

August 3, 1999

CALIFORNIA ABANDONS LAW DESIGNED TO CUT AID TO ILLEGAL ALIENS

(LULAC v. Wilson)

The State of California this week abandoned its defense of Proposition 187, the initiative adopted overwhelmingly by California voters in 1994 in an effort to cut off the flow of public benefits to illegal aliens. California abandoned the law despite the fact that the federal appeals court before which a challenge to the law was pending had never had an opportunity to pass on the law's constitutionality.

The decision by the administration of California Governor Gray Davis was a setback for the Washington Legal Foundation (WLF), which last fall filed a brief in *League of United Latin American Citizens [LULAC] v. Wilson*, asking the U.S. Court of Appeals for the Ninth Circuit to uphold Prop 187. Prop 187 sought to prevent illegal aliens in the State from receiving public social service, health, and education benefits.

Prop 187 has been subject to court challenges since soon after its adoption. In 1995, a federal district judge struck down virtually the entire law, holding that Prop 187 violated various provisions of the U.S. Constitution. For a variety of procedural reasons, the case did not reach the Ninth Circuit on appeal until last year. Before the appeals court could hear the case, Governor Pete Wilson (an avid supporter of Prop 187) left office and was replaced by Governor Davis, a Prop 187 opponent.

Gov. Davis's abandonment of Prop 187 came despite California law indicating that a governor is obligated to defend State laws in court unless and until it has been invalidated in an appellate court decision. While many supporters of Prop 187 view Gov. Davis's action as a betrayal of the State's voters, there is little that can be done to combat the decision -- because no one other than the Governor and Attorney General appears to have the standing necessary to defend State laws in court.

"Gov. Davis's capitulation is troubling, particularly because many of the provisions of that law, adopted by California voters in 1994, were later adopted by Congress in 1996 as part of its immigration reform efforts," said WLF Chief Counsel Richard Samp after learning of the Governor's decision. "It is difficult to understand how Prop 187 can be said to conflict with federal immigration policy, as found by the district judge as the basis for her decision striking down Prop 187, when Congress two

years later adopted virtually identical restrictions on payments to illegal aliens," Samp said.

Proposition 187 established a scheme whereby State employees were required to verify whether those seeking public benefits are in this country legally. It also required the State to share any information it acquired regarding illegal immigrants with the federal Immigration and Naturalization Service (INS). Proposition 187 also prohibited illegal aliens from receiving four types of public benefits: (1) social service benefits; (2) public health care (with the exception of emergency care); (3) public elementary and secondary education; and (4) public postsecondary education. WLF's brief took no position regarding whether California ought to be permitted to exclude illegal alien children from elementary and secondary schools; WLF asked that Proposition 187 be upheld in all other respects.

The district court did not find that illegal aliens have any constitutional right to obtain public benefits. Rather, the district court held, Proposition 187 is invalid because federal law supposedly prohibits States from adopting any measures whatsoever regarding immigrants. It held that immigration is to be dealt with exclusively at the federal level.

In its brief filed with the appeals court, WLF argued that a State has a strong interest in ensuring that its tax dollars are reserved for those legally present in the State, and that it has every right to enforce measures designed to protect that interest -- even if the measures end up having indirect impacts on immigration. The only power denied to States is the power to physically deport illegal aliens, WLF argued.

WLF's brief noted that Congress in 1996 passed the Personal Responsibility and Work Opportunity Reconciliation Act, which prohibits governments at any level from paying public benefits (other than emergency medical aid and public school education) to illegal aliens. WLF argued that there is no basis for holding that Prop 187 conflicts with federal law when federal law contains prohibitions against aid to illegal aliens that are as strong or stronger than those contained in Proposition 187.

WLF is a public interest law and policy center with supporters in all 50 States. It devotes a significant portion of its resources to ensuring that the nation's immigration laws are strictly enforced and that aliens in this country illegally, or who commit crimes while here, are swiftly deported. WLF filed its brief on behalf of itself, the Allied Educational Foundation, and four Members of Congress from California: John T. Doolittle, Wally Herger, Frank D. Riggs, and Ed Royce.

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For further information, contact WLF Chief Counsel Richard Samp at (202) 588-0302.