



Educational Considerations

Volume 40 | Number 3

Article 6

7-1-2013

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Recommended Citation

Sutton, Lenford C. and Stewart, Tricia J. (2013) "State Challenges to Plyler v. Doe: Undocumented Immigrant Students and Public School Access (Perspectives on Legal Issues in Education)," *Educational Considerations*: Vol. 40: No. 3. <https://doi.org/10.4148/0146-9282.1094>

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Perspectives on Legal Issues in Education

State Challenges to *Plyler v. Doe*: Undocumented Immigrant Students and Public School Access

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This article presents a review and an analysis of selected state laws and initiatives that have attempted to restrict public school access for undocumented immigrant children in the wake of the landmark U.S. Supreme Court decision of *Plyler v. Doe*.¹ We begin with an overview of the Court's ruling in *Plyler*. This is followed by examples of state-based challenges to *Plyler* in California and Arizona where the former began as a ballot initiative and the latter as a legislative bill. Subsequently, both laws were successfully challenged in the courts. The fourth and final section provides a discussion and conclusions.

Overview of *Plyler v. Doe*

In 1982, *Plyler v. Doe* extended education rights to undocumented immigrant children.² In striking down a Texas statute that would have charged these children tuition to attend public schools, the U.S. Supreme Court ruled that public schools must provide access to children regardless of immigration status based upon the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution which prohibits a state from denying any person within its borders the equal protection of the laws. Under Fourteenth Amendment jurisprudence, the application of strict scrutiny by the courts is traditionally applied when the action of a state negatively affects a "suspect class" or violates a fundamental right. Accordingly, state actions related to education must be narrowly tailored to serve a compelling interest of the state.³

California's Proposition 187

In addition to the more familiar method of enacting new state laws through elected legislators, twenty-one states permit ballot initiatives that, if passed by a majority of state voters, become law.⁴ Of these, eleven states, including California, use a "direct" approach. Under this approach, an individual citizen crafts a proposition and obtains at least the state-mandated minimum number of registered voter signatures in support, after which the proposition is placed on the ballot.⁵

Such was the case in California in 1994. Frustrated with the specter of overcrowded schools, dwindling social services, and a growing prison population, all related to illegal immigration, voters in California passed Proposition 187 during the mid-term elections of 1994.⁶ Proposition 187 and the subsequent law, although never enforced due to judicial intervention,⁷ sought to declare illegal immigrants ineligible to receive state-funded social services and to attend public schools, as follows:

No public elementary or secondary school shall admit, or permit the attendance of, any child who is not a citizen of the United State, an alien unlawfully admitted as a permanent resident, or persons who are otherwise authorized to be present in the United States... In order to carry out the intention of the People of California that, excepting emergency medical care are required by federal law, only citizens of the United States and aliens lawfully admitted to the United States may receive the benefits of publicly funded health care.⁸

Under the law, if implemented, California school districts and social service providers would have been required to: "(a) verify the immigration status of persons seeking services; (b) notify the Immigration and Naturalization Service (INS), a federal agency, about anyone who was determined or reasonably suspected to be in violation of immigration laws; and (c) inform the parents of undocumented children about their illegal status."⁹ In addition, the law stipulated that changes would be permitted only through voter referendum or a supermajority vote in both the state senate and house of representatives.

In *League of United Latin American Citizens (LULAC) v. Wilson*, plaintiffs successfully challenged the law that emanated from Proposition 187 in federal court.¹⁰ Although Governor Wilson, the defendant, appealed the ninth circuit court's decision, his term ended before the case was heard before the U.S. Appellate Courts. In 1999, a settlement was approved by Governor Davis, and the district court decision was adopted as law.

Alabama House Bill 56

In 2011, the Alabama legislature passed House Bill (H.B.) 56, which was subsequently signed into law by Governor Robert Bentley on June 9, 2011, as The Beason-Hammon Alabama Taxpayer and Citizen Protection Act whose stated purpose was to address the "economic hardship and lawlessness" allegedly caused by "illegal immigration," and to discourage it by requiring all state agencies to cooperate with federal authorities in the enforcement of federal immigration laws.¹¹

The text of the law asserted that one of the primary sources of economic hardship was the cost of providing a public education to undocumented immigrant children, as follows:

Because the costs incurred by school districts for the public elementary and secondary education of children who are aliens not lawfully present in the United States can adversely affect the availability of public education resources to students who are United States citizens or are aliens lawfully present in the United States, the State of Alabama determines that there is a compelling

need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the United States, in order to forecast and plan for any impact that the presence such population may have on publicly funded education in this state.¹²

To that end, the law required all public schools to determine if newly enrolled students were "born outside the jurisdiction of the United States" or if they were children of an undocumented immigrant by examining the student's original birth certificate or a certified copy.¹³ If the child was born outside the United States, if the child's parent is an undocumented immigrant, or if a birth certificate is not available, the parent was required to notify the school of their child's citizenship or immigration status within 30 days either by providing the documentation described above or by signing a declaration.¹⁴ Under the law, if the parent did not comply within the time period, school officials were required to report the student as "...an alien unlawfully present in the United States."¹⁵

The law also required Alabama school districts to submit an annual report to the State Board of Education.¹⁶ In turn, the board would be required to produce a report from this data for the legislature to include the citizen and immigration status of students by school as well as student participation in ESL programs by school and status.¹⁷ The annual report would also be required to "itemize" and analyze the cost of providing a public education to undocumented students, including ESL classes, and the potential impact on the quality of education that might be provided to students if those costs were not present.¹⁸


On August 1, 2011, the U.S. Department of Justice along with other defendants challenged several provisions of H.B. 56.¹⁹ In her decision, federal judge Sharon Lovelace Blackburn upheld the section of that required public schools to determine immigration status when enrolling new students. The judge also dismissed claims that the Clergy and the Hispanic Interest Coalition of America plaintiffs had no standing to challenge section 28 of the statute that concerned the enrollment of students in Alabama's public schools.²⁰

Mixed rulings were also handed down by a three-judge panel in the Eleventh Circuit Court of Appeals, which included Justices Ed Carnes, nominated by Republican President George H.W. Bush, and Frank M. Hull and Rosemary Barkett, both nominated by Democratic President Bill Clinton. The court enjoined the state of Alabama from enforcement of the section which required public schools to determine the legal status of newly enrolled students.²¹

Discussion and Conclusions

California's 1994 voter-initiated ballot initiative, Proposition 187, and Alabama's law of 2010, based upon H.B. 56, are stark examples of how two states have attempted to challenge access to public schools for undocumented immigrant children, a right that was clearly articulated in *Plyler* over 30 years ago. Proposition 187 directly challenged *Plyler* by declaring undocumented children ineligible to attend public schools while the approach of H.B. 56 was more subtle. Its mandate for school districts to collect information on students' immigration status

would not directly result in denial of a public education. However, this section of the law exerted a potentially chilling effect in that parents, especially if undocumented, might fear disclosing their child's immigration status would place the family in danger of deportation.²²

Judicial intervention was necessary and successful. The law based upon Proposition 187 was struck down in its entirety while a number of sections of the law based upon H.B. 56, including reporting student immigration status, were invalidated by the courts. As a result, the legacy of the *Plyler v. Doe*, remains intact. 

Endnotes

¹ *Plyler v. Doe*, 475 U.S. 202 (1982).

² *Ibid.*

³ However, skeptics have noted Justice Burger's dissent at page 244 of the decision where he stated, "The Court acknowledges that, except in those cases when state classifications disadvantage a 'suspect class' or impinge upon a 'fundamental right,' the Equal Protection Clause permits a state "substantial latitude" in distinguishing between different groups of persons. *Ante* at 216-217. Moreover, the Court expressly— and correctly—rejects any suggestion that illegal aliens are a suspect class, *ante* at 219, n. 19, or that education is a fundamental right, *ante* at 221, 223. Yet by patching together bits and pieces of what might be termed quasi-suspect-class and quasi-fundamental-rights analysis, the Court spins out a theory custom-tailored to the facts of these cases. In the end, we are told little more than that the level of scrutiny employed to strike down the Texas law applies only when illegal alien children are deprived of a public education, *see ante* at 223-224. If ever a court was guilty of an unabashedly result-oriented approach, this case is a prime example."

⁴ University of Southern California, "What Are Ballot Propositions, Initiatives, and Referendums?" (Los Angeles, CA: Initiative and Referendum Institute, n.d.), <http://www.iandrinstitute.org/Quick%20Fact%20-%20What%20is%20I&R.htm>.

⁵ *Ibid.*

⁶ K.L. Billingsley, "California GOP Hits Hard at Clinton, Welfare and Crime," *Washington Times*, September 19, 1994, Final edition, A3.

⁷ See, "CA's Anti-Immigrant Proposition 187 is Voided, Ending State's Five-Year Battle with ACLU, Rights Groups," American Civil Liberties Union, July 29, 1999, <http://www.aclu.org/immigrants-rights/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-righ>.

⁸ Cal. Health & Safety Code § 130 (West 1995).

⁹ Cal. Educ. Code § 48215 (West 1995).

¹⁰ *LULAC v. Wilson*, 908 F. Supp. 755, 769–71 (C.D. Cal. 1995).

¹¹ Ala. Laws Act 2011-535, § 2.

¹² *Ibid.*

¹³ Ala. Laws Act 2011-535, § 28 (a)(1-2).

¹⁴ *Ibid.*, (a)(3); (b)(4).

¹⁵ *Ibid.*, (5).

¹⁶ *Ibid.*, (5)(c).

¹⁷ *Ibid.*, (d)(1-2).

¹⁸ *Ibid.*, (d)(3-5).

¹⁹ *United States v. Alabama*, 2011 U.S. Dist. Lexis 112362 (N.D. Ala., Sept. 28, 2011).

²⁰ *Ibid.*

²¹ *Ibid.* Hispanic Interest Coalition of Alabama et al., v. Governor Robert Bentley et. al, (11th Cir. 2011).

²² See, Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, Letter to Dr. Thomas R. Bice, Alabama State Superintendent of Education, May 1, 2012, <http://media.al.com/bn/other/DOJ%20Letter%20May%202012.pdf>.