

SUPREME COURT OF ARIZONA

STATE OF ARIZONA ex rel.) Arizona Supreme Court
Attorney General Mark Brnovich,) No. CV-17-0215-PR
)
Plaintiff/Counter-Defendant/) Court of Appeals
Appellant,) Division One
) No. 1 CA-CV 15-0498
v.)
) Maricopa County
MARICOPA COUNTY COMMUNITY) Superior Court
COLLEGE DISTRICT BOARD,) No. CV2013-009093
)
Defendant/Appellee,) **FILED 04/09/2018**
)
ABEL BADILLO and BIBIANA VAZQUEZ,)
)
Intervenor-Defendants/)
Counter-Plaintiffs/Appellees.)

DECISION ORDER

On June 21, 2017, the court of appeals filed an amended opinion in this case holding, among other things, that “[c]onsidered together, federal and state law, [] prohibit MCCCCD from granting in-state tuition benefits to DACA recipients.” *State ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd.*, 242 Ariz. 325, 340 ¶ 46 (App. 2017). Based on this ruling, the court of appeals reversed the trial court’s summary judgment in favor of the appellees (petitioners in this Court) and stated that it was remanding with instructions for the trial court to enter a judgment enjoining MCCCCD from granting in-state tuition to DACA recipients. *Id.*

On February 13, 2018, this Court granted review solely on the issue of "whether DACA recipients who are lawfully present in this country while they are participating in the DACA program are eligible for resident tuition." After receiving supplemental briefs, the Court heard argument and the case was submitted on April 2, 2018. At the Court's invitation, MCCCDC filed a post-argument brief stating that MCCCDC's Governing Board on February 27, 2018, adopted tuition rates for the 2018-19 fiscal year, which begins on July 1, 2018, and that student enrollment for summer and fall terms began on March 5, 2018. In its post-argument brief, the State noted it had no basis to dispute this information.

On the issue on which review was granted, the Court unanimously agrees with the court of appeals that existing federal and state law do not allow MCCCDC to grant in-state tuition benefits to DACA recipients. The Court is issuing this decision order to afford MCCCDC and its students, as well as the State, notice of the Court's holding without further delay and thus allow as much time as possible for planning by those affected.

Our decision is not intended to foreclose any measures taken by the State, in compliance with federal law, to extend resident tuition rates to in-state high school graduates not lawfully residing here. Other states have done so. See, e.g., Cal. Educ. Code § 68130.5(a);

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