



SB 396 (De León): Erase Proposition 187 Act

PURPOSE:

Remove the stain from California's statutes created by the enactment of Proposition 187 by taking legal action to revoke every unconstitutional provision of that divisive proposition.

BACKGROUND:

In 1994, exactly twenty years ago, the voters of California approved Proposition 187, now considered one of the most mean-spirited measures in California's ballot initiative history. With 59 percent of voters in favor of the initiative and 41 percent against it, Proposition 187 was a pernicious and unabashed attempt to target and scapegoat immigrants for the economic recession in the mid 1990's. At the time, California had an estimated 1.3 million undocumented immigrants, which included more than 300,000 undocumented children.

Proposition 187 would have *barred* the children of undocumented immigrants from attending public schools and would have required teachers, doctors, social workers, and law enforcement personnel to report and turn in any suspected undocumented immigrant to federal authorities. In short, it turned every teacher, doctor, social worker, and local police officer into a border patrol agent for the federal government.

Specifically, Proposition 187 would have done the following:

- Every school district would have had to *verify* the legal status of every child and parent enrolled in the district. If school districts "*reasonably suspected*" that a student, parent, or guardian was not legally present in the U.S. they would have had to *report* the person to Immigration and Naturalization Services (INS, now Immigration and Customs Enforcement), the State Superintendent of Public Instruction, and the California Attorney General.
- Public colleges and universities would have been prohibited from accepting students not legally authorized to be in the United States. Schools would have

had to verify the citizenship or legal status of each student at the beginning of every term and report students “*reasonably suspected*” of being undocumented to the INS, the State Superintendent of Public Instruction, the California Attorney General.

- Public agencies and publicly funded health care facilities would have had to verify a person’s immigration status before providing that person with social services—including welfare services for troubled youths, the elderly, and others with special needs—or health care services—including prenatal and postnatal services. If an agency or health care facility reasonably suspected that an applicant was undocumented, it would have had to report it to INS, the California Attorney General, the State Department of Social Services, and the Department of Health Services.

Proposition 187 was ultimately struck down by federal courts on the grounds that it violated the U.S. Constitution by infringing on the federal government’s jurisdiction over immigration law. Though never fully implemented, it had a damaging and lasting impact on the immigrant communities because it further stigmatized an already vulnerable population. Still today, the immigrant population fears interacting with government officials and, as a result, is often hesitant to become civically engaged and cooperate with the police.

Furthermore, Proposition 187 served as the unfortunate precursor to the draconian anti-immigrant laws recently adopted in Arizona (SB 1070) and Alabama (HB 56) that, like Proposition 187, encourage racial profiling and targeting undocumented immigrants.

Nevertheless, despite clear findings that Proposition 187 is unconstitutional, *its language remains on the books*. Undoubtedly, the state has made tremendous progress in recent years by enacting laws that promote the safety and livelihood of immigrant families and that recognize undocumented immigrants as valued members of society. And so, after 20 years, it is fitting that California *expressly acknowledge* the harm caused to Californians through passage of the discriminatory and xenophobic Proposition 187 by removing its stain from the state’s statutes.

PROPOSAL:

Repeal the unconstitutional provisions of Proposition 187 by repealing Sections 48215 and 66010.8 of the Education Code, Section 53069.65 of the Government Code, Chapter 1.3 of Part 1 of Division 1 of the health and Safety Code, Section 834b of the Penal Code, and Section 10001.5 of the Welfare and Institutions Code.

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