

FEDERAL BILL COULD REVIVE PROP. 187 MEASURE MAY LET STATES BAR UNDOCUMENTED FROM SCHOOL

San Jose Mercury News (California)

JUNE 9, 1996 Sunday MORNING FINAL EDITION

Copyright 1996 San Jose Mercury News All Rights Reserved

Section: CALIFORNIA NEWS; Pg. 3B

Length: 980 words

Byline: S. L. BACHMAN, Mercury News Staff Writer

Body

Proposition **187** is stirring with new life.

If **federal** immigration reforms permit **states** to **bar undocumented** immigrant children from public **schools**, the Wilson administration plans to use this lever to seek the reinstatement of the **measure** denying education and health care to **undocumented** immigrants.

Congress could soon grant Gov. Pete Wilson and other supporters of **187** this potent new legal argument by explicitly giving **states** powers a **federal** judge ruled that California lacked when she suspended implementation of the **measure** last year.

The relevant provision is contained in the House version of immigration reform. A joint House-Senate conference committee will soon convene to resolve differences between the two **measures**.

The **bill**'s implications are explosive in this election year, if not fully understood.

President Clinton badly wants to sign an immigration **bill** to show he's tough on the issue - although spokesman Mike McCurry has called the **school** ban "nutty." Recognizing the **measure**'s potential political firepower, Sen. Robert Dole, the presumptive Republican nominee, used his March California campaign swing to endorse the amendment and attack President Clinton on immigration.

And yet when San Jose Mayor Susan Hammer and Police Chief Lou Cobarruvias joined other local officials Tuesday to denounce the ban as the unconstitutional twin of Proposition **187**, they appeared not to realize that the **measure** might actually bring it back to life.

Passage of the amendment "would open up a whole series of arguments in defense of **187**," said Robert Post, a Boalt Hall **School** of Law professor.

The Attorney General's Office is mum on strategy, but Wilson is eager to go to court with the legislation, originally sponsored by Rep. Elton Gallegly, R-Oxnard.

"By Congress taking a position on all of the elements of **Prop. 187**, including the **school** component, we believe it strengthens our case in court," said Sean Walsh, the governor's press secretary.

"We love the Gallegly amendment."

Basis for voiding **187**

FEDERAL BILL COULD REVIVE PROP. 187 MEASURE MAY LET STATES BAR UNDOCUMENTED FROM SCHOOL

In overturning 187, federal Judge Mariana Pfaelzer cited a Supreme Court case, Plyler vs. Doe, in which the court said the 14th Amendment's guarantee of equal protection under the law required Texas to educate all children. Texas had tried to exclude undocumented children from its schools.

Pfaelzer ruled that states can neither regulate immigration - a federal responsibility - nor limit services for immigrants that the federal government helps fund. But her ruling allowed states to regulate services the state underwrites, and those for which Congress has not explicitly claimed responsibility. The Gallegly amendment would make states' rights over education explicit.

Although Proposition 187 was passed long before the amendment, several constitutional scholars agreed that proponents could argue in court that legal conditions had changed, and so the judge should lift her injunction on Proposition 187.

Challenge to injunction

Even if the judge didn't lift her injunction, proponents hope the amendment would set in motion a series of legal moves that could convince the Supreme Court to overturn Plyler. That would remove the legal underpinning of Pfaelzer's injunction, and the Wilson administration would then argue she should lift it.

Legal opinions differ about whether the passage of the school ban would achieve the result Wilson and others desire.

Barnaby Zall, a Washington lawyer who worked on the 1982 Plyler case, said he thinks the amendment would survive a constitutional challenge. "The Supreme Court has never held that you couldn't deny these kids a free education," he said.

Other lawyers believe the opposite.

Educating children

"The equal protection clause of the U.S. Constitution does not permit the government to discriminate against innocent children, when it comes to something as important as education," said Carlos Holguin, general counsel for the Center for Human Rights and Constitutional Law in Los Angeles, which is lead counsel in a suit against Proposition 187.

Mayor Hammer and others believe the amendment is mostly an "election-year ploy" to win votes by attacking a weak and defenseless group. But ploy or not, it is definitely a hot election-year issue.

Gallegly's legislation zoomed to prominence in March on the supportive words of such Republican leaders as House Speaker Newt Gingrich and Senate Majority Leader Bob Dole. Dole called for the amendment's passage when launching his California campaign on the U.S.-Mexico border - even though he previously had voted against a similar measure.

Wide opposition to ban

Democrats on the House-Senate conference committee - which has yet to be fully named - can be expected to oppose it vigorously, backed by constituents in pro-immigration campaigns, church groups and teacher unions. President Clinton has been heavily lobbied by these groups to veto any bill including the school ban.

Complicating the political picture is strong opposition to the amendment among law enforcement groups and across the political spectrum. Opponents include three national police groups, the Los Angeles County sheriff, and police chiefs from San Diego and Sacramento counties, as well as the Republican mayor of New York and governor of Texas.

Still, proponents offer no apologies.

FEDERAL BILL COULD REVIVE PROP. 187 MEASURE MAY LET STATES BAR UNDOCUMENTED FROM SCHOOL

Easy access to services such as education attracts illegal immigrants, Gallegly and his supporters argue. And it's unfair, they argue, to let states carry the financial burden of caring for illegal immigrants that failed federal border enforcement allows in the country.

California would save nearly \$2 billion if it stopped paying for the education of these children - enough to hire 44,000 more teachers, Gallegly said.

"If we're going to ask the states to pay the bills, we're going to give the states that option," he said.

Notes

The Associated Press contributed to this report.

Classification

Language: ENGLISH

Subject: IMMIGRATION (93%); LAW COURTS & TRIBUNALS (89%); ILLEGAL IMMIGRANTS (89%); LEGISLATION (89%); JUDGES (89%); US FEDERAL GOVERNMENT (78%); EDUCATION SYSTEMS & INSTITUTIONS (78%); LEGISLATIVE BODIES (78%); LAW SCHOOLS (78%); GOVERNORS (78%); US REPUBLICAN PARTY (77%); APPEALS (77%); CAMPAIGNS & ELECTIONS (77%); SUPREME COURTS (76%); POLITICAL CANDIDATES (75%); PUBLIC SCHOOLS (73%); DISCRIMINATION LAW (69%); POLICE FORCES (66%); ATTORNEYS GENERAL (64%)

Industry: EDUCATION SYSTEMS & INSTITUTIONS (78%); LAW SCHOOLS (78%); PUBLIC SCHOOLS (73%)

Person: BILL CLINTON (90%); ELTON GALLEGLY (77%)

Geographic: SAN JOSE, CA, USA (79%); CALIFORNIA, USA (92%)

Load-Date: October 23, 2002