

## **The Battle Over Proposition 187**

The federal government has the responsibility of controlling U.S. borders and the flow of people across them. The U.S. Immigration and Naturalization Service (INS) administers the many federal laws that determine legal status in the United States. But federal efforts have not been succeeded in controlling the number of illegal immigrants in California and in other areas including Texas, Arizona, south Florida, New York and Chicago. The INS estimated that California had roughly 1.6 million illegal immigrants in 1994.

This failure has prompted bitter fights at the ballot box and in the courts between those who favor strict measures to discourage illegal immigration and those who oppose such measures on humanitarian grounds.

### **A California Proposition**

Proposition 187 was the most controversial measure on the California state ballot in 1994. It served as a focus of a larger debate about what should be done about illegal immigration. Frustrated by a lack of federal action and the failure of state legislation, backers of tough measures against illegal immigrants decided to take their issue to the public.

Like many states, California has an initiative process. This allows groups to place proposed measures on the ballot for consideration of the voters. If approved, a proposition becomes law in California. For a proposition to be placed on the California ballot, its backers must qualify the measure. This means they must circulate petitions among registered voters. Backers must collect enough valid signatures to amount to 5 percent of the total number of voters who cast ballots in the last election for state governor. Proposition 187 qualified and was placed on the ballot.

The purpose of Proposition 187 was clear. It was designed to discourage illegal immigration into California by denying education, health, and social services to people who did not have legal immigrant status. Under the proposition, people without legal status could be barred from getting welfare benefits, from receiving non-emergency health service, and from attending public schools. To make this happen, the measure required educational, public health, and social service administrators, and law enforcement officials to check on the immigration or citizenship status of the people they serve. For example, school officials would have to check the status of all students. Social service workers would have to check the status of their clients. The names of all those suspected of illegal status would be sent to the federal immigration service and the California attorney general.

The supporters of Proposition 187 included former immigration service administrators Harold Ezell and Alan Nelson, Assemblyman Richard Mountjoy, Governor Pete Wilson, the California Republican Party, U.S. Senate candidate Mike Huffington, and the California Coalition for Immigration Reform.

Opponents of the Proposition 187 included the California Teachers Association, California Labor Association, California Medical Association, State League of Women Voters, California State Employees Association, Los Angeles City Council, President Bill Clinton, U.S. Senator Dianne Feinstein, and the democratic candidate for governor Kathleen Brown.

## **Arguments**

Supporters of Proposition 187, called the Save Our State campaign, saw illegal immigration as a very serious problem, especially in California. They argued that the federal government has failed to deal with the problem. In general, they believed that illegal immigration places a drain on California taxpayers. They also believed that it is morally wrong and hurts the economy and the job market. They hoped that the measure would force the federal government to better control the borders. The law, they argued, would discourage illegal immigration and reduce the costs of public services by hundreds of millions of dollars. These savings, they argued, could be used to improve services to legal residents or to cut taxes.

Opponents of Proposition 187 may have agreed that illegal immigration is a serious problem, but they believed that the measure was unconstitutional and created bad public policy. They also worried that the proposition may violate federal law and that it could put California's federal funding in jeopardy at a potential cost of billions of dollars.

The opponents pointed to an existing U.S. Supreme Court decision, *Plyler v. Doe* (1982), which held that the children of illegal immigrants could not be denied access to public education. They argued that this decision showed that Proposition 187 is unconstitutional and would never go into effect. Opponents also argued that Proposition 187 is bad public policy because it required public service employees to enforce it, turning them into law enforcement officers. They predicted that if illegal immigrants were denied health services, disease rates might increase. Or, if students were forced out of school and onto the streets with nothing to do, crime rates might increase. Finally, opponents argued that the measure could increase prejudice against brown-skinned residents whether they are citizens, legal residents, visitors, or illegal immigrants.

In the November 1994 election, Proposition 187 passed by a nearly 3-2 margin, but almost immediately it was challenged in federal court. The court challenges kept most of its provisions from being enforced.

Political controversy over the new law also continued after the election. Some Latino opponents of the new law urged a boycott of tourism to California; others urged a boycott of certain corporations that had contributed to the campaign of Governor Pete Wilson, a supporter of the measure. Some Latino groups opposed the boycotts, fearing it would increase unemployment in the state. From the other side of the issue, some supporters of the new law urged recall campaigns against public officials who joined in lawsuits to stop the law from going into effect.

## **The Aftermath**

After the passage of Proposition 187, the U.S. Congress also became involved in the question of public benefits for undocumented immigrants. In 1996, a new federal welfare reform law went into effect. Called the Personal Responsibility and Work Opportunity Reconciliation Act, it too restricts the rights of illegal immigrants to receive various public benefits. In some ways, it even went further. It not only applied to illegal immigrants, but also to "not-qualified" non-citizens who are legally residing in the United States on a temporary basis. However, unlike Proposition 187, the welfare reform law did not ban children of illegal residents from public schools.

As these events took place, the federal lawsuit challenging Proposition 187 continued. Then in November 1997, two years after the measure passed in California, federal Judge Mariana R. Pfaelzer issued a ruling. In a 32-page opinion on the case, the judge declared Proposition 187 "not constitutional on its face." She struck down all of the law's major provisions including the ban on public school attendance and health and social-service benefits. She did let stand less-controversial elements of the law, which established criminal penalties for the use of false immigration documents.

Judge Pfaelzer rested her ruling on what is called the federal "preemption doctrine." Article VI of the U.S. Constitution contains the Supremacy Clause. It holds that laws passed by Congress are the supreme law of the land and that, if they conflict with laws passed by the various states, the state laws are invalid. Under the authority of the Supremacy Clause, the U.S. Supreme Court has ruled that federal laws can "preempt" state laws. For example, the power to regulate interstate commerce is given to Congress under the Constitution. If a state were to pass a law trying to regulate interstate commerce, that law would be preempted because Congress already exercises its constitutional authority to regulate interstate commerce and the state laws could conflict with federal law. Preemption does not only apply to commerce matters, but to areas traditionally left to federal control including bankruptcy, patent and trademark, admiralty regulation, and immigration.

According to Judge Pfaelzer's ruling, because Proposition 187 attempted to regulate immigration, it was preempted by federal law. "California is powerless to enact its own legislative scheme to regulate immigration," stated the judge. "It is likewise powerless to enact its own legislative scheme to regulate alien access to public benefits." To support her ruling, the judge cited the recent federal welfare reform act as demonstrating Congress's intent to regulate in this area.

Supporters of the Proposition 187 vowed to appeal the ruling to the U.S. Supreme Court. Whether in the courts or in the political arena, the debate over Proposition 187 and other similar measures is likely to continue for some time.

## **For Discussion**

1. How did Proposition 187 get on the California ballot?

2. What was the proposition supposed to accomplish?
3. What does the proposition require?
4. How did Judge Pfaelzer rule on the case? What reasons did she give?

### **ACTIVITY: Citizens Advisory Panel**

Introduction: Proposition 187 is an example of a public policy. Public policy is a governmental law, rule, or action on a particular issue. Because public policy can affect many lives and have widespread impact, there are often many opinions about what is good or bad policy. When thinking about public policy, it is important for everyone to ask some tough questions about it. This should happen at every stage of policy making: when it is proposed, or adopted, or even after it goes into effect. Remember: Laws and policies, even when enacted, can be changed or repealed or overturned.

All of us should be involved in policy making. We do this when we vote. We do this when we write to our elected officials or newspapers. We do this when we work on elections or join with others to speak our minds.

To be real players in helping shape public policy, we need to be informed about the issue. We need to think through issues and proposed policies. We need to be able to discuss and effectively state our views. This will help to persuade others.

**Instructions:** Imagine that a law similar to Proposition 187 were being considered where you live. Imagine that you have been appointed to a Citizen Advisory Panel to make recommendations about the proposed law. Based on what you have learned about Proposition 187, work in small groups to answer the following questions. Similar questions can be used when you are analyzing any policy. Make sure you think about and answer each question. Be prepared to share your answers with the class.

1. What problem is the proposition designed to address?
2. What are the causes of the problem? What effects does the problem have?
3. Does the proposition address the causes of the problem? Does the proposition help lessen its negative effects?
4. What benefits will the proposition have? What costs will it have?
5. What are some alternatives to the proposition?
6. Based on the answers to the previous questions, would you support or oppose the proposition?