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I. Introduction

Anti-immigration laws create unreasonable obstacles to the academic advancement of undocumented students. A close analysis of Proposition 187 and HB 56 will show how undocumented students are still facing hardship as they navigate American schools. Also, looking at the aftereffects of Proposition 187 will help uncover ways in which all states can help support undocumented children in their academic achievements. As Justice Brennan once wrote, “Education has a fundamental role in maintaining the fabric of our society.”¹

Following the introduction, Part II of this essay reflects on the 1982 landmark case, *Plyler v. Doe*.² Part III compares two anti-immigration laws: (1) Alabama’s HB 56, Beason-Hammon Alabama Taxpayer and Citizen Protection Act; and (2) California’s Proposition 187, Save our State Initiative. After demonstrating how anti-immigration laws displace undocumented students, Part IV offers recommendations for the inclusion and advancement of these students in higher education.

II. Background

In *Plyler*, the U.S. Supreme Court ruled by a five-to-four vote that denying undocumented children access to free public education violated the Equal Protection Clause of the Fourteenth Amendment.³ The court’s decision was pivotal for many reasons. But, most importantly, it

¹ *Plyler v. Doe*, Oyez, <https://www.oyez.org/cases/1981/80-1538> (last visited March 10, 2020).

² *Id.*

³ *Id.*

dismissed the claim that “undocumented aliens, because of their immigration status, are not ‘persons within the jurisdiction’ of the State.”⁴ The court established that an undocumented immigrant is “surely still a ‘person’ in any ordinary sense of that term,” regardless of immigration status.⁵

By citing equal protection, the *Plyler* court ensured equal access to education for undocumented children. The court emphasized that “depriving the children of any disfavored group” of the education offered to other children will be costly to children and the Nation. First, a “lifetime of hardship” will be imposed on undocumented children.⁶ Without a basic education, an undocumented child will be powerless “to participate effectively and intelligently” in society.⁷ Moreover, creating a “subclass” of uneducated children will only result in “significant social costs borne by our Nation.”⁸ Without a proper education, an undocumented child is less likely to succeed and contribute to the country’s economy and political system.

Lastly, the *Plyler* court boldly asserted that undocumented children would eventually adjust their status. While Texas alleged that undocumented children are unlikely to remain in the United States and “put their education to productive social or political use,” the court invalidated this claim. As a matter of fact, many of these children will remain in the country indefinitely, and become U.S. citizens.⁹ Thus, the U.S. Supreme Court made a strong argument for allowing undocumented children membership into American institutions. Denying these children access to

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

public education will only create “a subclass.”¹⁰ Despite *Plyler*’s defense of equal access to education, there have been multiple anti-immigration laws directed against undocumented children.

For example, on November 8, 1994, California passed Proposition 187 (Prop 187).¹¹ Prop 187 denied undocumented immigrants access to public social services, non-emergency health care services, and public education at elementary, secondary, and post-secondary institutions.¹² In addition, state and local agencies were required to report persons suspected of being undocumented.¹³

In 2011, Alabama passed HB 56, arguably the harshest immigration law in the country. HB 56 prohibited undocumented immigrants from receiving public benefits, seeking employment, and entering into business contracts or lease agreements.¹⁴ Undocumented students are also denied admission into public universities, and access to scholarships, grants, or financial aid. Moreover, violating the Equal Protection Clause, HB 56 bars undocumented children and U.S. citizen children of undocumented parents from primary schools.¹⁵ Finally, law enforcement, schools, and employers are required to verify the immigration status of persons.¹⁶ Those

¹⁰ *Id.*

¹¹ *California Proposition 187, Illegal Aliens ineligible for Public Benefits (1994)*, Ballotpedia, [https://ballotpedia.org/California_Proposition_187,_Illegal_Aliens_Ineligible_for_Public_Benefits_\(1994\)](https://ballotpedia.org/California_Proposition_187,_Illegal_Aliens_Ineligible_for_Public_Benefits_(1994))

¹² *Id.*

¹³ *Id.*

¹⁴ Representative Hammon et al., *Alabama House Bill 56*, LEGISCAN, (Feb. 25, 2011), <https://legiscan.com/AL/text/HB56/id/321074/Alabama-2011-HB56-Enrolled.pdf>

¹⁵ *Id.*

¹⁶ *Id.*

“concealing, harboring, shielding” or employing undocumented persons are penalized under the law.¹⁷

III. Analysis

There is a constant theme in anti-immigration laws—their proponents claim “illegal entrants impose [a] significant burden on the State’s economy.”¹⁸ For example, California claimed Prop 187 would save the state about \$200 million per year.¹⁹ Alabama legislators alleged “illegal immigration is causing hardship and lawlessness.”²⁰ However, this is not the case. In the *Plyler* opinion, Justice Brennan stated that “the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state.”²¹

In particular, millions of undocumented immigrants file taxes each year, without qualifying for earned income tax credit, as well as other benefits. Because they are not issued social security numbers, undocumented immigrants file income tax returns using Individual Tax Identification Numbers (ITIN’s). According to the Institute on Taxation & Economic Policy, undocumented immigrants contribute approximately \$11.74 billion a year in state and local taxes.²² In Alabama, they contribute about \$62.3 million a year.²³ Thus, undocumented immigrants actually boost funding for public benefits. They pay into programs like Social Security, Medicaid, and

¹⁷ *Id.*

¹⁸ *Plyler v. Doe*, *supra* at 1.

¹⁹ California Proposition 187, *Illegal Aliens ineligible for Public Benefits* (1994), *supra* note 12.

²⁰ Hammon, *supra* note 15.

²¹ *Plyler v. Doe*, *supra* at 1.

²² Lisa Christiansen Gee et al., *Undocumented Immigrants’ State & Local Tax Contributions*, Institute on Taxation & Economic Policy, (March 1, 2017), <https://itep.org/wp-content/uploads/ITEP-2017-Undocumented-Immigrants-State-and-Local-Contributions.pdf>.

²³ *Id.*

Medicare, even though they do not benefit from these programs. Finally, by paying sales and property taxes like everyone else, undocumented workers fund public schools and local government services.²⁴

What then is the real purpose behind anti-immigration laws? Besides denying undocumented children equal access to opportunity, creating “a permanent caste of undocumented resident aliens...as a course of cheap labor.”²⁵ Foremost, advocates for these discriminatory laws should recognize two things: (1) that even if undocumented immigrants cannot vote, they can still indirectly sway politics; and (2) that denying children equal access to education is unconstitutional and bad public policy.

Prop 187 illustrates how undocumented immigrants influence politics. Leading up to Election Day in California, then Governor Pete Wilson running for reelection, openly endorsed Prop 187. When asked if he could look a child in the eye and call immigration, he responded: “I make no apology for putting California children first.”²⁶ That same day 70,000 people gathered in protest of the measure.²⁷ Soon after, students began forming groups and orchestrating mass demonstrations. On November 2, 1994, 10,000 students marched the streets of Los Angeles. This was their political awakening.²⁸ Some of these individuals later emerged as politicians and activists for California. For example, Kevin De Leon, a protest organizer, later became an assemblyman and eventually the leader of the California State Senate.

²⁴ Alexia Fernandez Campbell, *Trump Says Undocumented Immigrants Are An Economic Burden. They Pay Billions in Taxes*, Vox, (Oct. 25, 2018), <https://www.vox.com/2018/4/13/17229018/undocumented-immigrants-pay-taxes>.

²⁵ *Plyler v. Doe*, *supra* at 1.

²⁶ Jessica P. Ogilvie, *Proposition 187: Why a Ballot Initiative That Passed 25 Years Ago (And Never Went Into Law) Still Matters*, LAist, (Nov. 6, 2019), https://laist.com/2019/11/06/proposition_187_what_you_need_to_know.php.

²⁷ *Id.*

²⁸ Libby Denkmann, *California's Prop 187 Vote Damaged GOP Relations With Immigrants*, NPR, (Nov. 8, 2019), <https://www.npr.org/2019/11/08/777466912/californias-prop-187-vote-damaged-gop-relations-with-immigrants>.

Prop 187 dramatically reshaped California's political identity. Largely backed by Republicans and construed as anti-Latino, Prop 187 galvanized Latinos into action. Many Latinos withdrew from the GOP and joined Democratic voters, making California Democratic territory.²⁹ Republicans had lost the Latino vote. Also, the U.S. Citizenship and Immigration Services (USCIS) received a multitude of citizenship applications. More than ever, Latinos wanted to protect and represent their communities, so they ran for political office and went after positions of power.³⁰

In addition, organizations came together to challenge Prop 187. Besides Mexican American Legal Defense and Educational Fund (MALDEF), League of Latin American Citizens (LULAC), and the California Rural Legal Assistance Foundation, several groups immediately filed lawsuits challenging the measure.³¹ In 1997, a federal judge declared Prop 187 unconstitutional.³² Moving past the divisiveness of Prop 187, California has become a proponent for educational equality and opportunity. Unlike Alabama, California has responded effectively to the needs of undocumented students.

For example, California passed Assembly Bill 540 (AB 540) in 2001. AB 540 states that undocumented students shall be exempt from paying nonresident tuition in the California State University and the California Community Colleges, if the following criteria are met: (1) attended high school in California for three or more years; (2) graduated from a California high school or the equivalent; (3) registered as an entering student currently enrolled at an accredited institution of higher education in California, not prior to the 2001-02 academic year; (4) filed an affidavit

²⁹ Jessica P. Ogilvie, *supra*.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

with the institution of higher education stating that the student has applied to legalize his or her immigration status, or will file an application upon being eligible.³³ Once a student is eligible for a non-resident exemption under AB 540, they may apply for California Dream Act financial aid such as: private scholarships, university grants, community college fee waivers, and Cal Grants.³⁴

Moreover, the University of California (UC) provides financial, legal, and emotional support to undocumented students. In particular, Janet Napolitano, the University of California President, launched the Undocumented Students Initiative in 2013.³⁵ The program allocates \$12.5 million to UC campuses for “targeted financial aid” and certain services for undocumented students.³⁶ The program allocates funding to three areas in particular. First, the UC Dream Loan program, with a reserve of \$5 million annually, makes loans available for students who do not qualify for federal loans.³⁷ Second, UC’s Legal Services Center, which provides free access to an attorney and help applying for state and federal programs.³⁸ Lastly, funding is provided for student service staff coordinators and undergraduate and graduate fellowships.³⁹

Notwithstanding California’s efforts to make education more attainable, undocumented students still struggle to navigate higher education. Foremost, students are fearful of disclosing

³³ *Education Code Section 68130.5, As Amended, Commonly known as AB 540*, California Student Aid Commission, <https://www.csac.ca.gov/post/california-nonresident-tuition-exemption> (last visited March 10, 2020).

³⁴ *Id.*

³⁵ The Regents of the University of California, *Student Opportunity Undocumented Students*, University of California, <https://www.universityofcalifornia.edu/initiative/student-opportunity/undocumented-students> (last visited March 10, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

their immigration status.⁴⁰ A survey by the University of California, Los Angeles, found that half of the survey participants preferred to keep their immigration status private, 39% revealed their status when necessary, and 13% were not open to discussing their status at all.⁴¹ Because most undocumented students keep their immigration status private, they overlook help from counselors and are left with unanswered “questions and fears about life after graduation.”⁴²

In particular, undocumented students struggle with the uncertainty related to their immigration status.⁴³ Without the prospect of adjusting their immigration status, students fear being deported or separated from their families. In addition, the inescapable reality is that the current administration has ignited an anti-immigrant movement. Immediately after becoming president, Trump promised to rescind the Deferred Action for Childhood Arrivals (DACA) program. The DACA program grants “certain young people who were brought to this country as children”⁴⁴ a two-year renewable period of deferred action from removal, as well as work authorization. Thus, right when undocumented students began feeling a slight sense of security, Trump vowed to take it away.

Given the constant threats to their immigration status, students are diverted from their academic work.⁴⁵ With the rapid changes in immigration, students are having difficulty focusing

⁴⁰ Laura E Enriquez, et al., *How Can Universities Foster Educational Equity for Undocumented College Students: Lessons from the University of California*, UCLA Institute for Research on Labor and Employment, <https://irle.ucla.edu/wp-content/uploads/2019/01/Enriquez-Educational-Equity-Final.pdf> (last visited April 10, 2020).

⁴¹ Laura E Enriquez, et al., *supra* at 41.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Janet Napolitano, *Memorandum for David V. Aguilar Acting Commissioner, U.S. Customs and Border Protection*, U.S. Department of Homeland Security, (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁴⁵ Laura E Enriquez, et al., *supra*.

during class.⁴⁶ Some students have even reported losing sleep, resulting in ineffective study time and lower grades.⁴⁷ Additionally, students are taking time away from studying to confirm their families are safe from immigration raids. Other times, to attend immigration-related appointments for themselves or their family members, undocumented students have to take time away from school.⁴⁸ Eventually, the added stress and anxiety over immigration status can affect a student's well-being.

Furthermore, undocumented students have limited access to “postgraduate preparation.”⁴⁹ Because most internships and work programs require proof of permanent residency or citizenship, undocumented students are excluded from practical experience. Even DACA recipients with work authorization have reported being denied volunteer opportunities.⁵⁰ In addition, some undocumented students probably lack the requisite experience to compete with other students for internships and jobs. U.S. citizen students have more access to resources, as well as the help of educated family members.

IV. Recommendations

Aside from helping students access financial aid, encouraging permanent residents to naturalize, providing mental support for struggling students, creating mentorship programs, assisting high school kids with their college applications, I propose a more permanent solution. I propose that Congress finally pass the Development, Relief, and Education for Alien Minors

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

(DREAM) Act, without any reservations or conditions. The DREAM Act⁵¹ would legalize undocumented immigrants that arrived to this country as children.

Undocumented persons cannot continue to put their futures on hold and live in constant fear of being deported. Undocumented people should not have to flee states because of laws like HB 56. It is difficult for undocumented people to depend on an unpredictable political process. Republicans and Democrats must come together to legalize these immigrants. With help from Congress, undocumented students can contribute further to this country.

For now, we can help bring awareness to the challenges undocumented students are facing. Hopefully, more states will follow California's lead in providing equal access to education, regardless of immigration status.

⁵¹ *The Dream Act, DACA, and Other Policies Designed to Protect Dreamers*, American Immigration Council, (Aug.1, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_dream_act_daca_and_other_policies_designed_to_protect_dreamers.pdf.