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Proposition 187: Unfounded and Ineffective

by Frank del Olmo

Proposition 187 grew out of the California election tradition that spawned Proposition 13; the still-controversial 1978 statewide ballot measure limiting property taxes. Like Proposition 13, it was a send-'em-a-message initiative, aimed at expressing voter frustration over a perceived public-policy problem. And like Proposition 13 it will likely produce many unintended bad results.

Approved 59% to 41%, Proposition 187 would prohibit state and local governments from providing education, health care, and other social services to illegal immigrants. The Proposition's

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proponents claim that such services aggravate California's illegal immigrant problems by enticing foreigners to enter the country illegally and that social tensions resulting from immigration will only worsen unless California does a dramatic about-face. They admit some of the measures are Draconian—for instance, state and local agencies would be required to report "apparent illegal aliens" to immigration authorities. But they argue that more moderate measures—minor congressional reforms and local patch jobs—are not enough.

Medical Care

To refuse to provide fundamental health care is downright dangerous to the public interest. If Proposition 187 is

upheld in the courts, people here illegally would be denied basic health care even if their medical problems were serious; even if they had communicable diseases; even if a low-cost dose of preventative medicine could nip a potentially costly problem in the bud.

A major and vital goal of public health care is to keep the problems of even the sickest and most destitute individuals from becoming a danger to society. If an illegal immigrant with an infectious disease like tuberculosis is turned away from a public clinic, health professionals worry that he is less likely to return to his homeland than to become a potential health threat in this country. Is the public interest better served by treating the disease or by turning the carrier away?

Public Schools

Though based on a longer-term definition of the public good, the argument for educating the children of illegal immigrants is similar. First, studies have shown that children born abroad who are raised here by immigrant parents remain in this country, even if their parents eventually return to their countries of origin. So it is in the public interest to make sure those kids become well-educated and acculturated to American life. At least then they will likely become productive members of society as adults.

Many, perhaps most, of the children born to illegal immigrants, are born in the United States and thus are U.S. citizens entitled to a public education. Yet Proposition 187 would literally force a school district to question young Americans about their parents' immigration status and report to authorities any parents suspected of being here illegally. The "Big Brother" aspects of this

approach to immigration law enforcement are obvious. Less obvious are the unintended consequences, such as illegal immigrants pulling their children from public schools in huge numbers. Many law-enforcement officials also campaigned against Proposition 187 arguing that tossing kids out of school would be an unintended but effective gang-recruitment tool.

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Fundamental Flaws

Proposition 187's most fundamental flaw is the facile assumption that illegal immigration is only a negative phenomenon. What about economic benefits that accrue from all recent legal and illegal immigrants, such as low-wage, highly productive labor? Think of all the work—from home repair to garment manufacturing—that keeps marginal businesses profitable and allows new small firms to open. Think what the world-famous California economy would be like without the many thousands of tiny businesses and services that depend on low cost labor. Guess who's picking the crops for California agribusiness, the state's biggest single industry.

Powerful economic factors cause illegal immigration. Reputable experts disagree over how many new immigrants this state can absorb without severe consequences and over whether they are a net plus or a negative for the economy. But the experts are virtually unanimous on what draws most immigrants here: jobs, however ill-paid, not welfare.

Another flaw of the Proposition is the assumption that a single state can actually do something about an international phenomenon like the migration of people from countries as close as Mexico and as far away as China. That assumption is legally tenuous, for the courts have traditionally held that immigration is a federal, not state, responsibility. On

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Education Myths Created by Opponents of Proposition 187

Opponents of Proposition 187 make the specious argument that we do not want an uneducated class of people in the state, even though they are here illegally, because being uneducated means difficulty in getting employment. Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law? That violates concepts of common sense and good government.

Educators argue that they should not become immigration officers. Agreed. No one is asking teachers to do so. It is reasonable, however, for education personnel to perform the functions within their job descriptions, which includes determining the admissibility of students. Currently, all new school enrollees must establish their residency in the school district and submit immunization records and birth certificates. Ironically, schools usually do not perform such functions with respect to illegal alien children. Therefore, citizens and legal aliens are held to higher standards than illegal immigrants. It is

very simple for school officials, like employers, to ask basic questions regarding citizenship or immigration status. If there is any question, the school need only require the student to produce the necessary verification papers. Any enforcement action is left to the INS and to other law enforcement agencies.

Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law?

Opponents also argue that if illegal aliens of high school age cannot attend schools, they may become involved in gangs and criminal activity. There seems to be no shortage of gang problems within schools today, so this assertion does not hold water. Also, consider the irony that one existing solution to gang activity in schools is to suspend or expel the violators from schools. Should we expel

citizen offenders but keep illegal alien offenders in school?

Revisiting *Plyler v. Doe*

The K-12 education provisions of Proposition 187 are the vehicle for the courts to re-visit the concept of free public education for illegal aliens. Current federal law, as established by the U.S. Supreme Court in its 5-4 *Plyler v. Doe* decision of 1982, holds that illegal aliens are entitled to free public education. Proposition 187, with its status checks for all enrollees and a provision on the transition of illegal aliens to their home countries, provides the Court with an opportunity to either hold that the California initiative meets the standards of *Plyler*, or to modify or overturn *Plyler* and allow the plan to stand.

With the importance of the issue, it is essential that the Court revisit the issue of free public education of all present and future illegal aliens. By passing Proposition 187, California voters sent a strong message to political leaders that they want to stop illegal immigration and provided a strong catalyst for reasonable and responsible change, not only in California, but throughout the United States. ☹

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that basis alone, any sections of Proposition 187 that contradict federal laws or procedures may wind up being annulled by the courts.

The Risks

Perhaps no single argument against Proposition 187 makes its proponents so uneasy as what their initiative could wind up costing California taxpayers. According to the California legislature's chief analyst, lost federal aid to schools, public hospitals, and clinics could add up to \$15 billion. That made it hard for Proposition 187's proponents to sell it as a tax-saving initiative in the spirit of Proposition 13. So they changed strategy, and conceded that they did not expect 187 to

go into effect right away. They then acknowledged their real goal: pushing the state into what is sure to be a long, costly lawsuit challenging the Supreme Court's *Plyler v. Doe* decision of 1982, which held that immigrant children are entitled to public education. In effect, Proposition 187's authors are gambling with California's tax money in the hope of winning a dubious legal battle. That fight is already well underway: a federal district court in Los Angeles issued a restraining order suspending most of Proposition 187's provisions while the measure is challenged in court, a process most legal experts figure could take a year or more.

And even if Proposition 187's backers win these law suits, what have they really

got to show for it? One need only ponder the divisive campaign waged over 187, with its overtones of hostility against Latinos, Asians, and other state residents who look or sound like "apparent illegal aliens" to get a sense of how difficult ethnic relations could become if the misguided initiative ever is allowed to go fully into effect.

So while Proposition 187 purports to offer a simple answer to a complex phenomenon, it really is no answer at all. Not only will Proposition 187 end illegal immigration, it will drag California into a series of ethnic and legal conflicts that could hurt the state far more than illegal immigration does. ☹

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ties provided by the Panel, and thereby to enhance the Panel's ability to hold the Bank accountable for its development strategies. Professor Bradlow, WCL Professor David Hunter, Senior Attorney at the Center for International Environmental Law, and the Center for Human Rights and Humanitarian Law, have offered their services to assist potential

complainants in filing requests before the Panel.

Professor Hunter applauds the Panel for "an independent and objective review of the claim" and for doing "an excellent job in identifying specific violations and calling into question the fundamental decision to pick [the Arun III] alternative." He believes that an investigation would reveal a "clear violation of Bank

policies." While the Panel "has made a very strong case for inspection," it will not succeed in improving Bank operations unless "the Board and Bank Management take the Panel's ultimate recommendations and findings seriously." ☹

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