

## FACTORS THAT INFLUENCE MIGRATION

# Proposition 187 in California

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*Philip Martin*

California voters on November 8, 1994 voted 59 to 41 percent to approve Proposition 187, the “Save Our State” Initiative. Proposition 187, if implemented, would create a state-run system to verify the legal status of all persons seeking public education, health care, and other public benefits. The only sections of Prop 187 currently in effect are those that make the manufacture, distribution, or use of false documents to obtain employment or public benefits a state felony.

Proposition 187 primarily creates a state-mandated screening system to prevent unauthorized persons from obtaining public services. In the words of the initiative—no person “shall receive any public social services to which he or she may otherwise be entitled until the legal status of that person has been verified.”

A majority of voters in 50 of California’s 58 counties supported Prop 187—the exceptions were eight San Francisco Bay Area counties. According to exit polls, 64 percent of whites, 57 percent of Asian-Americans, 56 percent of African-Americans, and 31 percent of Latinos voted in favor of Prop. 187. Some 78 percent of those voting in favor of Prop. 187 agreed that “it sends a message that needs to be sent” and 51 percent agreed that “it will force the federal government to face the issue.” Some 40 percent of voters in one exit poll said that they voted primarily because Prop. 187 was on the ballot.

Of those voting against the measure, 60 percent agreed with the statement that it “doesn’t solve the problem” and about 40 percent agreed that “it would throw children out of school” and that “it is racist/anti-Latino.”

California’s population is 57 percent white, 25 percent Latino, nine percent Asian-American, and seven percent African American. However, voters on November 8, 1994 were 75 to 80 percent white, eight to 10 percent Latino, four to five percent Asian-American, and 10 percent African-American.

Proposition 187 may mark the beginning of national efforts to reduce legal and illegal immigration, much as Proposition 13 in 1978 arguably laid the basis for the Reagan-era tax cuts of the early 1980s. On the other hand, Proposition 187 may be turn out to be a largely symbolic expression of frustration with illegal immigration, much as Proposition 63, which made English the state’s “official language” in 1986, proved to be.

## **Provisions**

Proposition 187 has five major sections. First, it bars illegal aliens from the state’s public education systems from kindergarten through university, and requires public educational institutions to begin verifying the legal status of both students (effective January 1, 1995) and their parents (effective January 1, 1996).

California educational institutions today verify the residence but not the legal status of elementary school pupils and university students. There are no tuition charges for K-12 education. One of California’s three higher education systems—the state university system—charges resident illegal aliens lower in-state tuition, while community colleges and UC charge them higher out-of state tuition. Almost 1 in 7 college and university students in the U.S. attends a public institution in CA.

Second, Proposition 187 requires all providers of publicly-paid, non-emergency health care services to verify the legal status of persons seeking services in order to be reimbursed by the state of CA. Persons seeking emergency care must also establish their legal status, but unauthorized persons must be provided emergency health services.

Third, Proposition 187 requires that all persons seeking cash assistance and other benefits verify their legal status before receiving benefits. Unauthorized aliens are generally not eligible for such benefits, so this provision establishes a state-run eligibility system to screen applicants for benefits.

Fourth, all service providers are required to report suspected illegal aliens to California’s Attorney General and to the INS. This means that those enrolling children in school, or those determining eligibility for public benefits, are required to report persons they suspect of being unauthorized. State and local police must determine the legal status of persons arrested, and report unauthorized aliens.

Fifth, the making, distribution, and use of false documents to obtain public benefits or employment by concealing one's legal status is now a state felony, punishable by fines and prison terms. Prop 187 does not affect e.g., teenagers who buy or use false documents to obtain alcohol.

Proposition 187 is an initiative statute whose provisions remain state law unless disapproved by a two-thirds vote of the California Legislature or by another initiative. Sections of Prop 187 can be implemented individually. On November 9, 1994, Governor Wilson ordered that state-reimbursed health services for prenatal care be stopped as soon as possible, and that no more unauthorized aliens be enrolled in state-reimbursed long-term health care programs (nursing home care).

## Campaign

Proposition 187 initiative began with a huge lead in opinion polls—it had a 37-point lead in July, 1994, and led among likely voters by 62 to 29 percent in mid-September, 1994. However, by early November, polls indicated that as many likely voters opposed as supported SOS. Most politicians and opinion leaders argued that voters should reject Proposition 187 because it was too blunt an instrument to deal with the complex issue of illegal immigration. No major newspaper endorsed Proposition 187.

In the week before the election, Governor Wilson, who was re-elected with 55 percent of the vote, asserted that if Proposition 187 became law, he would require state and local government employees to report suspected illegal aliens as required by the initiative. California Attorney General Dan Lungren, who was also re-elected, promised to develop emergency regulations to implement the initiative immediately, but noted that there was no penalty for persons who do not report suspected illegal aliens.

Wilson's campaign bought the only pro-Proposition 187 TV ads that were aired, while the anti-187 campaign used contributions from doctors and teachers to run anti-Proposition 187 TV ads. Democratic gubernatorial challenger Kathleen Brown ran out of money for TV ads at the end of her campaign, and toured high school and college campuses, urging students to work to defeat Proposition 187.

President Clinton argued against Proposition 187. According to Clinton, "it is not wrong for you [Californians] to want to reduce illegal immigration. And it is not wrong for you to say it is a national responsibility." Clinton said that "the federal government should do more to help to stop illegal immigration and to help California bear the costs of the illegal immigrants who are there," but urged California voters to reject Proposition 187 and allow the federal government to "keep working on what we're doing—stiffening the border patrol, stiffening the sanctions on

employers who knowingly hire illegal immigrants, stiffening our ability to get illegal immigrants out of the work force, increasing our ability to deport people who have committed crimes who are illegal immigrants.”

The campaign’s final days were marked by large numbers of Hispanic students walking out of high school to protest Proposition 187, and by charges of hypocrisy between U.S. Senate candidates Feinstein and Huffington. Both took tough stands against illegal immigration, and both charged that the other employed an illegal alien maid. Feinstein hired an illegal housekeeper in the early 1980s—before it was unlawful for a U.S. employer to knowingly hire illegal alien workers—and Huffington hired an illegal alien nanny in the late 1980s and early 1990s, when such hiring was unlawful. Feinstein was narrowly re-elected.

The Mexican government actively opposed Proposition 187. In his final state-of-the-nation address, former Mexican President Carlos Salinas de Gortari asserted that “Mexico affirms rejection of this xenophobic campaign, and will continue to act in defense of the labor and human rights of our migrant workers.” Ernesto Zedillo, who became Mexico’s President on December 1, 1994 asserted during a November, 1994 trip to Washington, DC that Mexico “cannot object to legitimate enforcement of U.S. laws,” but Mexico objects to “enforcement [that] might lead to deprivation or violation of basic human rights... [including] education and health care.”

## **Status**

On November 20, 1995, a federal judge, in a 72-page opinion (*League of United Latin American Citizens v. Wilson*, Case No. CV 94-7569 MRP, declared most parts of Prop. 187 unconstitutional. The judge held that “Proposition 187’s verification, notification and cooperation/reporting requirements directly regulate immigration [which only the federal government can do] by creating a comprehensive scheme to detect and report the presence and effect the removal of illegal aliens.”

The key distinction in most of the ruling is the source of funds for programs. If a program is funded with both federal and state funds, the judge ruled that California could not unilaterally make illegal aliens ineligible for benefits. But if the program is funded with state funds only, then California can make illegal aliens ineligible for benefits. Only in K-12 education is the source of funds irrelevant—in this case, a 1982 U.S. Supreme Court decision requires states to educate illegal alien children. The judge ruled, however, that under federal law California can deny entry and in-state tuition status to illegal aliens seeking entry to colleges and universities.

Attorneys representing California argued that the state has a right and duty to conserve scarce state funds, and to spend them as voters wish. The federal

judge, by contrast, emphasized that only the federal government has the power to regulate immigration.

The California State Attorney General on January 31, 1996 asked the court's permission to exclude illegal aliens from 23 state programs, ranging from state-funded abortion to child abuse prevention programs—wholly state-funded programs.

## **Reactions**

Proposition 187 was based on the theory that changes in immigrant policy can affect immigration flows. According to Governor Wilson, denying public services to unauthorized aliens would discourage them from coming to the U.S., and encourage some who are here to leave.

In March 1996, the U.S. House of Representatives approved, on a 257-163 vote with Speaker Gingrich's support, a so-called "Proposition 187 or Gallegly" amendment to immigration reform legislation that would permit states to deny public education to illegal alien children, and to prohibit states from offering federally financed welfare benefits to illegal aliens. Many experts believe that, if Congress approves the denial of free public education to unauthorized children, the U.S. Supreme Court will reverse the 5 to 4 Plyler vs Doe decision in 1982 that found unconstitutional a 1975 Texas law that kept unauthorized children out of school. In the Plyler decision, the Supreme Court acknowledged that education was not a "fundamental right," but the majority decision emphasized that Texas provided no evidence "suggesting that illegal entrants impose any significant burden on the state's economy."

Bob Dole supported the Gallegly amendment; President Clinton opposed it. There are an estimated 700,000 illegal alien children in K-12 U.S. schools, including 355,000 in California

There was an attempt to put a Save Our State II initiative on the November 1996 ballot, but it failed to secure enough signatures. Save Our State II would have required all applicants for welfare payments or other government benefits in California to present state-issued identification cards proving their U.S. citizenship or legal residency, all persons born in California to be fingerprinted at birth, and all birth certificates to contain information regarding the residency status of the baby's mother.

