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The Political Incorporation of Latino Immigrants in California

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CLAREMONT MCKENNA COLLEGE

The Political Incorporation of Latino Immigrants in California

SUBMITTED TO

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AND

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BY

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for

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Chapter One: Introduction

Since the Civil Rights Movement and the election of the first two Latinos in the State Assembly, Latinos have increased their political power in California.¹ The first two Latinos in the State Legislature set the precedent for a long line of Latino legislators committed to serving their communities. In 1968 and 1970, two Latinos were elected to the State Assembly, and three more joined in 1972. These five Latinos serving in the State Legislature established the Chicano Legislative Caucus in 1973, which marked a significant turning point in the political empowerment of the Latino community. For the first time in California's legislative history, an agenda was formulated and legislative priorities were developed to protect and preserve the rights of Latinos throughout California. Today, the Latino Legislative Caucus is comprised of twenty-four members: seven Senators and seventeen Assembly Members, and it is one of the most influential organizations within the state. Its members hold strategic leadership positions and focus primarily on improving the quality of life for working families in California.

Despite the political gains in the State Legislature during the early 1970s, there remained an anti-immigrant sentiment directed towards Latinos, along with other racial groups, up until the late 1990s. Although Latino immigrants have produced a diverse culture and contributed to California's overall prosperity, each wave of immigrants endangered economic competition and created tension in the state.² This concern regarding the potentially detrimental effects of immigration led to the passage of anti-immigration initiatives such as Proposition 63 in 1986 and Proposition 187 in 1994.

¹ "Historical Overview of the California Latino Legislative Caucus," California Latino Legislative Caucus, Last modified 2013, accessed March 12, 2014. <http://latinocaucus.legislature.ca.gov/our-story>.

² Jack Citrin et al., "State of Change: Immigration Politics and the New Demography of California," in *Governing California*, ed. Ethan Rarick (Berkeley: Berkeley Public Policy Press, 2013), 27.

Given that Latinos were present in the State Legislature, it may seem perplexing that Latino immigrants continued to be the target of attack during the 1990s. While representation is essential in advancing and protecting the Latino community, the successful passage of anti-immigrant legislation was mainly due to the immobilization of Latinos as an electorate. Over time, immigrants and their children have become more incorporated into the political process, allowing for more immigration-friendly policy implementation in California. This paper explores and analyzes the political incorporation of Latino immigrants in California over the last several decades. Political incorporation refers to the process through which immigrants and their descendants claim their political rights and exercise their voice in politics. In order to understand the impact of Latino immigration on California state politics, it is important to first examine the demographic changes in the state. This paper will also serve as an overview of all of the major immigration legislation in California, beginning from the anti-immigration initiatives to the California Dream Act and immigration-friendly legislation that Governor Jerry Brown signed into law just under a year ago.

Chapter 2: Latino Immigration and its Impact on California

Immigration into California has been unprecedented, and has affected California in a myriad of ways. In order to understand how the Latino immigrant community fundamentally changed the state demographically, politically, economically, and culturally, it is necessary to become acquainted with pertinent background information. This chapter will first outline the demographic changes in the state beginning from 1960. The chapter will then explore the effect of California's immense immigrant population on national and state politics. Lastly, the chapter will explicate how these demographic and political changes ultimately culminated in societal unrest and anti-immigrant sentiments.

Demographic Changes in the State

Between 1960 and 1995, the number of immigrants living in the state increased from 1.3 million to eight million, and tripled as a percentage of the state's population, from 8.2 percent to 24.1 percent.³ A considerable amount of immigrants moving into California were Latino. In 1960, the census reported approximately 250,000 foreign-born residents of Mexican origin in California; and in 2010 this group numbered 4.4 million.⁴ In 1960, there were less than 14,000 foreign-born residents in California from Guatemala, Nicaragua, and El Salvador and in 2010 there were roughly 750,000.⁵ In addition to their high concentration, California's immigrants differ from the rest of the country in several ways.⁶ Compared to immigrants in the rest of the country, California's 1995 immigrants

³ Steven A. Camarota, "The Impact of Immigration on California: Summary and Analysis of Immigration in a Changing Economy," *Immigration Review*, no. 32 (July 1998): 1-6, accessed March 4, 2014, <http://cis.org/ImmigrationReview32-ImmigrationinCalifornia>.

⁴ Jeanne Batalova and Aaron Terrazas, "Frequently Requested Statistics on Immigrants and Immigration in the United States, Migration Policy Institute, December 9, 2010.

⁵ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 33.

⁶ Camarota, "The Impact of Immigration on California: Summary and Analysis of Immigration in a Changing Economy," 2.

had a much higher percentage of Mexican and Central Americans by 27 percent and more illegal aliens by 6 percent.⁷ California's immigrants also had lower rates of naturalization by 12 percent. California has been the largest immigrant-receiving state from 2000 to 2010, receiving 1.3 million of the U.S. influx of 8.8 million immigrants. This increase in immigration led California to transform into a "majority-minority" state.

Compared to the rest of the country, growth in California's immigrant population was dramatic. In 1960, California had 8.8 percent of the nation's total population and was home to 13.9 percent of its immigrants.⁸ By 1995, California accounted for 12.1 percent of the U.S. population and 32.7 percent of the nation's immigrants.⁹ Although growth in the immigrant population has since decreased, it continues to affect the diversity of California's population. The main reason for this decrease reflects a decrease in the immigrant population from Latin America to the state, who instead migrated to construction and service industries in other southern and southwestern states.¹⁰

Immigrant Population Effect on Politics

Immigration enhances California's political importance in the national arena, both in Congress and in Presidential elections. Within the state, immigration bolsters the influence of Southern California on policymaking, and voters from this region traditionally have differed strongly from the rest of the state's electorate. The population growth resulting from immigration into California has increased the state's representation in the House of Representatives.¹¹ The reapportionment of Congressional seats that

⁷ Ibid.

⁸ Ibid., 3.

⁹ Ibid.

¹⁰ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 34.

¹¹ Ibid., 39

occurs after each national census is based on changes in the number of residents across districts. Accordingly, California gained seven new house seats and Electoral College votes after the 1990 reapportionment and one more in the 2000 reapportionment. Most of these seats were located in Southern California, the area with the largest concentration of new immigrants.

Despite the increasing number of Latinos in California, their share of the eligible electorate and regular voters was much lower than their proportion of the overall population.¹² Many Hispanics were recent immigrants and do not have the right to vote, while others have chosen not to naturalize.¹³¹⁴ In addition, Latino immigrants were generally younger and had more children than native-born immigrants, which created a disparity in the citizen voting age population.¹⁵ The relative youth of these Latinos also had important consequences for overcrowding schools, bilingual education, and white flight. Lastly, low income and lack of formal education among Latinos diminished their political engagement and rate of voting.¹⁶ Hispanics made up 33 percent of California's adult population in 2010, 26 percent of its adult citizens, but only 19 percent of those who voted in the 2010 general election. Particularly in the statewide elections, the California electorate tends to be older, wealthier, more educated, more likely to be white, and more conservative than the overall population.

¹² Jack Citrin and Benjamin Highton, 2002, *How Race, Ethnicity, and Immigration are Shaping the California Electorate*, San Francisco: Public Policy Institute of California.

¹³ Jack Citrin, 1987, "Public Opinion in a Changing California," In *The Capacity to Respond*, ed. Ted K. Bradshaw and Charles G. Bell. Berkeley, California: Institute of Governmental Studies.

¹⁴ Pachon, Harry. 1991. "U.S. Citizenship and Latino Participation in California Politics." In *Racial and Ethnic Politics in California*, ed. Byran O. Jackson and Michael B. Preston. Berkeley: Institute of Governmental Studies.

¹⁵ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 33.

¹⁶ Uhlaner et al., 1989. "Political Participation of Ethnic Minorities in the 1980s," *Political Behavior*, 198.

In legislative election, the ethnic homogeneity of many districts ensures a level of minority representation in the California legislature. As of 2012, nearly a fourth of California's Assembly and of its Senate was affiliated with the Hispanic Caucus.¹⁷ However, increasingly direct democracy is the mechanism for settling important issues in the state. To the extent that the preferences of immigrants differ from the opinions of the demographic groups more likely to vote on statewide initiatives and referenda, this trend weakens their influence and that of the ethnic minorities to which they generally belong. This is important to note for the anti-immigrant initiative such as Proposition 63 in 1986 and Proposition 187 in 1994.

Given that the Democratic Party generally supports minorities and defends immigrants' rights, Latinos tend to identify as Democratic.¹⁸ Conversely, Republicans are more likely to express restrictionist sentiments.¹⁹ More recent legislation supporting the expansion of immigrant rights and benefits has maintained support of the legislature's Democratic members, and measures adopted in other states to limit illegal immigrants' access to jobs are not on the agenda in California. Meanwhile stringent measures on illegal immigration remain a universal attitude among Republicans. For instance, in the 2010 Republican gubernatorial primary, Steve Poizner criticized Meg Whitman for her weak stance on illegal immigration. This consequently weakened her general election bid against Democrat Jerry Brown, who was more in favor of supporting immigrants.²⁰

¹⁷ Ibid.

¹⁸ Bryan O. Jackson and Michael B. Preston, 1991, *Racial and Ethnic Politics in California*, 12.

¹⁹ Citrin et al., 1997, "Public Opinion toward Immigration Reform: The Role of Economic Motivations," 860.

²⁰ Ethan Rarick, *California Votes: The 2010 Governor's Race*, (Berkeley: Berkeley Public Policy Press, 2012), 16.

Societal Unrest and the Platform for Anti-Immigrant Sentiments

During the early 1990 recession, there were deep concerns about the economic impacts of a large immigration population at the state and national level.²¹ With a strong presence of Latino immigrants in the U.S., citizens began to believe that the nation had lost control of its borders. Governor Pete Wilson criticized the federal government for failing to fund mandated expenditures for refugees and illegal immigration.²² Meanwhile U.S. Senator Dianne Feinstein proposed border-crossing tolls to obtain revenue for bolstering border patrol forces. Senator Barbara Boxer went even further and proposed that the U.S. National Guard be deployed to curtail the flow of immigrants at the U.S.-Mexican border.²³

Congress and the Clinton administration responded with proposals to tighten the border and increase security.²⁴ They also accelerated the deportation process of illegal immigrants and limited the ability of legal immigrants to receive welfare, supplemental security income, and food stamps. Clinton supported the overhaul of the welfare system and abolished the federal benefit guarantee under Aid to Families With Independent Children, the main cash welfare program that had been in place for sixty-one years. Welfare reform legislation passed in 1996 prohibited future immigrants from receiving federal benefits during their first five years in the U.S. and bars most legal immigrants in the U.S. from receiving food stamps and supplemental security payments. California

²¹ Citrin et al., 1997, "Public Opinion toward Immigration Reform: The Role of Economic Motivations," 862.

²² Annie Nakao, 1991, Nakao, Annie. 1991. "Assessing the Cost of Immigration." *San Francisco Examiner*, 24.

²³ Ibid.

²⁴ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 34.

governor at the time, Pete Wilson, overall approved the bill, but felt that it could have further dismantled the current system.

Since 1991, the potentially detrimental effects of illegal immigration have been a central theme of budgetary politics in California. In the early 1990s, Governor Wilson argued that immigration contributed to the disparity between the number of taxpayers and recipients of social services in the state.²⁵ Given the costs of incarcerating illegal immigrant felons, state supplementary payments to refugees and elderly immigrants, and health, welfare, and education benefits to immigrants, Wilson indicted the federal government for its failure to fulfill funding commitments made in the Refugee Act of 1980 and in IRCA to support immigration and resettlement decisions.²⁶ In 1993, Wilson laid out his policy agenda in an open letter to President Clinton, proposing to cut services to illegal immigrants, including the access to public education required by the 1982 Supreme Court decision in *Plyler v. Doe*.²⁷ The governor also advocated a constitutional amendment to deny birthright citizenship to children of illegal aliens. California, along with Florida and Texas, filed suit against the federal government to recover several billion dollars in April 1994.

Creating a cost-benefit ratio for immigration is difficult, and the conclusions vary depending on the groups considered and the methodologies employed. For instance, according to a study by Julian Simon, during the first twelve years of U.S. residence, the typical immigrant uses substantially fewer public services than a native-born resident and

²⁵ Ibid.

²⁶ California Health and Welfare Agency, 1993, "A Failed Federal Promise: A Call for Renewed Federal Partnership on Immigrant and Refugee Programs."

²⁷ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 34.

is a net contributor in terms of federal taxes paid.²⁸ The Urban Institute estimated immigrants generate a \$25-\$35 billion public assistance annual surplus, but Donald Huddle, an economist from Rice University, concluded that the cost of immigrants to all levels of government projected a \$42.5 billion annual deficit.²⁹ More recent research continues to be divided, though most studies find smaller net consequences than the Urban Institute and Huddle Studies.³⁰ Whatever the impact on the federal government's budget, immigration does not help states with large numbers of immigrants reach their short-run expenditures. Because immigrants in California are younger on average than natives, they are more likely to have school-age children and require state spending for education.

This cost to the state in California includes the expense for programs aimed at the increasing number of school children with limited proficiency in English, a group that, according to the California Department of Education, included more than a fifth of youngsters in 2010. Even strong advocates of the economic benefits of legal immigration usually accept that the costs of education for the children of illegal immigrants and the eligibility of citizen children for public assistance represent a fiscal drain in a state with generous welfare systems such as California.³¹ For this reason, Governor Wilson's portrayed the cost of illegal immigration as a large, unfunded federal mandate.³²

²⁸ Julian S. Simon, 1989, *The Economic Consequences of Immigration*, Oxford: Basil Blackwell.

²⁹ Donald L. Huddle, 1995, "A critique of the Urban Institute's Claims of Cost Free Immigration: Early Findings Confirmed," *Population and Environment* 16: 509.

³⁰ Sari Pakkala Kerr and William R. Kerr. 2011, "Economic Impacts of Immigration: A Survey," Harvard Business School Working Paper, 11.

³¹ Passek, Jeffrey S., and Michael Fix, 1994, "Myths about Immigrants," *Foreign Policy*, 158.

³² Pete Wilson, 1996, "Piety, But No Help, On Illegal Aliens," *New York Times* (July 11): A23.

Moreover, the majority of the state electorate during this time promoted limiting immigrants' access to public services as opposed to expanding them.³³

³³ Citrin et al., 1997, "Public Opinion toward Immigration Reform: The Role of Economic Motivations," 862.

Chapter Three: An Era of Hostility Toward The Latino Community

Despite the demographic diversity of California's population during the late twentieth century, much of the state electorate was against immigration and the ensuing multiculturalism. This was especially evident in the anti-immigrant ballot initiatives that were proposed during this time period. The three main anti-immigration measures that will be highlighted in this chapter are Proposition 63 in 1986, Proposition 187 in 1994, and Proposition 227 in 1996. Proposition 63 was an official language referendum which essentially established English as the official language of the state. California Proposition 187 was a ballot initiative to establish a state-run citizenship screening system and prohibit "illegal aliens" from accessing healthcare, public education, and other social services in California. Proposition 209 outlawed affirmative action in public employment, education, and contracting. With immigrants flooding into California, all three initiatives reflect the electorate's response to the changing dynamics of the state during the late twentieth century. This chapter, which is divided into three sections, will examine the background of each measure including significant events that lead up to its passage. The chapter will also outline the provisions of the measure, and state the major supporters and opponents. Lastly, the chapter will discuss reactions by organizations and the general public following the passage of each provision.

English is the Official Language of California Amendment (1986)

Proposition 63, which was also known as the English is the Official Language of California Amendment, was an initiated 1986 constitutional amendment that established

English as the official language of California.³⁴ While the idea may seem novel at the time, Proposition 63 was actually not the first attempt in California history to regulate language. Language had been a political issue ever since California seceded from Mexico by the Treaty of Guadalupe Hidalgo in 1849.³⁵ The treaty promised that English and Spanish would be given equal status in the operations of government and education in the Southwest.³⁶ During the California Constitutional Amendment thirty years later, an English language provision was added but was later removed in the subsequent constitutional revision of 1966³⁷. This provision was in Section 24 of Article IV, which pertains to the legislative department of the state government.

In 1983, the California Committee for Ballots in English sponsored Proposition O in San Francisco, which called for a return to English-only ballots and passed by 63 percent.³⁸ In 1984, California voters approved Proposition 38, which was a statewide measure similar to Proposition O. These measures did not eliminate bilingual ballots, but placed California on record as opposing the federally mandated law. In 1984, Assembly member Frank Hill introduced two bills concerning official English: AB 201 and an Assembly Constitutional Amendment 30. Both measures died in the Assembly. The state chapter of US English, the California English Campaign, decided to put the issue on the 1986 ballot.³⁹

³⁴ "Proposition 63," Ballotpedia, last modified 2013, accessed February 20, 2014, [http://ballotpedia.org/California_Proposition_63,_English_is_the_Official_Language_Amendment_\(1986\)](http://ballotpedia.org/California_Proposition_63,_English_is_the_Official_Language_Amendment_(1986)).

³⁵ Connie Dyste, "Proposition 63: The California English Language Amendment," *Applied Linguistics* 10, no.3 (1989): 12.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ California English Campaign, 1986, "English Unites US" Brochure.

³⁹ "Hill unveils major bilingual education reform legislation," Press Release, January 1987.

Proposition 63 intended to preserve the English language as the official language in California. Proposition 63 amended Article III of the California Constitution, and includes sections concerning the boundaries of the state, separation of powers, administrative agencies and suits against the state.⁴⁰ It required the legislature and state officials to take necessary action to ensure that the role of English as the common language of the State of California is preserved and enhanced. This initiative also limited the legislature in making laws that would diminish the role of English as the common language of California.⁴¹ The proposition permitted residents or businesspeople in California to have standing to sue the State of California to enforce this action, and the Courts of record of the State of California to have jurisdiction to hear cases brought to enforce this section. Proposition 63 also required the legislature to provide reasonable and appropriate limitations on the time and manner of suits brought under this section.

Proposition 63 was popular amongst the electorate. Former Senator S.I. Hayakawa, a Republican from California, became the spiritual figurehead of the Official English Language campaign. Hayakawa's argument was primarily ideological. According to Hayakawa, the basic reason for designating English as the official language for California was to prevent the state from having two official languages, which would ultimately lead to political subdivision.⁴² In this regard, Proposition was an insurance policy against language minority groups that may attempt to establish their language in California in the future. He asserted that without an official language, California and the

⁴⁰ "Proposition 63, 1986," California State Constitution, Article III Section 6, Accessed 24 February, <http://www.languagepolicy.net/archives/prop63.html>.

⁴¹ "Initiative Constitutional Amendment California Proposition 63," 1986, Official State Language, http://repository.uchastings.edu/ca_ballot_props/968.

⁴² S.I. Hayakawa, 1986, "Why the English Language Amendment? An autobiographical statement." Press statement.

U.S. were in danger of being divided on racial lines. He idealized the American visions, citing President Roosevelt and the pledge of allegiance, and did not make references to the practical and legal implications of instigating major changes in language policy.⁴³

Another main proponent of Proposition 63 was Assembly Member Frank Hill, a Republican from Whittier. Hill argued that bilingual education and public services are detrimental to national unity and biculturalism.

There was widespread opposition to Proposition 63, including Governor George Deukmejian, Los Angeles Mayor Tom Bradley, California Attorney General John Van De Kamp, California Assembly Speaker Willie Brown, and numerous civil and political rights organizations such as the American Civil Liberties Union⁴⁴, the League of United Latin American Citizens, the Mexican American Legal Defense and Educational Fund, and the League of Women Voters.⁴⁵ In a press release on September 2, 1986, Governor Deukmejian called the measure “unnecessary, confusing, and [a] counterproductive way to emphasize the importance of a common language.” The arguments of the opponents reflected concern over potentially damaging effects of the initiative because of the vague wording and open-ended provisions that could lead to unnecessary lawsuits. Opponents of Proposition 63 claimed that it limited rather than expanded rights, did nothing concrete to encourage the learning of English, and basically punished Californians who did not speak English. The opponents also feared that the official English measure would eliminate multilingual services and crack down on immigration. Moreover, these organizations contended that the proposition was a mask to hide anti-immigrant

⁴³ Ibid.

⁴⁴ American Civil Liberties Union of Southern California. October 1986. ACLU Newsletter.

⁴⁵ Trombley, W. 1986a. 'Prop. 63 backer will try to defeat opposing candidates.' Los Angeles Times, October 1.

sentiment that was present in California due to the large concentration of the nation's Latino immigrants.⁴⁶ All groups expressed fears of divisiveness, discrimination, resentment, the potential legal ramifications, and possible curtailment of bilingual services and bilingual education.⁴⁷

Despite its high profile critics, Proposition 63 was approved by 73.2 percent of the voters. Following its enactment, a federal lawsuit, *Gutiérrez v. Municipal Court*, was filed against Proposition 63.⁴⁸ At issue was a speak-English-only rule for municipal court clerks in Huntington Park, California. Ironically, the clerks whose speech was most affected had been hired for their bilingual skills, which they used to translate for Spanish-speaking members of the public. At all other times, except for lunch and coffee breaks, they were required to speak English. The U.S. Ninth Circuit Court of Appeals ruled in 1988 that Proposition 63 was “largely symbolic.”⁴⁹ Citing guidelines of the federal Equal Employment Opportunity Commission, the Circuit Court held the English-only policy to be illegal national-origin discrimination. Moreover, the Circuit Court ruled that Proposition 63 outlawed arbitrary English-only rules in the workplace and declared that Proposition 63 was primarily symbolic.⁵⁰ Judge Stephen Reinhardt delivered the court's opinion in the case, on behalf of a unanimous three-judge panel, on January 27, 1988. A year later, the U.S. Supreme Court reversed the Ninth Circuit's ruling.

⁴⁶ Marcia Chambers, “California Braces for Change With English as Official Language,” November 26, 1986, Accessed April 4, 2014, <http://www.nytimes.com/1986/11/26/us/california-braces-for-change-with-english-as-official-language.html>.

⁴⁷ California Ballot Pamphlet 1986, Accessed February 9, 2014, <http://library.uchastings.edu/research/ballots/index.php>.

⁴⁸ *Ibid.*

⁴⁹ *Gutierrez v. Southeast Judicial Dist. Mun. Ct.*, 838 F.2d 1031.

⁵⁰ Charles V. Dale and Mark Gurevitz, *Legal Analysis of Proposals to Make English the Official Language of the United States*, October 17, 1995, Washington, D.C.: Congressional Research Service.

Despite its legal standing, Proposition 63 was largely ignored because of its vague language. The measure directed the state to “preserve, protect and strengthen the English language,” but did not call for any specific action or enforcement. Therefore, many state, city, and local government agencies continued to print official public documents in Spanish and other languages since Proposition 63 did not regulate how governments use other languages. Nevertheless, Proposition 63 is significant because it represents the first time that the issue of official English has been put to popular vote, which renders the state as a test case for future language policy legislation. More importantly, Proposition 63 sent a message to immigrants that they should learn to speak English if they expected to live in California.

Save Our State Initiative (1994)

The factors leading up to the passage of Proposition 187, which established a state-run citizenship screening system and prohibited illegal aliens from accessing public education and other social services, are immeasurable. More often than not, scholars suggest that it was mainly due to a combination of three factors: the decline in California’s economy, the evident immigrant burden on the state, and a disparity between the electorate and the recipients of public services. Although numerous research studies prove that there are benefits to having a large immigrant population, this section will solely focus on the negative effects of immigration, which formed the basis for Proposition 187.

In the early 1990s, California was hit by a recession, and the state’s gradual deindustrialization had eliminated hundreds of thousands of the semi-skilled jobs. In addition, large reductions in the defense industries that began in the late 1980s drove

California unemployment figures over 9 percent in 1992.⁵¹ As a result of the recession and subsequent crime and overcrowding, there was a migration of middle-class families to neighboring states.⁵² Between 1991 and 1994 when the state's economic recovery began, California had a net out-migration of over 600,000 people. However, the state population continued to grow because of foreign immigration.⁵³ In 1994, California had an estimated 1.3 million illegal immigrants, which included approximately 308,000 illegal alien children. Residents were increasingly concerned about the costs of providing services to the families of illegal immigrants, and Wilson announced that California had transformed into a welfare state.⁵⁴

Collectively, Latino immigrants loaded enormous problems on the state. Children of immigrants were flooding the schools, making up more than 60 percent of the enrollment.⁵⁵ Latino immigrants also filled many of the state's jobs as farm workers, dishwashers, maids, cooks, janitors, and day laborers.⁵⁶ Governor Pete Wilson began to issue complaints that illegal aliens were draining the state of billions annually for education, health care, and prison costs. These complaints were validated in a study by a twelve-member panel of the National Research Councils, which reported that California taxpayers pay considerably more for services to new immigrants than the immigrants pay

⁵¹ Peter Schrag, *Paradise Lost: California's Experience, America's Future* (New York, New Press, 1998) 52.

⁵² Center for Continuing Study of California Economy, *California Population Characteristics* (Palo Alto, CA; Author, 1995), 11.

⁵³ Center for Continuing Study of California Economy, *California Economic Growth* (1996-1997 ed.) (Palo Alto, CA; Author, 1996), 3.

⁵⁴ Jeffrey R Margolis, "Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187," *The University of Miami Inter-American Law Review* 26, no. 2: 368-369.

⁵⁵ Schrag, *Paradise Lost: California's Experience, America's Future*, 58.

⁵⁶ *Ibid.*

in taxes.⁵⁷ The NRC also observed that while “under most scenarios the long-run fiscal impact is strongly positive on the national level,” it is “substantially negative at the state and local levels,” and particularly in states like California that receive most of the new immigrants.

The Latino immigrant community was particularly vulnerable during the early 1990s. There was a lot of negative media attention directed towards Latino immigrants in California. For example, Wilson’s 1994 campaign commercials quote, “they just keep coming,” over pictures of Mexicans running across the state’s southern border. Although millions of aliens were naturalized in the country in 1996, a third of them in California had never voted.⁵⁸ The electorate was disproportionately white and middle class, while the consumers of public services were predominantly Latinos. This imbalance is one of the most significant factors in the successful proposal and passage of Proposition 187.

With increasing tension and hostility towards the politically unincorporated Latino immigrant community in California, Republican Assemblymember Dick Mountjoy introduced Proposition 187 as the “Save Our State” initiative, which then appeared on the November 1994 ballot. Polls surveying community responses showed that there was widespread support for Proposition 187.⁵⁹ Section One of the proposed law states that California citizens have suffered economic hardship because of the “presence of illegal aliens” in the state.⁶⁰ They also claimed that they have been personally injured by “the criminal conduct of illegal aliens” and that they have a “right to the protection of

⁵⁷ James P. Smith and Barry Edmonson, eds., *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), S-9.

⁵⁸ Schrag, *Paradise Lost: California's Experience, America's Future*, 62.

⁵⁹ Nancy H. Martis, 1994, “Illegal immigrants. Ineligibility for public services. Verification and Reporting.” California Voter Foundation.

⁶⁰ Proposition 187 Text.

their government” from illegal immigrants.⁶¹ Section Two and Three criminalizes illegal immigration into the state and outlines procedures regarding the imprisonment and punishments of illegal immigrants. Section Five amends the Welfare and Institutions Code by adding a provision that allows only citizens to have access to social services, thereby excluding illegal immigrants from public social services. Section Six excludes illegal immigrants from publicly funded healthcare and enforces healthcare facilities to not only deny services to illegal immigrants, but to also notify the State Director of Health Services, the Attorney General of California, and the United States Immigration and Naturalization Service of the illegal immigrant. Section Seven compels public schools from admitting or permitting the attendance of children that are not U.S. citizens, which includes children that are lawfully admitted as permanent residents or are otherwise authorized under federal law to be present in the United States. It also compels schools to verify the legal status of each child and his or her legal guardians enrolled in the school district and report suspected illegal immigrants to the INS. Section 8 excludes illegal immigrants from public postsecondary educational institutions and mandates admission officers to promptly report suspected illegal immigrants.

Proponents of the bill cited cost concerns in their argument, estimating that California spent \$3 billion per year on services for illegal immigrants, mostly for educating the children of illegal immigrants.⁶² Governor Wilson was a major advocate of Proposition 187. Given that illegal immigration was a central issue during the early

⁶¹ Kevin R. Johnson, *A Handicapped, Not Sleeping, Giant: The Devastating Impact of the Initiative Process on Latina/o and Immigrant Communities*, 96 Cal. L. Rev. 1259 (2008). Accessed March 3, 2014, <http://scholarship.law.berkeley.edu/californialawreview/vol96/iss5/3>.

⁶² Margolis, “Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187,” 369.

1990s, Governor Wilson declared strong support for Proposition 187 in attempts to win his 1994 re-election campaign against Kathleen Brown.⁶³ Throughout his election campaign, Wilson declared support for the proposition, promising that he would require all state and local government employees to report suspected illegal immigrants to the Attorney General's Office if Proposition 187 passed. State Attorney General Dan Lungren, also running for re-election, agreed to enforce emergency regulations to implement the law immediately after the election. Of course, it is possible that Wilson and Lungren would have supported the proposition without their looming re-election bid, but their support did seemingly boost their approval rating.

Groups that opposed passage of Proposition 187 mostly included civil and political rights organizations such as the American Civil Liberties Union and the Mexican American Legal Defense. President Bill Clinton also vocalized his concern about the implications of Proposition 187, admitting that it is reasonable for Californians to favor a reduction in illegal immigration, but urged the state to reject Proposition 187 as an impediment to federal policy on immigration.⁶⁴ Latino students organized protests against Proposition 187 and even boycotted several high schools.⁶⁵ The California State Parent-Teacher Association also opposed the bill because of its statutes requiring children and their legal guardians to prove their legal status.⁶⁶ Although Proposition 187 was widely supported by conservatives, several prominent conservatives, including former Congressman and Secretary of Housing and Urban Development Jack Kemp, former

⁶³ Cathleen Decker and Daniel M. Weintraub, November 10, 1994, "Wilson Savors Win; Democrats Assess Damage." *Los Angeles Times*, 1.

⁶⁴ Philip Martin, "Proposition 187 in California," *International Migration Review* 29, no. 1: 258-259.

⁶⁵ *Ibid.*

⁶⁶ Marcelo M. Suarez-Orozco, 1996, "California Dreaming: Proposition 187 and the Cultural Psychology of Racial and Ethnic Exclusion," *Anthropology & Education* 27, no. 2, 161.

Secretary of Education William Bennett, and Ron Unz openly opposed the measure.⁶⁷⁶⁸

Three weeks before Proposition 187 was passed, more than 70,000 people marched in downtown Los Angeles in opposition to the measure.⁶⁹ The Mexican president, Carlos Salinas de Gortari, criticized the proposition for being xenophobic and harmful to the rights of migrant laborers.⁷⁰

Despite opposition, California voters approved the proposition by a wide margin: 59 percent to 41 percent on November 8, 1994.⁷¹ Latinos totaled 8 percent of voters, although they comprised 26 percent of the state's population. While 78 percent of Republicans and 62 percent of Independents voted for the initiative, Democratic voters opposed the measure by 64 percent.⁷² The passage of the proposition led to a mobilization of civil rights organizations and the Latino community. Student activists, churches, and ethnic communities expressed opposition to Proposition 187, arguing that the bill was xenophobic and discriminatory. Some feared that the costs of a state-run citizenship screening system and the potential loss of federal funds would off-set any savings of denying public benefits to illegal aliens.⁷³ Immediately following the passage of Proposition 187, a coalition of Latino and civil rights groups, including Mexican

⁶⁷ Matthew Miller, 1999, "Ron Unz's Improbable Assault on the Powers That Be in California," *New Republic*.

⁶⁸ Martin, "Proposition 187 in California," 260.

⁶⁹ "Why Proposition 187 Won't Work," *The New York Times*. November 20, 1994.

⁷⁰ Martin, "Proposition 187 in California," 261.

⁷¹ "California Proposition 187, Illegal Aliens Ineligible for Public Benefits (1994)," Ballotpedia, last modified March 18, 2014, accessed March 18, 2014. http://ballotpedia.org/California_Proposition_187,_Illegal_Aliens_Ineligible_for_Public_Benefits_%281994%29.

⁷² *Ibid.*

⁷³ Suarez-Orozco, "California Dreaming: Proposition 187 and the Cultural Psychology of Racial and Ethnic Exclusion," 161.

American Legal Defense and Educational Fund and American Civil Liberties Union, filed lawsuits in state court.⁷⁴

The constitutionality of Proposition 187 was challenged by several lawsuits. On November 11, 1994, Federal Judge Matthew Byrne issued a temporary restraining order against the implementation of the measure, which State Attorney General Dan Lungren filed.⁷⁵ Judge Mariana Pfaelzer then issued a permanent injunction of Proposition 187 in December 1994 and blocked all provisions excluding those dealing with higher education and false documents. Multiple cases were then consolidated and brought before the federal court. In November 1997, Pfaelzer held that Proposition 187 was unconstitutional because it infringed on the federal government's exclusive jurisdiction over immigration.⁷⁶ Pfaelzer also explained that California is "powerless to enact its own legislative scheme to regulate immigration," and is also "powerless to regulate alien access to public benefits." Governor Wilson appealed the ruling, which brought the case to the federal Ninth Circuit Court of Appeals. But in 1999, the newly elected Democratic Governor Gray Davis had the case brought before mediation.⁷⁷ His administration withdrew the appeal before the courts in July 1999, effectively killing the law.⁷⁸

While the majority of non-Hispanic whites believed that the measure was as an attempt to deal with illegal immigration, most Latinos saw the initiative as anti-Latino,

⁷⁴ McDonnell, Patrick J. (July 29, 1999). "Davis Won't Appeal Prop. 187 Ruling, Ending Court Battles [1]". *Los Angeles Times*. p. 1.

⁷⁵ "Why Proposition 187 Won't Work," *The New York Times*. November 20, 1994.

⁷⁶ Patrick J. McDonnell, "Prop. 187 Found Unconstitutional by Federal Judge," *Los Angeles Times*, November 15, 1997.

⁷⁷ Dave Leshner and Dan Morain (1999-04-16). "Davis Asks Court to Mediate on Prop. 187." *Los Angeles Times*. Retrieved 2009-04-09.

⁷⁸ Patrick J. McDonnell, "Davis Won't Appeal Prop. 187 Ruling, Ending Court Battles," *Los Angeles Times*, July 29, 1997.

and viewed Pete Wilson as someone who did not represent their interests.⁷⁹ Prior to Proposition 187, many referred to the Latino electorate as “a sleeping giant,” implying that while Latinos constituted a large demographic population, about 26 percent in 1990 politically powerful, making only 8 percent of California’s voters in 1988.⁸¹ Proposition 187 led to a growth of the Latino electorate as a result of an increase in newly naturalized Latino citizens.⁸² The Immigration and Naturalization Service records show that there were 234,000 applicants for citizenship nationally between October 1994 and January 1995, an 80 percent increase. 1,500 Latinos were applying for citizenship in Los Angeles County a day, which was an increase from 200 Latinos in October 1993.⁸³ The California Field Poll concluded that, of the 1.15 million new voters added to California’s rolls in the 1990s, one million were Latinos, which constitutes approximately 87 percent of new voters.⁸⁴ Following Proposition 187, the Latino share of California’s overall vote dramatically increased to 12 percent in 1996 and 13 percent in 1998.⁸⁵ According to a study based on voter registrar data in Los Angeles County by Tomás Rivera Policy Institute, Latino turnout has not only been sustained but has surpassed other groups.⁸⁷ In

⁷⁹ “Pantoja, Adrian D. et al, “Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos,” *Political Research Quarterly* 54, no. 4, (December 2001): 732.

⁸⁰ Ibid.

⁸¹ Latino Issues Forum. May 1988. *The Latino Vote 1998*.

⁸² Pantoja, “Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos” 734.

⁸³ John Jacobs, 1995, “Will Political Attacks Drive Latinos To The Polls?” *San Diego Union Tribune*, March 30, B-9.

⁸⁴ Carla Marinucci, 2000, “New Voters in State are Mostly Latino, Poll Documents Surge—Democrats Benefit.” *San Francisco Chronicle*.

⁸⁵ Pantoja, “Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos” 734.

⁸⁶ Ibid., 735.

⁸⁷ Matt A. Barreto and Nathan D. Woods. *Voting Patterns and the Dramatic Growth of the Latino Electorate in Los Angeles County, 11994-1998*. Claremont, CA: Tomás Rivera Policy Institute.

1998, Democratic Latinos in Los Angeles County voted at rates either that non-Hispanic white Republicans, approximately 46 percent.

California Civil Rights Initiative (1996)

As previously mentioned, Latino immigrants significantly impacted the job market during the 1990s, which sparked a discussion on affirmative action. Given that the electorate, once again, felt the need to protect themselves from the detrimental effects of immigration, the electorate adopted Proposition 209, which outlawed affirmative action in public employment, education, and contracting. Proposition 209 was placed on the 1996 ballot following a debate on affirmative action by the University of California Board of Regents.⁸⁸ Prominent groups and individuals in support of the measure, especially Governor Pete Wilson, resembled those that had supported Proposition 187. While affirmative action programs had many beneficiaries, the issue was again interpreted by many Latinos as another expression of racial or ethnic resentment, undoubtedly due in part to the previous measure, Proposition 187.

Modeled on the Civil Rights Act of 1964, the California Civil Rights Initiative was authored by Dr. Glynn Custred and Dr. Tom Wood, two academics from California. It was the first electoral test of affirmative action policies in America. Proposition 209 amended the California constitution to include a new section, Section 31 of Article I. The main provision of the measure states that California shall not discriminate against or give preferential treatment on the basis of race, sex, color, ethnicity, or national origin in the

⁸⁸ Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by choice, voters by necessity: Patterns in political mobilization by naturalized Latinos." *Political Research Quarterly* 54, no. 4 (2001): 729-750.

operation of public employment, public education, or public contracting.⁸⁹ The political campaign to promote Proposition 209 was initiated by Joe Gelman, president of the Board of Civil Service Commissioners of the City of Los Angeles, Arnold Steinberg, a political strategist, and Dr. Larry Arnn, president of the Claremont Institute. It was later endorsed by Governor Pete Wilson and supported and funded by the California Civil Rights Initiative Campaign. A key co-chair of the Campaign was law professor Gail Heriot, who served as a member of the United States Commission on Civil Rights. Supporters of Proposition 209 contended that existing affirmative action programs led public employers and universities to reject applicants based on their race, and that Proposition 209 would “restore and reconfirm the historic intention of the 1964 Civil Rights Act.”⁹⁰

The initiative was opposed by affirmative action advocates and traditional civil rights and feminist organizations on the left side of the political spectrum. Opponents argued that it would end affirmative action practices of tutoring, mentoring, outreach and recruitment of women and minorities in California universities and businesses.⁹¹ Students held demonstrations and walk-outs at several universities including UCLA, UC Berkeley, UC Santa Cruz, and San Francisco State University.⁹² Organizations that opposed Proposition 209 and similar measures claimed that women and people of color were unfairly hampered by an educational system which had given preference to white males for centuries, and that affirmative action had proven a successful way of countering the preferential selection of white males.

⁸⁹ Proposition 209 Text.

⁹⁰ Argument in Favor of Proposition 209.

⁹¹ Rebuttal to Argument in Favor of Proposition 209.

⁹² Students Protest Proposition 209". United Press International, November 7, 1996.

Proposition 209 was approved on November 5, 1996, with 54 percent of the vote, and has withstood legal scrutiny and legislative action until recently. In September 2011, a measure that would have authorized the University of California and the California State University to consider race, gender, ethnicity, and national origin, along with other relevant factors, in undergraduate and graduate admissions, to the maximum extent permitted by the 14th Amendment to the United States Constitution passed both chambers of the California State Legislature, but was vetoed by Governor Jerry Brown.⁹³ Two years later in August 2013, the California State Senate passed California Senate Constitutional Amendment No. 5, which would have effectively repealed Proposition 209.⁹⁴ However, before the bill could be put on a referendum ballot, high opposition from various citizen groups caused the bill to be shelved, and further action will not be considered in the California Assembly.⁹⁵

English in Public Schools Initiative (1998)

Several comments in favor of Proposition 187, that undocumented children take too long to learn English and that the bilingual programs are too costly, set the stage for what eventually became Proposition 227. Defending the right to meaningful education of Limited English proficient students had always been a difficult task during the late twentieth century. The biggest challenge occurred in 1998, when voters passed Proposition 227. Sponsored by Republican Ron Unz, Proposition 227 sought to eliminate

⁹³ Senate Constitutional Amendment No. 5 (May 30, 2013).

⁹⁴ "Senate Vote on SCA 5 (Jan 30, 2014)"

⁹⁵ Deborah Escobedo, "Propositions 187 and 227: Latino Immigrant Rights to Education," *Human Rights* 26, no. 3 (1999): 13.

bilingual education programs and impose singular English-only programs for the state's 1.4 million non-English speaking students.⁹⁶

Similar to Proposition 187, Proposition 227 was prompted by a dramatic increase in Latino immigrant students in the classroom. The state provided over \$400 million in special funds for students who need additional help to succeed in school, and schools reported that the majority of this money was spent for limited English proficient (LEP) students.⁹⁷ With approximately 1.4 million students that identified as LEP enrolled in California public schools, eighty percent of which were Spanish speaking, bilingual education was seen as a drain on the state budget.⁹⁸ The formidable presence of Latino students in classrooms did not translate to equal educational opportunity for them, as they remained a group largely at risk for academic failure.⁹⁹ In 1996, the President's Advisory Commission on Educational Excellence for Hispanic Americans concluded that “educational attainment for most Hispanic Americans is in the state of crisis,” and that “the disparity in overall achievement between Hispanic Americans and other Americans is intolerable.”¹⁰⁰ The State Superintendent's Advisory Task Force concluded that “California public schools have consistently failed to meet the academic standards of Hispanic students” and that “Hispanics are performing dramatically below state averages in all the key indicators of success in school.”¹⁰¹ California's Department of Education

⁹⁶ Ibid., 14.

⁹⁷ Ibid., 15.

⁹⁸ Ibid., 15.

⁹⁹ Patricia C. Gandara and Frances Contreras, *The Latino Education Crisis: The Consequences of Failed Social Policies*, (Cambridge, Mass: Harvard University Press, 2009): 4.

¹⁰⁰ Ibid.

¹⁰¹ Fred Genesee et al., *Educating English Language Learners: A Synthesis of Research Evidence*, (New York: Cambridge University Press, 2006), 14.

confirmed that the Latino dropout rate was 24 percent, which is almost 7 percent above the state average.¹⁰²

The California Legislative Analyst's Office prepared a background statement about Proposition 227 for the state's Voter Guide, asserting that the 1.4 million limited English proficient students could not understand English well enough to keep up in school and should be enrolled in English-only programs. Under Proposition 227, schools must make their lessons understandable to LEP students. To help schools address the needs of these students, the State Department of Education created guidelines for the development of local LEP programs, and the main goal of these programs is to make LEP students fluent in English. Schools had to give all LEP students the option of being in bilingual programs, in which students are taught both in their home language and in English. Schools must also allow parents to choose whether or not their children are in bilingual programs. State guidelines required that schools give LEP students special services until (1) they can read, write, and understand English as well as average English speakers in their grade; and (2) they can participate equally with fluent speakers in the classroom.

Proposition 227 ultimately changed the way that LEP students were taught in California. Specifically, it requires California public schools to teach LEP students in special classes that are taught nearly all in English. This provision had the effect of eliminating bilingual classes and shortened the time most LEP students stay in special classes. It eliminated most programs in the state that provided multi-year special classes to LEP students by requiring that (1) LEP students move from special classes to regular

¹⁰² Carola Suárez-Orozco et al., *Transformations: Immigration, Family Life, and Achievement Motivation among Latino Adolescents*, (Stanford: Stanford University Press, 1996), 7.

classes when they have acquired a good working knowledge of English and (2) these special classes should not normally last longer than one year. Lastly, it required the state government to provide \$50 million every year for ten years for English classes for adults who promise to tutor LEP students.

After Proposition 227 passed with a margin of 61 percent to 39 percent in June 1998, three significant actions took place in California. The first being a request for an injunction against implementation of Proposition 227 in *Valeria G. v. Wilson*, which was denied by U.S. District Court Judge Charles Legge.¹⁰³ The ruling was based on precedents established in *Castañeda v. Pickard* that allowed “sequential” programs for teaching English language and then academic content such as the “structured English immersion” design of Proposition 227. However, Judge Legge’s ruling clarified school districts’ obligation to language minority students to recoup any academic deficit that occurred while students were learning English until LEP students were performing at the acceptable academic level. The second action occurred in April 1999, when the California State Board of Education eliminated the redesignation criteria formerly in place for classification of a limited English proficient student from LEP to Fluent English Proficient (FEP), which allowed school districts to set their own criteria for classifying students as fluent English speakers. Lastly, in July 1999, the State Board of Education adopted the English Language Development Standards that coordinated with the Language Arts/Reading Content Standards, which provided a framework for program design and development and purchase of supporting instructional materials.

¹⁰³ “Legal History of Bilingual Education,” Mora Modules, last modified September 2013, accessed April 2, 2014, <http://moramodules.com/Pages/HistoryBE.htm>.

Chapter 4: A Political Shift in Immigration Reform

Despite arduous efforts to burden undocumented immigrants during the 1990s both in California and other states, there was a monumental shift in immigration politics during Gray Davis' governorship California, which began with granting resident and illegal immigrants in-state tuition in the state's public university system in 2002.¹⁰⁴ Four years later, the California Dream Act, which allowed undocumented students to qualify for state financial aid, was placed on the legislative agenda. From obtaining a driver's license to receiving protection from undeserved deportation, the Latino immigrant community has benefitted from a considerable expansion of rights since the early 2000s. This chapter, which is divided into three sections, will examine the background of the Public Postsecondary Education Act, the Dream Act, and a set of major reform bills Governor Jerry Brown signed into law in 2013. Each section will also outline the provisions of each law, state its major supporters and opponents, and discuss subsequent reactions by organizations and the general public.

Public Postsecondary Education: Exemption from Nonresident Tuition (2002)

As a result of the immigration waves in the late 1980s and early 1990s, there were many undocumented students in California that did not have equal access to a postsecondary education. The highest level of education among the majority of Latino immigrants was a high school diploma.¹⁰⁵ This was not due to a lack of desire or ability, but rather because these students were born abroad to parents who unlawfully immigrated

¹⁰⁴ Citrin et al, "State of Change: Immigration Politics and the New Demography of California," 34.

¹⁰⁵ "Immigration Law. Education. California Extends Instate Tuition Benefits to Undocumented Aliens. Act Relating to Public Postsecondary Education," *Harvard Law Review* 115, no. 5 (March 2002): 1548.

to the U.S. Given that the federal law prevents states from charging instate tuition to undocumented students and that a college education is a necessity for a decent income, these students were essentially crippled by the system.¹⁰⁶¹⁰⁷ In the face of this federal law, Governor Gray Davis signed Assembly Bill 540 into law, adding a new section, to the California Education Code, which created an exemption from the payment of non-resident tuition for certain non-resident students who have attended high school in California and received a high school diploma or an equivalent.

Section One of AB 540 summarizes the need for a new exemption from non-resident tuition for undocumented immigrants. It first declares that the high school students who have attended elementary and secondary schools in California for the majority of their lives are likely to remain, but are exempt from obtaining an affordable college education because they are required to pay nonresident tuition rates.¹⁰⁸ These marginalized students had proven their academic merit by receiving admission into California's colleges and universities.¹⁰⁹ Moreover, exemplary high school students must have access to state colleges and universities and thereby increase the state's productivity and economic growth. It is important to note that AB 540 did not grant postsecondary education benefits on the basis of residence. AB 540 also claimed to have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

¹⁰⁶ Leisy Abrego, "Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California," *Law & Social Inquiry* 33, no. 3, (2008): 716.

¹⁰⁷ Ibid.

¹⁰⁸ Assembly Bill No. 540, Public postsecondary education: exemption from nonresident tuition.

¹⁰⁹ Ibid.

Section Two of AB 540 amended the Education Code, adding Section 68130.5 which outlined the qualifications for paying the in-state tuition rate: (1) high school attendance in California for three or more years; (2) graduation from a California high school or attainment of the equivalent thereof; (3) registration as an entering student at an accredited institution of higher education in California no earlier than the fall semester or quarter of the following academic year; and (4) in the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

Since its proposal by the Assembly of Higher Education in May 2001, the bill passed through the Senate Education Committee and Senate Appropriations Committee with minimal amendments. On September 14, 2001, AB 540 passed with fifty-three yes votes, fifteen no votes, and eight no votes recorded. On October 12, 2001 AB 540 was signed by Governor Gray Davis and was chaptered by the Secretary of State the following day.¹¹⁰ Higher education was finally within reach for students who previously could not afford even community college. Before the passage of AB 540 some of the students who were academically eligible to attend college decided not to apply because it was beyond their means.¹¹¹ Several other participants affirm that AB 540 has reached its instrumental intent, at least at the community college level.

¹¹⁰ “Letter from Gray Davis, Governor, State of California, to the California Assembly,” September 29, 2000, accessed April 2, 2014. http://leginfo.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1197_vt_20000929.html.

¹¹¹ Abrego, “Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California,” 717.

Following AB 540's enactment, a state appellate court subsequently overturned it, saying that state law could not supersede federal law governing illegal immigrants. Although California seemed to contradict 8 U.S.S § 1623's bans on giving undocumented aliens in-state tuition benefits, it avoided federal preemption. The law did not violate the express language of the federal court USC. Federal law provides that an undocumented alien "shall not be eligible on the basis of residence within a state" for a postsecondary benefit.¹¹² Moreover, a state must offer benefits based on objective criteria other than residency. Constitutional or not, the approximately 40,000 AB 540 students have continued to pay resident fees while the case remains on appeal to the state Supreme Court.¹¹³¹¹⁴

This law represents a landmark change in the way that states treat undocumented immigrants.¹¹⁵ However, despite this historic victory for the Latino immigrant community, expensive tuition continued to limit undocumented students' access to four-year institutions. Given that most undocumented students live in precarious economic conditions, attendance at a four-year college is rarely an option. Indeed, according to the University of California Office of the President, in 2002–2003, within a system-wide undergraduate student population of almost 160,000, the exemption was granted to 719 students.¹¹⁶ Of these, however, only 13 percent were undocumented students.¹¹⁷

¹¹² Ibid.

¹¹³ "Statement of Doris Meissner, Commissioner, INS," Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for Fiscal Year 2001: Hearing Before the Subcomm. of the Senate Comm. on Appropriations, 106th Cong. 191 (2000).

¹¹⁴ Ibid.

¹¹⁵ Abrego, "Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California," 717.

¹¹⁶ University of California, Office of the President. 2003. Statistical Summary of Students and Staff, University of California, Fall 2003. <http://www.ucop.edu/ucophome/uwnews/stat/statsum/fall2003/statsumm2003.pdf> (accessed April 1, 2008).

Moreover, without financial aid, only community college is accessible. Even after the passage of AB 540, attendance at any California State University or University of California was prohibitively expensive for these socioeconomically disadvantaged students and their families.¹¹⁸

California Dream Act (2006)

In response to the sustained financial struggle for undocumented students to obtain a postsecondary education, the State Legislature sought to address the adversity of young people who grew up in California but whose future was circumscribed by the current immigration laws. In 2005, Assemblyman Gil Cedillo introduced SB 160, the California Development, Relief, and Education for Alien Minors (DREAM) Act, which is a set of California laws that allow children who were under the age of sixteen when brought into the United States without proper documentation who have attended maintained a grade point average acceptable for university admission to apply for financial aid benefits.¹¹⁹ Assemblyman Gil Cedillo said his proposal would help “children brought here through no choice of their own, who embrace our values and learn the language.”¹²⁰

SB 160 had a long path through the state legislature before its passage. It was first introduced and read for the first time in the Committee on Rules on February 2nd,

¹¹⁷ Abrego, “Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California,” 717.

¹¹⁸ Scott S. Greenberger, “A New Glass Ceiling Undocumented Children Can't Qualify for College and Undocumented Children Face Barrier,” *The Boston Globe*. (July 1, 2001): 2.

¹¹⁹ “To Dream or Not to Dream: A DERAM Act Summary,” Legal Language Services, last modified June 2013, accessed April 2, 2014, <http://www.legallanguage.com/legal-articles/dream-act-summary/>.

¹²⁰ National Immigration Law Center. 2006. Basic Facts about In-State Tuition for Undocumented Immigrant Students. http://www.nilc.org/immlawpolicy/DREAM/in-state_tuition_basicfacts_041706.pdf (accessed April 1, 2008).

2005.¹²¹ It then passed the Senate Education Committee with a 7-4-1 vote with amendments, and was passed by the Senate Appropriations Committee approximately eight months later with a 7-5-1 vote. After going through the Senate Floor, the Assembly on Higher Education, the Assembly on Appropriations, the bill went back to the Assembly Floor, where it passed with a vote of 44-31-4. In August 2006, the Senate passed the bill by a vote of 24-15-1. On September 30, 2006, Governor Arnold Schwarzenegger vetoed the bill. In his veto statement, he agreed that “undocumented students should [not] be penalized for the acts of their parents,” but argues that the bill would “penalize students here legally by reducing the financial aid they rely on to allow them to go to college and pursue their dreams.”¹²²

During the following session of the legislature, another version of the bill was introduced in the form of SB 1. The three provisions that were added to the Education Code all related to student financial aid. It also proposed fee waivers for high school graduates who met non-resident in-state tuition requirements. Through yet another bipartisan effort, the bill passed both houses of the state legislature, and was unveiled by a bipartisan group of U.S. senators and students with hopes that the measure would pass. Much to their dismay, Schwarzenegger vetoed it again on October 13, 2007. In his veto message, he underscored funding problems. Given that public universities were all increasing tuition in order to maintain the quality of education, Schwarzenegger suggested that it would be unfair to “place additional strain on the General Fund to accord the new benefit of providing state subsidized financial aid to students without

¹²¹ “Legislative History,” The California Dream Act, last modified 10 October 2013, accessed January 20, 2014, <http://www.californiadreamact.org/about/legislative-history.html>.

¹²² Rong-Gong Lin II, “Effect of illegal status on college students detailed,” May 20, 2007. *Los Angeles Times*, <http://articles.latimes.com/2007/may/20/local/me-students20>.

lawful immigration status.”¹²³ He also pointed out that undocumented students already qualify for the lower in-state tuition rate while attending California public colleges and universities. According to the National Immigration Law Center, about 65,000 high school students would have qualified for the Dream Act that year.

In 2008, SB 1301, which remained unchanged from SB 1, moved more quickly through the legislature. It was introduced in February 2008 and its third reading and passage took place in August 2008. With even more yes votes than the last several attempts, 46-29, Senator Cedillo and others hoped that the governor would sign it on the third attempt. Unfortunately for proponents of the measure, the DREAM Act was once again vetoed by Governor Schwarzenegger. Again, he cited budgetary concerns. In his veto letter, he stated that he was in support of making education affordable to all California students, but that it was not feasible “given the precarious condition of the state.”

In 2009, SB 160 was held in Senate Appropriations Committee in 2009. In 2010 Gil Cedillo introduced the bill as SB 1460. It passed the State Senate on 3 June 2010 and the State Assembly on 20 August 2010. Then, it went back to both houses again and passed in both on 31 August 2010. On January 11, 2011 Assemblyman Cedillo reintroduced the legislation as two separate bills, AB 130, and AB 131. Both bills moved relatively quickly through the legislature, with fewer revisions than previous years. Finally, AB 130 was signed into law by Jerry Brown on July 25, 2011, granting undocumented students access to an estimated \$88 million in private financial aid in the form of scholarships and grants. AB 131, which allows undocumented students who meet

¹²³ Ibid.

criteria for in-state tuition to apply for financial aid, was signed by Brown on October 8, 2011.¹²⁴ The Brown Administration expressed the necessity in taking action to “expand educational opportunity to all qualified students.” Brown also stated that college promises “intellectual excitement and creative thinking” and that allowing qualified students to attend college will positively impact society.¹²⁵ The California Department of Finance estimated that 2,500 qualified for Cal Grants as a result of AB 130 and AB 131, which amounts to approximately 14.5 million. The Overall Cal Grant Program was funded at \$1.4 billion, which results in 1 percent of all Cal Grant funds will be potentially impacted by AB 131 when the law went into effect in 2013.

The California Dream Act has been widely praised and criticized from various organizations. Proponents claim that the bill would finally narrow the gap in education for US Citizens and illegal aliens, thereby establishing equality and greater opportunity. UC asserted that undocumented students that demonstrated a commitment to academics should not be disregarded because of their immigration status. By allowing AB 540 students to apply for and receive financial aid from the State and UC, these bills help place these students on a more equal footing with other needy students and would enhance their access to college.

Critics have expressed that the measure is a waste of taxpayer money for an already financially burdened California with tuition costs increasing and many students unable to continue their education. They claim that it would merely attract more illegal immigrants to the U.S. Moreover, they assert that California should not offer financial

¹²⁴ “Governor Brown Signs California Dream Act,” January 8, 2011, Press release, California Office of the Governor.

¹²⁵ Ibid.

assistance to undocumented immigrants at a time of a fiscal crisis, especially when the public universities were purportedly accepting more out-of-state and foreign students to help offset the economic downturn. In addition, the measure fueled outrage from Californians who felt that illegal aliens are getting better treatment and more entitlements at their expense.

Favorable or not, undocumented students were considered for state Cal Grants in fall 2013 under AB 130 and AB 131. UC students who met the criteria described in AB 540 and who were not U.S. citizens, permanent residents or are not in other documented categories but meet the criteria in AB 540 were allowed to compete for UC privately donated scholarships for which they are qualified in 2012. In addition, these students are now considered for state Cal Grants beginning fall 2013.

Chapter Four: The Year of the Immigrant: Major Reform Laws (2013)

While many states are waiting for the federal government to decide on issues relating to immigration, California is one of few states that have taken the initiative to pass immigration reform legislation. Last year, Governor Jerry Brown signed into law a group of bills that positioned the state at the forefront of the efforts to fix immigration policies.¹²⁶ “While Washington waffles on immigration, California's moving ahead,” Brown stated, “I'm not waiting.”¹²⁷ Among the measures Brown approved were the Jury Duty Eligibility Act, the Elections Officials Act, the Immigration Services Act, the Employment Retaliation Act, the Domestic Worker’s Bill of Rights Act, the Driver’s Licenses Eligibility Act, the Attorneys Admission to Practice Act, and the TRUST Act. This section will briefly state the intention of each measure.

1. The Jury Duty Eligibility Act, AB 1401 removes the exclusion of “lawfully present immigrants” from jury selection lists that are compiled in part from California’s Department of Motor Vehicles records, essentially permitting undocumented immigrants to serve on juries.¹²⁸
2. The Elections Officials Act, AB 817, allows legal residents to serve as poll workers.¹²⁹
3. The Immigration Services Act, AB 1159, requires that lawyers and consultants abide by ethical business practices. Its intent is to protect

¹²⁶ Michael Gardener, “Lawmakers Expand Immigrant Rights.” *UT San Diego*. September 13, 2013.

¹²⁷ Amanda Beadle, October 7, 2013, “California Governor Signs Sweeping Immigration Reforms into Law,” *Immigration Impact*, <http://immigrationimpact.com/2013/10/07/california-governor-signs-sweeping-immigration-reforms-into-law/>.

¹²⁸ AB-1401 Jury duty: eligibility. (2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1401

¹²⁹ AB-817 Elections officials.(2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB817

immigrants from the unauthorized practice of law by non-lawyers, fraud, and unnecessary mistakes that could jeopardize a client's pursuit of citizenship or result in deportation.¹³⁰

4. The Employment Retaliation Act, AB 666, prohibits employers from retaliating against workers by threatening to report them or members of their family as being in the country illegally.¹³¹
5. The Deferred Action for Childhood Arrivals Act, AB 35, provides that immigration consultants, attorneys, notaries public, and organizations accredited by the U.S. Board of Immigration Appeals are the only individuals authorized to charge a fee for providing services associated with filing an application under the U.S. Department of Homeland Security's deferred action program.¹³²
6. The Domestic Worker's Bill of Rights Act extends overtime protections to personal attendants who care for and support thousands families in California. This act intends to improve working conditions for domestic workers and will in turn improve the quality of care that Californians receive.¹³³
7. The Driver's Licenses Eligibility Act, AB 60, allows undocumented immigrants to obtain a driver's license that will have a special designation and

¹³⁰ AB-1159 Immigration services. (2013-014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1159&search_keywords=

¹³¹ SB-666 Employment: retaliation.(2013-2014)

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB666

¹³² AB-35 Deferred action for childhood arrivals. (2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB35

¹³³ AB-241 Domestic work employees: labor standards. (2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB241

notation that it cannot be used for identification to board planes, register to vote or collect benefits.¹³⁴

8. The Attorneys Admission to Practice Act, AB 1024, allows undocumented applicants the ability to be admitted as an attorney at law.¹³⁵

9. The TRUST (Transparency and Responsibility Using State Tools) Act, AB 4, prohibits local police from detaining an individual on the basis of a U.S.

Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless specified conditions are met.¹³⁶ The act is intended to counteract the Secure Communities immigration program, which requires immigration status checks of everyone held in local jails and has resulted in thousands of deportations for people with no criminal records.

Some conservatives have remarked that all of these laws have made illegal immigrants effectively legal in California. Others have praised the new laws, asserting that they will help bring the approximate eleven million undocumented people who are often described as “living in the shadows” out into the open, so they may take part more fully in American life without fear of deportation.¹³⁷ In the end, the bills that Governor Brown signed into law signify there is now one statewide standard that outlines the rights of people who are here illegally. Furthermore, 2013 was a victory for the Latino immigrant community in California. Undocumented Latino immigrants now have more

¹³⁴ Assembly Bill No. 60.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB60

¹³⁵ AB-1024 Attorneys: admission to practice.(2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1024

¹³⁶ AB-4 State government: federal immigration policy enforcement.(2013-2014).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB4

¹³⁷ Assembly Bill No. 817

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB817

rights than ever before, including the right to drive, serve in juries, practice law, and more. Most importantly, they who will no longer live in fear of being exploited or deported, which is a complete reversal of the marginalized and vulnerable Latino community during the Proposition 187 era.

Chapter Five: Conclusion

California's recent immigration reform laws reflect a huge political shift since its anti-immigrant era only two decades ago. Due to the mobilization and political incorporation of the Latino immigrant community, California is a profoundly different state today. In a complete turnaround from the anti-immigrant legislation during Pete Wilson's governorship, Governor Brown has demonstrated support for the immigrant community by approving a myriad of immigration-friendly bills this past year. Bringing licenses back to all Californians and halting unfair deportations ultimately protects immigrant families, which signifies the complete reversal of the Proposition 187 era.

Together with driver's licenses, increased worker protections, and other civil rights advances, 2013's major legislative victories will reverberate across the nation. Along with TRUST and Driver's Licenses measures, other key bills signed into law this year included The Domestic Worker Bill of Rights, the State Bar Dream Act, and two measures to prevent retaliation against immigrants seeking to exercise basic rights on the job.¹³⁸ Another issue that is currently on the 2014 agenda is access to health care for undocumented immigrants, which is next step in healing the injustice that adversely impacts immigrant communities across California. A group of immigrant youth leaders, health advocates, and allies have begun touring across California to promote the passage of SB 1005, "Health For All," and mobilize support across the state, starting from San Diego and ending in Sacramento where the bill will be heard in the CA Senate Health Committee on April 30th of this year.

¹³⁸ California Immigrant Policy Center. Fall Legislative Update. October 11, 2013.

California is not alone in the immigration reform movement. States such as Illinois, New Jersey and Colorado are amending their policies to be more immigrant-friendly. Most of the latest immigration laws were tested elsewhere first, but they are gaining momentum as demographics and public attitudes push state lawmakers into the pro-reform position. With major immigration reform laws in effect such as the California TRUST Act, thousands of deportations will be prevented. Community leaders and advocates are not only working hard throughout California to ensure it is implemented properly, but are also calling on President Obama to follow California's lead and to immediately halt all deportations. As a result of this effort, the Obama Administration announced it would no longer target those arrested for minor crimes for deportation.

Congressional inaction on immigration has left millions of families living in two drastically different environments. Republican-dominated states, where undocumented immigrants have little to no access to housing, education, and employment, are generally hostile to immigrants. But in predominantly Democratic states such as California, the same immigrants are gaining access to drivers' licenses, better wages and college educations for their children. California is part of a grand transition that other states may follow in time. Furthermore, Governor Brown's actions will affect immigration legislation on a national scale as John J. Pitney Jr., a professor at Claremont McKenna College, concludes, "advocates of more immigration laws are going to be watching California very closely, and if these laws work out well they will be able to use the state as Exhibit A in their case for national legislation."¹³⁹

¹³⁹ McGreevy, Patrick. Brown Signs Immigration Bills, wins activists' kudos in pressing for reform. October 6, 2013. http://www.washingtonpost.com/politics/brown-signs-california-immigration-bills-wins-activists-kudos-in-pressing-for-reform/2013/10/06/71b1dac8-2ecb-11e3-9ccc-2252bdb14df5_story.html

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