. At present, at least eighteen States have provisions allowing in-state tuition for undocumented immigrants while sixteen States—Washington, Utah, Texas, Oregon, New York, New Mexico, California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, and New Jersey, extend in-state tuition rates to undocumented students through state legislation. Two States: Rhode Island and Oklahoma allow in-state tuition rates to undocumented students through the decisions of the Board of Regents (Hultin, 2015). As observed by Dougherty et al. (2010), on the surface, one would assume that these legislations will fare better with liberal states than conservative states. But that cannot explain why in-state tuition legislation is allowed by law in conservative States such as Utah and Nebraska but not allowed in a

liberal statelike Delaware and Vermont. To get a deep understanding of the phenomena, I am drawing on two liberal states as case studies--California and Delaware to examine the politics associated with granting or not granting in-statetuition to undocumented immigrants and the underlying factors that contribute to these liberal States taking different stands when it comes to policies concerning undocumented students' education. To complement the works of existing literature I relied on Sabatier and Weible (2007) Advocacy Coalition Framework (ACF) and System Theory initially developed by Ludwig von Bertalanffy (1968) and furthered by Ross Ashby (1956) in my analysis of the politics of in-statetuition in California and Delaware. These two theories are used helped to identify important features of the politics of in-statetuition eligibility that extant literature on the topic misses by supplementing each other.

- *Advocacy Coalition Framework*

The advocacy coalition framework (ACF) is particularly useful in understanding the social, economic, and political context within which policymaking occurs (Dougherty, Kenny, and Blanca, 2010). According to ACF, policy change occurs—often over lengthy periods of time such as a decade or more—within semi-autonomous policy communities or policy environment that have expertise within a policy domain, (Sabatier and Jenkins-Smith, 1993, 1999; Sabatier and Weible, 2007). Within the policy, subsystems are divisions among advocacy coalitions that are pushing different issues and solutions.

However, the policy environment and advocacy coalitions can significantly change through outside forces that take the form of socio-economic changes, shifts in public opinion, spillover from neighboring policy subsystems, and changes in the traditional structure of governance controlling the executive branch or the legislature (Sabatier and Weible, 2007). These shocks cause policy changes by adjusting the political resources or policy core beliefs of advocacy coalitions. For example, outside forces in California and Delaware can be attributed to the rapidly rising number of undocumented immigrants and events such as the terrorist attack on September 11, 2001 respectively. Also, less dramatic policy change arises through incremental “policy-oriented learning” that leads advocacy coalition members to modify their beliefs. These changes in belief are occasioned by new experiences or new information (Sabatier and Jenkins-Smith, 1999, Sabatier and Weible, 2007). Several features of the advocacy coalition framework apply well to the cases of California and Delaware. Both States had competing advocacy coalitions that supported and opposed in-statetuition eligibility. Those coalitions were internally unified and externally divided by different beliefs about the nature and impacts of immigration, the nature of the citizenship, and the proper role of government. The beliefs and actions of these competing advocacy coalitions were strongly shaped by fundamental socio-cultural beliefs, particularly the undecided nature of most Americans towards immigration policies, which mixes resistance to high levels of immigration but which also hold positive views of immigration's role in U.S. history (Espenshade and Hempstead, 1996; Freeman, 1995; Dougherty et. al. 2010).

Again, ACF draws our attention to the nature of strength of the supporters of in-statetuition eligibility. This strength heavily influenced the relative power of the immigrant community, particularly its ability to translate population numbers into political power. The theory also helps to explain the divisive attitude among Delaware Democrats at the statelevel when it comes to eligibility for in-statefunding for undocumented immigrants. Finally, ACF throws more light on the context of the actions of the competing advocacy coalitions--constitutional structure. The presence or absence of the initiative referendum has an influence on how coalitions are formed. The presence of direct democracy makes it much more likely that popular support or objection to immigration can be translated into government policy (Ferraiolo, 2008; Schildkraut, 2001). The option of citizen initiatives in California but its absence in Delaware goes a long way toward explaining the different outcome in the two States. Notwithstanding the advantages ACF brings to the analysis, advocacy coalition framework does not explain the environment in which coalitions are formed and how they come to stake out policy solutions (Mintrom and Vergari, 1996). Moreover, though advocacy coalition theory calls attention to the role of outside forces in causing policy change, it says little about the precise political processes by which outside forces precipitate policy change. These limitations to advocacy coalition framework can be rectified, however, with the application of system theory.

- *System Theory*

System theory, as applied in decision making is a concept that sees the decision-making process as a unit and interdependent despite being complex procedures that are subject to changes from both within and without (Kartz and Kahn 1966). In its basic form system theory comprises of input, output, the environment and the feedback loop (Quade, 1969). According to Jenny and Russell (2001), there are two main ways in which system analysis can be applied to policy making. It can be used to understand the environment as to when a policy is made and as a means of generating ideas in the political system, does contributing to political processes. Also, one of the advantages of this theory is to specify choices, together with their risks, costs, and benefits in the political process (Pershing and Austin, 2015). When it comes to taking advantage of

opportunities in the political environment, because system theory is dependent on the political environment for its input, policymakers take advantage of policy openings such as a major crisis, a change in national mood, or a new party in government to move a social problem and then preferred solution to it onto the government's decision agenda (Easton, 1953). System theory highlights the role of individuals or coalitions in bringing attention to certain problems and policies, defining perspectives about them, working out possible solutions, and in the process creating the advocacy coalitions supporting problems and policies. In this way, system theory addresses the silence in advocacy coalition theory about how advocacy coalitions are formed. Moreover, system theory helps explain how the outside forces discussed by advocacy coalition theory are recognized and put to political advantage by advocacy coalitions. Having established the theories that were used to aid my analysis in this research, I turn my attention to the literature on the subject in the next segment.

Per Passel (2003), it is estimated that every year about 65,000 undocumented immigrants who were not born in the United States but have lived here in the past five years graduate from high school. However, research conducted indicates that most of these undocumented high school graduates do not pursue further education or training. Many factors can be attributed to this problem key among them is their undocumented status and the institutional limitations associated with it (Gonzales, 2009). In comparison with other graduates, it is estimated that only about 5-10% of undocumented students who graduate high school enroll in higher education, while about 73% of legal immigrants and 70% of native-born American attended college as of 2004 (Passel, 2003; Ibarra and Sherman, 2012).

One of the major challenges facing the undocumented students is their inability to qualify for lower in-state tuition like other students who grew up in the state. According to a 2016 report by the College Board, the average cost of tuition and fees for the 2016–2017 school year was \$33,480 at private colleges, \$9,650 for state residents at public colleges, and \$24,930 for out-of-state residents attending public universities. This means an undocumented immigrant who wants to attend any public college in States they grew up in must pay an additional estimated fees of \$15,280. This difference often determines whether the undocumented immigrants get a college education or not. As noted by Passel and Cohn (2009), because children of undocumented immigrants tend to come from lower-income which is estimated to be \$36,000 well below the national standard of \$50,000, they are likely not to go to college due to the difference they have to pay. With the exception of New Mexico, Texas and California, most States do not provide federal assistance to undocumented students. This situation prevents them from receiving Pell Grants which is aimed at providing college aid to low-income students and participating in federally funded work-study programs which allow students to work part-time on campus to pay for college (Gonzales, 2009). At this point, it is imperative to understand the main arguments put forth by the two states under consideration in this research.

- *In-State Tuition Eligibility—California and Delaware*

Although Flores (2007), Rincon (2008) Ovink et. al. (2016) have some state-specific research on in-state tuition for undocumented students, a critical examination of the literature on in-state tuition for California and Delaware yielded little information. Most of the literature centered around the advantages and disadvantages States will derive from implementing (or not) in-state tuition for undocumented students in general and the legalities of these policies (Dougherty et. al 2010), but not much in terms of the politics that go into the formulation of these policies. The findings from these research can be grouped into three broad themes; cost-saving measures, the moral and social justice factors, and the legal factors.

Proponents of the cost-saving measures are concerned about the advantages or disadvantages States will derive from implementing in-state tuition for undocumented students. In this analysis, States weigh the costs associated with providing or not providing college accessibility to undocumented students and the benefits or cost they will incur in doing so. In States like California where in-state tuition has been adopted, one of the main arguments put across is the benefit the state will derive from educating undocumented immigrants. Aside from increasing the potential workforce base of the state, supporters of the policy talk about the issue of lost wages, according to the Alliance for Excellent Education, each year, 1.2 million students drop out of high school. Over half of America's dropouts are from minority groups in general and undocumented students in particular. Since dropouts earn significantly less than their counterparts who receive high school or college diplomas, the cost of lost wages is significant. Throughout their lives, the dropouts from 2008 alone will cost States \$319 billion in lost wages. This situation can be averted if undocumented students are given the opportunity to go to college (Alliance for Excellent Education, 2015).

While States like California look at the costs and the benefits associated with educating the undocumented student, Delaware looks at the other side of the coin—the cost and savings associated with not educating the undocumented student. Opponents of the policy argue that allowing undocumented students to pay in-state tuition rates, especially during tight economic times, takes opportunities away from U.S. citizens and legal immigrants. Giving undocumented students, resident tuition rates rewards them and their families for not

abiding by the law, while at the same time punishes legal citizens and legal immigrants by taking away enrollment slots for them (National Conference on State Legislature, 2015).

Another argument put forth by supporters and opponents of this policy relates to its morality and legality. From the moral perspective, States like California have argued that many of the undocumented students came to the United States with their parents as young children and should not be deprived of higher education because of their parents' choices (National Conference on State Legislature, 2015). Aside from the fact that undocumented did not decide to relocate to the US, it is estimated that in California alone undocumented immigrants currently pay \$3,199,314,000 in-state and local taxes (Institute on Taxation and Economic Policy, 2017). This position is countered by States which believe that granting resident tuition rates to undocumented students is illegal. They argue that such legislation violates Section 505 of IIRIRA, and Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Congressional Records, 1996). In section 401 of PRWORA, it States that an "alien who is not a qualified alien is not eligible for any public benefit," which opponents claim includes in-state tuition to postsecondary institutions (National Conference on State Legislature, 2015).

Lastly, from the social justice stands, it is argued that large percentage of undocumented students have either graduated from a public high school or obtained a GED. It is not only inconsistent to provide these students with an education that ends at high school graduation but morally wrong to do so knowing the dangers associated with this stance. Currently, the postsecondary options for undocumented students are severely limited, which hampers their future social and economic mobility (National Conference on State Legislature, 2015). However, States like Delaware disagree with this assertion. Delaware maintains that, allowing undocumented students to pay in-state tuition rates, granting resident tuition rates rewards undocumented students and their families for breaking the law, while at the same time punishes legal citizens and legal immigrants by taking away enrollment slots for them (National Conference on State Legislature, 2015).

Although the data collected support the elements in both debates, both sides fail to explain the politics that influence States' legislature to take these decisions. For example, how did in-state tuition for undocumented students become part of the agenda at the policy table in California? How did in-state tuition advocates craft legislation that allowed the policy to be accepted and implemented in California while it was rejected in Delaware? (Guy, 2001; Olivas, 2004, p. 462; Olivas, 2008, pp. 128–129). As can be seen, these factors call for a critical examination of the social, economic, and political context within which their different immigration policies were set. On the basis of the above factors I developed three hypotheses which have effects on the politics of in-state tuition for undocumented immigrants:

First, I hypothesize that the political ideologies of States are less influential when it comes to in-state tuition for undocumented immigrants.

Also, States with large immigrant populations and organized groups are likely to support in-state tuition for undocumented students.

Lastly, the business community plays an activity role in the formulation of policies concerning undocumented students.

Using the two states as the unit of analysis in conjunction of the theories of policymaking as the analytical tools, the above hypotheses were examined. To gather data for the analysis, the researcher employed secondary sources as the method for data collection-- documentary record in the form of public agency reports, academic books and journal articles, doctoral dissertations, and newspaper articles. The data gathering was done through evaluation of the relevant materials. The first step was to identify materials that were relevant to the research topic. After that, a data set was created from them. Once a dataset that appeared viable in addressing the topic was created, I evaluated it to ensure its appropriateness to the research topic (Johnston, 2014). I followed Stewart and Kamins (1993) proposal on reflective approach in evaluating the data, what they called the "stepwise fashion" (p. 18). The stepwise fashion included (a) what was the purpose of this study; (b) who was responsible for collecting the information; (c) what information was collected; (d) when was the information collected; (e) how was the information obtained; and (f) how consistent is the information obtained from one information available from other sources. Once these conditions were satisfied; the data were examined to understand the politics of in-state tuition.

I focus my analysis on California and Delaware because their differences and similarities help us unearth less obvious factors that shape the state politics of immigration policy and of state policymaking generally. On the one hand, their responses have been strikingly different—with California passing in-state tuition eligibility with relatively little opposition while Delaware has not yet passed it because of different internal politics.

On the other hand, the States appear very similar in social and political features. Both States are considered liberal in the American political environment though comparatively, California has more immigrants than Delaware which could mean California has a higher probability of support for in-state tuition policies. There is also the presence of strong business community in both states, yet, with different policies governing the

activities of the business community. For instance, Delaware is described as a business-friendly state because of its conservative business policies. Comparing the two States allows an examination of how different political outcomes are shaped by social and political factors such the population of immigrants in the state, the ability of the State to raise revenue and absorb the cost of in-state tuition for undocumented students. I argue that, although these are salient factors, they become lost in the heat of the debates and are often missed in policy analysis.

***An Analysis of In-State Tuition Policy in California- ACF***

California is one of the pioneers in enacting legislation that extends eligibility for in-state tuition to undocumented immigrants who meet certain requirements. California offers qualified undocumented students with in-state tuition and state-funded financial aid through the different bills passed in recent times in support in-state tuition eligibility for undocumented (University Leaders for Educational Access and Diversity, 2017). AB 540 was the first that laid the foundation for recent legislation on in-state tuition for undocumented students in California. This bill does not explicitly stipulate that undocumented immigrants are eligible. Rather, it permits this extension of eligibility by stating the residency requirements in a way that includes this population. A student is considered a state resident and therefore is eligible for in-state tuition and state financial aid at California's public higher education institutions. On October 12, 2001, Governor Gray Davis signed into law Assembly Bill 540 (Stats. 2001, ch. 814) which added a new section, 68130.5, to the California Education Code. Section 68130.5 created a new exemption from the payment of nonresident tuition for certain nonresident students who have attended high school in California and received a high school diploma or its equivalent. (State of California, 2001). Table 1 gives a detailed information of the different in-state tuition bills in California.

YEAR	BILL	PROVISION	OUTCOME	SPONSOR
2001	AB 540	Allows eligible undocumented students to pay in-state tuition rates at California public colleges and universities.	Passed	Firebaugh and Maldonado
2012	AB 130	Allows eligible A.B. 540 students to apply and receive scholarships at California public colleges and universities.	Passed	Cedillo
2013	AB 131	Allows eligible A. B. 540 students to apply and receive financial aid at California public colleges and universities	Passed	Cedillo
2013	AB 1024	Allows undocumented law students to practice law in the state of California upon passing the bar.	Passed	Gonzalez
2015	AB 206	If passed, the bill will establish the California DREAM Work-Study Program under California State University and the University of California to provide work-study to students who meet certain requirements.	At the committee level	Mark Stone
2015	AB 1366	has been ordered to an inactive file by Senator Jackson as of September 2015. If passed, the bill will encourage California community colleges, California State University, and the University of California to designate a DREAM Resource Liaison on their campuses to streamline access to financial aid and academic resources for certain students.	Not passed	Lopez
2016	AB 2009	was vetoed by the Governor in September 2016. If passed, it would have required California community colleges and California State Universities, and request the University of California to designate a DREAM Resource Liaison to streamline access to financial aid and academic resources.	Not Passed	Lopez

2017	A.B. 1622	it would require the California Community Colleges and the California State University, and request the University of California, to designate a DREAM Resource Liason to assist students meeting specified requirements (including undocumented students) by streamlining access to financial aid and academic resources.	Not passed	Evan Low
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Source: University Leaders for Educational Access and Diversity, 2017.

To understand the politics of in-state tuition in California, it is important to analyze the history of in-state tuition in California. Consistent with the principles of Advocacy Coalition Framework, past attempts to create or amend existing laws have effects on the outcomes of similar laws. When you look at California, the right to education for undocumented students have been part of the narrative within the legislative and the judicial for some time. The current in-state law was contested in a 1985 court case *Leticia A. v. Board of Regents of the University of California*. This challenge was filed by a group of undocumented students who were not recognized as California residents for purposes of determining tuition. At that time, the court ruled that charging nonresident tuition to undocumented students was unconstitutional because both the University of California (UC) and CSU used a different definition of "residency" for undocumented aliens than it used for United States (U.S.) citizens. The 1985 decision was later overridden by the 1990 Court of Appeal, in the case *Regents of the University of California v. Los Angeles County Superior Court*. In this case, the court ruled against granting in-state tuition to undocumented students claiming it was unconstitutional. Bradford, the court held that current law was unconstitutional. The 1985 case, *Leticia A. Board of Regent of University of California*, served as the basis for AB 540. Supporters knew which areas to improve to make a complying case.

Another feature of ACF is its ability to explain the formulation of policy using coalition groups which are usually internally unified but externally divided. In examining in-state tuition policy in California, I found several supportive coalitions pitted against a single opposing coalition that was weak and poorly organized. For instance, over 80 civil rights groups, immigration rights groups, students, some legislators, and community organizations representing Asian and Pacific Islander American provided the key activists and main supports for the efforts to enact in-state tuition eligibility for undocumented students. Playing the most significant public leadership role was state governor representative Gray Davis who was the forefront of providing equal educational opportunities to students, assembly Members Firebaugh, and Maldonado who introduced the bill AB 540. These groups and individuals had a common objective—support the provision of in-state tuition to undocumented California Students. To achieve this goal, they provided a unified front against any opposition. As seen in the lawsuit *Martinez vs. Regents of the University of California*, which challenges AB 540, supporters of the in-state tuition policy were well organized and articulated their position with facts. In that suit, Yungsohn Park, an attorney with the Asian Pacific American Legal Center of Southern California, which co-wrote a brief and argued that many from low-income families, would find it impossible to afford college if the law is invalidated (Rivera, 2009). In its ruling, the court decided on few important things, first, regarding whether it was efficient, moral or socially acceptable to deny or approve undocumented students in-state tuition in California, it agreed that those were a political decision and it has no authority to decide on it. On the legal issue which was whether providing in-state tuition for undocumented students was a violation of the 14 amendment, and the equal protection clause of the California constitution, the court agreed that because the exemption is given to all who have attended high school in California for at least three years (and meet the other requirements), and not all who have done so qualify as California residents for the purpose of in-state tuition, and further because not all unlawful aliens who would qualify as residents but for their unlawful status are eligible for the exemption, [they] concluded the exemption is not based on residence in California. Rather, it is based on other criteria. Therefore, the state has acted in accordance with the law (Rich, 2010).

The diversity of the coalition made it possible for different range of issues to be rise in support of the bill. For instance, in one of the committee hearings it was argued that many of the students that would benefit from this measure are children of parents who have been granted amnesty by the federal government and are waiting for their own applications for citizenship to be accepted by the Immigration and Naturalization Service (California Senate, 2001). Additionally, supporters argue that this measure will help talented California high school students, who cannot afford to pay nonresident tuition, to afford college. They point to several cases in which students were encouraged to attend college and apply for programs such as the Cal Grant, only to find that they are ineligible for aid and must pay an extremely high tuition due to their nonresident status (California Senate, 2001).

As Rincon noted, ACF makes it possible to explain the role of state's interest in policies regarding immigration. In this regard, the social justice argument was coupled with—and in public presentations, sometimes overshadowed by—an argument based on the economic self-interest of the Anglo population (Rincon, 2008). A major premise driving this economic argument was that college-educated immigrants would meet labor market demands, earn higher incomes, and pay more in taxes. One common theme by people who testified before the House Higher Education Committee repeatedly was: The cost of not helping motivated students to attend college is greater than the cost of helping them (Dougherty, et. al, 2010). The long-term implications of high rates of attrition to the state include a growing unskilled, undereducated workforce, accompanied by increased spending on social programs, higher rates of crime, and decreased opportunities for a higher quality of life (California House of Representatives, 2001). For instance, in the legal brief filed by Asian groups, it argues that AB 540 helps California's economy by increasing the educated workforce and promotes the social and civic values of education, diversity and democracy. They continued, even if undocumented students are ineligible to work now, many are petitioning to change their status and may become legal permanent residents during college, the groups say (Rivera, 2009).

### *Using system theory to analyze in-state tuition in California*

System theory helps us analyze how those coalitions come to be organized, focus on certain policies, and get their issues and preferred policies on the government decision agenda. System theory underscores the role of the political environment: an avenue for actors who are well-placed, persistent, and willing to heavily invest resources of time and energy in securing government's attention to the issues and policies they favor. In the process, they create supportive political coalitions and, not infrequently, catalyze the formation of opposition coalitions.

One area is policy selection. How did the supporters of in-state tuition eligibility come to see it as the key solution to the lack of college access for undocumented immigrants? Policy researchers have noted that the policy proposals that attract serious attention from the policy community are those seen as viable in terms of substantive relevance or technical feasibility, budgetary feasibility, and values acceptability (Kingdon, 1995, chap. 6). The idea of in-state tuition eligibility as a solution to the college access problems of undocumented immigrants appeared to be substantively relevant and technically feasible because the key details had already been worked out by the supporters of the bill.

First, the argument had been made that it was compatible with federal law. In his article, *IIRIRA, The Dream Act, and undocumented college student residency*, Olivas made a persuasive case that it was not prohibited by federal law, including by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. According to him, in-state tuition eligibility can be given to undocumented students provided out-of-state students who meet similar requirements were given the same benefit (Olivas, 2004). Significantly, States that have made undocumented immigrants eligible for in-state tuition have done so by extending eligibility to anyone who has graduated from one of the state's high schools and who has lived in the state for a certain number of years. In addition, the idea of in-state tuition eligibility had already been anticipated by most citizens of the state (Dougherty, et. al, 2010).

An important feature of system theory is its ability to specify cost and benefit. The ability of the coalition to at least provide an estimate of how much the state of California stands to benefit from educating undocumented immigrants was crucial to the acceptability of in-state tuition as a solution. It was argued that admitting undocumented students will increase enrollment and the graduation rate, which means more people to pay taxes for the policy to sustain itself (Rincon, 2008).

Another advantage of system theory is explaining how the policy got onto the Government Agenda. As it was noted with policy advocacy coalition theory note, moving an issue and policy solution onto the government decision agenda is greatly facilitated if the key actors take advantage of policy opportunities (Kingdon, 1995, chap. 8; Mintrom and Norman, p. 652) or outside force (Sabatier and Weible, 2007, pp. 198–199, 204–205). One of the major policy formulating opportunity is the huge number of immigrants in California. The state is home to 40% of immigrants in the United States and the difficulty in getting access to college education forced the issue onto the public discourse. This situation generated a spate of newspaper articles describing how many undocumented students were graduating from high schools with good records—some were even valedictorians—but could not afford to go on to college because they were not eligible for in-state tuition (Gray, 2000; Hegstrom, 2000a; Lozano, 2000; Schiller, 2001).

There is strong evidence that the passage of AB 150 led to an increase in the proportion of undocumented high school graduates who entered college especially because California is the most popular destination for immigrants in the United State (Passel, 2005). As cited by Abrego (2008), it is estimated that between 5,800 and 7,450 undocumented students per year are eligible to benefit from AB 540 (Bartindale 2001). Effectively, higher education was now within reach for students who previously could not afford even community college. Before the passage of AB 540 for example, some of the students who were academically



eligible to attend college decided not to apply because it was beyond their means. In a research conducted by Abrego(2008), she noted how Patty, one of the interviewees described her emotions prior to AB 540, when she had to make the decision not to apply to college. She could not apply to college even though she had good grades because of the cost associated with paying out of state tuition. Similar situations abound in the state prior to the passage of AB 540 for students who wanted to pursue higher education. Especially because during her protected status under the law, this student's academic experiences were in no way distinct from her peers'. In fact, she excelled in comparison to other students. Despite her achievements, college was so unaffordable that she chose to avoid the application process altogether (Abrego, 2008). Shortly after the passage of AB 540, however, Patty's response is very different. In the second interview, she discusses the law's effect on her life and the excitement that came with it. From the State's legislative proceedings, AB 5490 passed with little opposition. Opposition usually came from individuals who wrote letters to the House and Senate and from some students who challenged the bill in court.

### ***Using system theory to analyze in-state tuition in Delaware***

Records from the House and the Senate from Delaware indicate that the state does not have a policy giving undocumented students in-state tuition, although Delaware Technical Community College and the University of Delaware do consider qualified undocumented students for in-state tuition if they are eligible. There have been numerous occasions where bills relating to tuition for undocumented students have been introduced but failed to pass. For instance, in 2003, there were attempts to pass HB 222, which would have allowed in-state tuition eligibility for undocumented students, however, the bill failed to pass. Again, in 2012, SB 169, a bill which would have allowed current undocumented students to pay in-state tuition, was introduced but failed to pass. Though in 2004, HR 59 passed in support of the DREAM Act, this law did not enact any legislation making undocumented students eligible for in-state tuition in the state. In light of these challenges, Senator Robert Marshall in 2014 introduced the Tuition Equity Act (SB 183) with the aim of providing qualified undocumented students with in-state tuition if passed.

As noted before, Advocacy Coalition Framework helps us in understanding the importance of the social, economic as well as the political structure of Delaware. These inherent structures affect not only the policymakers but the type of coalitions that might come up to oppose or support any policy. Comparatively, Delaware is a small state in terms of landmass and population, sandwiched between larger states. Its population is split among the three counties—Sussex, Kent, and New Castle. Sussex is described as a more rural and conservative county, New Castle is cosmopolitan and liberal, while Kent lays in the middle of these descriptions. There is an alleged disconnect between the rural central and southern areas of the state and the urbanized corridor in the north, home to the bulk of the state's population and the largest city of Wilmington. According to Gallup's State of the States survey, 36 percent of respondents in Delaware described themselves as moderate, one of the highest rates in the nation (Gallup, 2016) and inclined to vote more moderate on social issues. From these factors, it can be inferred that the reasons underscore the state's position on education; spending less on each student and on in-state tuition for undocumented students. Another social reason can be attributed to the number of undocumented and documented immigrants in the state. Per Pew Research Center, about 25,000 undocumented immigrants live in Delaware as of 2014 compared to California's 2,350,000 (Passel and Cohn, 2016). From system theory and ACF's perspectives, there would not be a strong immigration coalition within the political framework to push the issue either into the public discussion arena or make it part of the agenda at the policymaking table. Again, because the coalition is weak, it is likely not to generate enough diverse ideas which is one of the hallmark of a good policy. Rather opponents of in-state tuition will have a stronger coalition to nip the policy in the bud (Cohen, 2012).

Another point worth considering is related to the politics of the state, although Delaware is considered a liberal state, historically, it has not always been one. Delaware has moved from being considered a swing state in the 20th century, to a Republican state during the 1988 presidential elections to a Democrat state it stands now. These historical patterns have imprints on how the state responds to policies considered as too liberal such as in-state policies for undocumented students. There is a strong conservative presence in Sussex county while the county Kent has been described as a swing county depending on the issue on the table, leaving New Castle which is the center of all the state's business activities as the only 'liberal county' (Cohen, 2012). The lack of strong Democratic party support in the state can also explain why in-state tuition is not allowed for undocumented students. The Democratic party generally favors immigration issues and makes a case for it in the House and Senate but this has not been the case in Delaware where the Democratic party has kicked against the policy for economic, social and political reasons the latest in 2014. It can be inferred that, if supporters of the bill are not getting the approval of the liberal party, then the policy is bound to fail as it has happened in previous attempts.

Related to the above is, the state's conservative nature of the state's business policies. A critical examination of the business policies of the state indicates a common trend-- both the Republican and the

Democrat legislators have a habit of to vote consistently in favor of big business policies, and toward the conservative side of moderate on fiscal and economic issues, which is a very important sector of Delaware's economy. It is estimated that about half of the companies in the Fortune 500 are incorporated in Delaware, because of its friendly corporate legal framework (Cohen, 2012). For example, the cost to incorporate is one of the lowest in the country, and one person can hold all officer positions of the corporation. Officer names are not required to be listed in the articles of incorporation. Shares of stock owned by persons outside of Delaware are not subject to Delaware taxes (Smallwood, 2016). It also has a relatively low tax policies compared to its northeastern neighbors. With such conservative approach to business and corporation, system theory suggests that the business community are not likely to support in-state tuition for undocumented immigrants for economic reasons-- because it has the potential of raising the amount of taxes they pay. Economically, the state will not support in-state tuition for undocumented immigrants because it already spends less on its resident students. It will be in the state's interest to support the native students first if funds are available then on undocumented students.

Lastly is the constitutional structure of Delaware. Unlike California, the constitution of Delaware does not allow initiatives to be put on the ballot without requiring legislative approval. The effect of this is that even if ordinary citizens of the state wants to initiate any conversation on in-state tuition, the political environment does not encourage that. This prevents further steps in building a coalition to push the agenda.

## II. FINDINGS

One of the major findings relates to the political ideology of States. As it can be seen with the four States considered under this research and the one conducted Dougherty, et. al, 2010, the politics of in-state tuition for undocumented immigrants defies the broadly accepted political ideology in American political system-- republican States are conservatives which means they are likely to oppose liberal policies like tuition for undocumented students. Texas strongly conservative state was the first state to approve in-state tuition for undocumented students with bipartisan support while Delaware: a liberal state still has no provisions in its constitution for undocumented students.

Another finding is the importance of the business community in influencing policies regarding in-state tuition for undocumented students. While, in Texas and California, they used their presence to champion the approval of this bill, this was not the case in Arizona and Delaware where they were publicly silent on the bill. Many reasons can be assigned to this silence, key among them is the effect of the weak coalition in support of in-state tuition in both States and the cost associated with supporting such bills and the fact that in Delaware pro-conservative support remain strong among policymakers and the business community.

The importance of the social factors in determining in-states tuition policies cannot be ignored. In both my research and the one conducted by Dougherty, et. al. (2010), social factors remain key in all four States. One important social factor is the legislative history of the state. Both Arizona and Delaware, have a history failed attempts to legislate laws concerning in-state tuition while California and Texas have a history of supporting such bills. These histories provide an avenue for the coalition to be built and a conducive environment for policymakers to exploit. This point is particularly relevant to California which has a long history of favorable policies towards undocumented students.

The structure of the constitution also played a role as to why a state will accept in-state tuition or not. The structure of the constitution--whether to allow citizens to initiate referendums on policies they see as important or to leave it to legislators to decide has had dual effects on this issue, that is in Texas and Delaware where the constitution prohibits citizens from initiating bills different outcomes were recorded in relation to the policy of in-state tuition. A similar scenario is seen in California and Arizona where the constitution allows citizens to initiate a referendum on policies. As noted by Dougherty, et. al. (2010) in Arizona, citizens used the power to initiate a referendum to block any attempts by the legislature from granting in-state tuition for undocumented students. However, this was not the case in California where citizens have the same power but rather used it as a threat and as such pressurized legislators and policymakers to approval in-state tuition for undocumented students. In Texas, the constitutional structure allowed legislators to pass the bill without the threat of citizens revoking it in a referendum, this played a key role in the passing of the in-state tuition bill while in Delaware legislators have failed to pass the bill knowing that if even in-state tuition for the undocumented student is the preferred policy of the citizenry, they cannot put it up for a vote through a referendum.

Another finding relates to coalition building and the role it plays in getting policies accepted or not. From the analysis, two broad different advocacy coalitions were mobilized on the issue of in-state tuition eligibility: one against and one in favor. Both coalitions were focused on different aspect of the issue but united by the possible outcome. The ability of a coalition to be successive depends on many factors including interest groups, the coalition's ability to understand the social, political and the economic need of its constituents and the large state. Knowing these help, them to strategize and come out with policies that are favorable to their course.

For example, the absence of a strong immigration coalition supporting in-state tuition coupled with the lack of support from the Democratic party which traditionally is liberal and tends to support immigration policies deemed the chances of advocates in the state of Delaware.

### III. CONCLUSION

This research paper has examined the politics of in-state tuition in two liberal States—California and Delaware. Both States have taken contrasting stands on the future of undocumented students in the state. California enacted a policy to enable undocumented students to pay in-state tuition in 2001 following Texas in this direction with little opposition. On the other hand, Delaware and Arizona have yet to pass any legislation allowing undocumented students to receive in-state tuition with support from both parties with Arizona going a step further to pass a law that prohibits undocumented students from in-state tuition or any other financial aid.

With the help of advocacy theory and system theory, I examined the politics that underlie state's decision whether to grant in-state tuition to undocumented students or not. Advocacy theory helped us to understand how interest groups form coalitions to support or oppose policies relating to in-state tuition while system theory brought to light the environmental factors that help to form these coalitions.

While this paper has expanded, the analysis concerning the politics that goes into policy formulations especially in-state tuition for undocumented immigrants, its reliance on secondary sources for data for the analysis can be a limitation. Another limitation relates to theories used in the analysis. Both advocacy coalition framework and system theory, analyze social phenomena from an aggregate position. This means differences such as race, gender and economic capabilities which can affect how successful coalitions can be are ignored.

In the end, what were the main reasons that the politics of in-state tuition took such different directions in California and Delaware? I argue that the explanation largely lies in differences in the operation of the following five factors, which varied sharply across the two States: (a) the population of undocumented immigrant in both States—larger population in California than in Delaware; (b) precedents—history of immigration policies; (c) the business community; (d) the political power of the immigrants—much greater in California; and (e) how citizens decide to use the constitutional power of citizens' initiative—available in California not in Delaware. The first two factors are particularly highlighted by system theory, with its emphasis on the political environment to shape the government agenda. The other features relate to advocacy coalition theory, with its emphasis on how the dynamics of policy subsystems are shaped by the social and political structure of a society (Dougherty, et. al., 2010).

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