

## Illegal Immigrants and Public Education

In June of 1982, the United States Supreme Court ruled in *Plyler v. Doe* that:

“A Texas statute [enacted in 1975] which withholds from local school districts any state funds for the education of children who were not “legally admitted” into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment.”<sup>1</sup>

Justice William Brennan, writing for the majority, explained that:

“[L]ike all persons who have entered the United States illegally, these children are subject to deportation. But there is no assurance that a child subject to deportation will ever be deported... a State cannot realistically determine that any particular undocumented child will in fact be deported until after deportation proceedings have been completed. It would be most difficult for the State to justify denial of education to a child enjoying an inchoate federal permission to remain.”<sup>2</sup>

Brennan and four other Justices of the United States Supreme Court restricted states’ ability to limit the costs of illegal immigration. Employing the same logic as did Justice Brennan, it is fair to say that those children in state public schools with “inchoate federal permission” represent an unlegislated federal tax levied against state taxpayers.

### A Compelling State Interest to Challenge *Plyler*

As part of the decision in *Plyler*, the Court ruled that Texas could not sufficiently prove a compelling state interest in denying public education to illegal immigrant children. Protecting taxpayers and reserving limited public resources for U.S. citizens, however, should be held up as a compelling state interest in challenging *Plyler*.

With eight new Justices on the Court, millions more illegal immigrants in the country, and increasingly sharp public attitudes relating to illegal immigration, the time has come for states to challenge the Court’s ruling in *Plyler* that illegal immigrants qualify for Equal Protection under the Fourteenth Amendment.

The Texas Legislative Budget Board notes that:

“Texas spent an estimated \$7,168 per student in current public education expenditures in the 2003–04 school year, compared with a national average of \$8,248....”<sup>3</sup>

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<sup>1</sup>*Plyler v. Doe*, 457 U.S. 202 (1982); Justice Brennan, writing for the Majority.

<sup>2</sup>*Ibid.*

<sup>3</sup>“Fiscal Size-Up, 2006-2007 Biennium”, Texas Legislative Budget Board  
at [http://www.lbb.state.tx.us/Fiscal\\_Size-up/Fiscal\\_Size-up\\_2006-2007\\_0106.pdf](http://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal_Size-up_2006-2007_0106.pdf)

Each illegal immigrant student enrolled in public school in Texas receives a benefit worth \$7,168 in state tax dollars. Factor in federal contributions, and each illegal immigrant child in public schools receives the benefit of approximately \$10,000 in public education spending.

Therein lies a compelling state interest for denying public education benefits to illegal immigration children. Following is a more detailed case study of how bilingual education in public schools in Texas costs taxpayers and yields little education results.

### **Bilingual Education Case Study: Texas and California**

Chapter 29 of the Texas Education Code declares that “English is the basic language of this state.” However, this declaration is undermined by the subsequent qualification that:

“[L]arge numbers of students in the state come from environments in which the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students....Bilingual education and special language programs can meet the needs of those students and facilitate their integration into the regular school curriculum.”<sup>4</sup>

The assertion that bilingual programs are imperative for students whose first language is not English is the basis for Texas’ bilingual and English as a Second Language (ESL) programs. The logic employed in the Texas Education Code is unclear, since it suggests that despite English being the basic language of the state, those students whose first language is not English must be taught in their own language. This premise is based on the notion that students’ academic achievement will be compromised if they are taught in English when they are not fluent in English or come from a home in which English is not the primary language.

However, experience from other states, most notably California, suggests that students whose primary language is not English perform *better* academically when they are taken out of bilingual or ESL programs. Academic achievement improved across the board in California after bilingual programs were significantly cut back in 1998, casting doubt on the assertion in the Texas Education Code that students with poor English proficiency need to be taught in bilingual programs.

### **The Californian Experience: Proposition 227**

On June 2, 1998, California voters passed Proposition 227, which fundamentally revised the basis upon which bilingual education was made available to students in California’s public schools. Proposition 227 required that:

“[A]ll children in California public schools shall be taught English by being taught in English. In particular, this shall require that all children be placed in

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<sup>4</sup>Texas Education Code, Chapter 29, Subchapter B, §29.051.

English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year.”<sup>5</sup>

As a result of the passage of Proposition 227, the number of schoolchildren enrolled in bilingual education programs in California fell from 409,879 in school year 1997–1998, to 169,440 in 1998–1999.<sup>6</sup> Bilingual education went from being widely available to all students at all grade levels, to being available only to students whose parents signed a waiver allowing them to be educated in bilingual programs, but only after they had spent the first 30 days of the school year being schooled completely in English. The only exception to this was a provision permitting one-year immersion courses during which students would learn English before being assimilated into mainstream programs.

Professor Christine Rossell, author of a number of detailed studies on bilingual education and the impact of Proposition 227, has pointed out that both the one-year immersion courses and the parental waiver have been abused by parents, teachers, administrators, and school districts. Rossell’s research indicated that the one-year immersion period was deemed to be “renewable” by the California State Board of Education if a student had not “achieved a reasonable level of English proficiency,”<sup>7</sup> and that:

“Teachers in schools with enough Spanish speaking English learners to run a bilingual education program explained...that they “worked very hard” telephoning and holding meetings during the 30 day all-English trial period to convince parents that their child would be better off in the bilingual education program.”<sup>8</sup>

These exemptions to the eradication of bilingual education explain the number of students still enrolled in bilingual programs even following the passage of Proposition 227. Rossell’s research indicates that the number of students remaining in bilingual programs remained constant in the years immediately after the Proposition was passed, with roughly 11 percent of high school students and 15 percent of elementary school students being enrolled in bilingual programs. This compares to enrollments rates of 29 percent and 39 percent for high school and elementary school participants, respectively, before the passage of Proposition 227.

### **The Benefits of Ending Bilingual Programs**

Despite residual enrollment in bilingual programs, the passage of Proposition 227 has been beneficial for the California public school system. The American Institutes for Research (AIR) reported in February 2006 that “[s]ince the passage of Proposition 227,

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<sup>5</sup>Christine Rossell, “Dismantling Bilingual Education Implementing English Immersion: The California Initiative,” Boston University, August 20, 2002, at

<http://www.bu.edu/polisci/people/faculty/rossell/papers/DismantlingBilingualEducationJuly2002.pdf>

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid.*

students across all language classifications in all grades have experienced performance gains on state achievement tests.”<sup>9</sup> AIR’s researchers also recommended that to further improve the educational achievement of English learners, California’s schools should “ensure that the students’ English learner status does not impede full access to the core curriculum,” and that “[s]chools should limit prolonged separation of English learners from English-speaking students to cases of demonstrated efficacy.”<sup>10</sup>

Rossell’s research also indicates that, following the passage of Proposition 227:

“[S]chools that eliminated their bilingual education programs had a 10-point gain in reading and a 13-point gain in math, but those that maintained some form of bilingual education program had only a 6-point gain in reading and a 14-point gain in math.”<sup>11</sup>

The results in California demonstrate that the Texas Education Code’s assertion that “[e]xperience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students,” is at best a questionable basis from which to develop education policy for students with limited English proficiency. The California experience casts considerable doubt on the value of the bilingual and ESL programs being operated by schools in Texas and other states, particularly when the growing cost of these programs is taken into account.

### **Bilingual Education in Texas**

The Texas Education Code provides that any school district with 20 or more enrolled students with limited English proficiency (as determined by language proficiency assessments undertaken during the first four weeks of the school year), must offer bilingual education or a special language program to its limited English proficiency students.<sup>12</sup> The programs that must be offered under §29.053 of the Texas Education Code are as follows:

- Kindergarten through elementary grades: Bilingual education
- Post-elementary grades through grade 8: Bilingual education or ESL
- Grades 9 through 12: ESL

Section 29.055 of the Texas Education Code draws a distinction between bilingual education and ESL, with the former being defined as “a full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students enrolled in the program.” ESL is defined as “a program of intensive instruction

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<sup>9</sup>American Institutes for Research, “Five Year Study of Proposition 227 Finds No Conclusive Evidence Favoring One Instruction Approach for English Learners,” News Release, February 21, 2006, at [www.air.org/news/documents/Release200602prop227.htm](http://www.air.org/news/documents/Release200602prop227.htm).

<sup>10</sup>*Ibid.*

<sup>11</sup>Christine H. Rossell, “The Near End of Bilingual Education,” *Education Next*, 2003 No. 4, at [www.educationnext.org/20034/44.html](http://www.educationnext.org/20034/44.html).

<sup>12</sup>Texas Education Code, Chapter 29, §29.053.

in English from teachers trained in recognizing and dealing with language differences.” It is clear from the definition of “bilingual education” that students can be taught the main parts of the curriculum in their primary language. Indeed, the Texas Education Code also makes it clear that “elective courses included in the curriculum may be taught in a language other than English,”<sup>13</sup> with the only exception to this being that “in subjects such as art, music, and physical education, students of limited English proficiency shall participate fully with English-speaking students in regular classes.”<sup>14</sup>

### **The Cost of Bilingual Education to Texas Taxpayers**

A report published by the Texas Comptroller of Public Accounts in December 2004 found that the Texas school population grew by 18 percent between the 1993–1994 and 2002–2003 school years. During the same period, the Comptroller found that the number of students in bilingual or ESL programs grew by 54 percent.<sup>15</sup>

In the 2005–2006 biennium, the Texas Education Agency spent \$22.1 billion on educational programs. The vast majority of this, \$14.5 billion, was spent on “regular” programs, \$3.2 billion was spent on programs for students with disabilities, while \$1 billion was spent on bilingual education programs.<sup>16</sup> These figures reveal that bilingual and ESL programs are the third largest component of the state’s education budget, and that they receive more funding than programs for gifted or talented students, athletics programs, and career and technology programs. In short, Texas spends 5 percent of its education budget teaching its students in languages other than English and teaching English as a foreign language to students who have a limited English proficiency. The Texas Education Code declares that English is the language of the state; yet, flying in the face of that declaration, \$1 billion of education funding is spent each year teaching students in languages other than English.

The vast majority of students enrolled in bilingual education or ESL in Texas are Hispanics. Research compiled by the Southern Methodist University indicates that 90 percent of students in Texas public schools who have “limited English proficiency” are Spanish speakers.<sup>17</sup> The growth rate of Texas’ Hispanic population suggests that the cost of providing bilingual education programs will continue to rise. Since FY 2000–2001, the budgeted cost of bilingual education programs has grown by more than 40 percent, echoing the increase in the state’s Hispanic population, which grew 54 percent during the 1990s.<sup>18</sup> Conservative estimates suggest that Texas’ Hispanic population will grow to

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<sup>13</sup>Texas Education Code §29.055(d).

<sup>14</sup>Texas Education Code §29.055(c).

<sup>15</sup>Texas Comptroller of Public Accounts, “Special Report: The Cost of Underpaying Texas Teachers,” December 2004 at [www.window.state.tx.us/specialrpt/teachersalary04/](http://www.window.state.tx.us/specialrpt/teachersalary04/).

<sup>16</sup>Texas Education Agency, “2005-06 Budgeted Financial Data,”  
<http://www.tea.state.tx.us/school.finance/forecasting/downloads/singlefile.html>

<sup>17</sup>Southern Methodist University, “Texas Bilingual Education Facts,” at  
[www.smu.edu/smunews/education/esl.asp](http://www.smu.edu/smunews/education/esl.asp).

<sup>18</sup>University of Texas at Austin, “In a State of Change: The Rapidly Growing and Increasingly Diverse Population of Texas,” June 2005, at [http://utopia.utexas.edu/articles/tbr/state\\_change.html](http://utopia.utexas.edu/articles/tbr/state_change.html).

comprise more than 50 percent of the state's population by the year 2035,<sup>19</sup> which indicates that the share of the education budget required by existing ESL and bilingual education programs will increase significantly.

The growth of Texas' Hispanic population only goes part of the way towards explaining the increasing cost of bilingual education programs. Another factor is the lack of qualified bilingual education teachers. The Commissioner of Education has designated bilingual education as a "critical shortage area," which allows school districts to offer stipends on top of annual salaries in order to attract qualified bilingual education teachers. In March 2006, the state comptroller reported that:

"Bilingual education was the area most commonly reported as receiving stipends, with 56 percent (208 districts) offering teachers stipends in this area. It was also the area receiving the largest stipends, averaging \$2,253 annually."<sup>20</sup>

This additional cost associated with providing bilingual programs only strengthens the arguments for bringing these programs to an end in Texas.

### **Enrollment of English-Speaking Students**

Section 29.058 of the Texas Education Code declares that "[w]ith the approval of the school district and a student's parents, a student who does not have limited English proficiency may also participate in a bilingual education program." Given the cost of bilingual programs and the assertion of English as the basic language of the state, there can be no logical argument justifying the enrollment of English-speaking students in bilingual programs. English-speaking students should be taught in English in mainstream classes rather than being given the option to enroll in a more costly program. This section of the Texas Education Code should be amended, since it acts only as a loophole through which students whose primary language is not English may remain in bilingual education even when they have become proficient in English.

### **Recommendations:**

*Create an English immersion program for public school students.*

The positive results in California make a strong case for abolishing bilingual education programs in favor of English immersion. The significant cost of bilingual education also warrants a shift to English immersion.

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<sup>19</sup> Texas Population Projections 2000–2040, Texas State Data Center and Office of the State Demographer, June 2004; at <http://txsdc.utsa.edu/tpepp/2006projections/summary/>

<sup>20</sup> Texas Comptroller of Public Accounts, "Special Report: The Cost of Underpaying Texas Teachers," Updated March 2006 at [www.window.state.tx.us/specialrpt/teachersalary06/](http://www.window.state.tx.us/specialrpt/teachersalary06/).

Enact state education goals that recognize the value of learning the English language.

The Texas Education Code makes at least two references to the importance of learning English. Chapter 29 of the Texas Education Code declares that “English is the basic language of this state.” Also, in Texas statute, the number one goal of the state system of public education reads: “The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language.”

Other states’ statutes should give similar weight to the English language.

*NOTE: Model legislation follows in Appendix 4.*

### **Anticipating and Answering Objections**

1. Objection: Forcing children into the English language will limit their learning opportunities.

Response: The experience in California indicates exactly the opposite. Test scores for children went *up* after the state traded bilingual education for English immersion. The American Institutes for Research reported in February 2006 that “[s]ince the passage of Proposition 227, students across all language classifications in all grades have experienced performance gains on state achievement tests.”<sup>21</sup>

2. Objection: Should student scores on accountability tests drop, a state would risk losing funding under No Child Left Behind.

The White House describes the relevant portion of the No Child Left Behind Act (NCLB) as follows:

“States that fail to make adequate yearly progress for their disadvantaged students will be subject to losing a portion of their administrative funds. Sanctions will be based on a state’s failure to narrow the achievement gap in meeting adequate yearly progress requirements in math and reading in grades 3 through 8.”

Such a decline in student test scores is unlikely since, under NCLB, states that fail to meet standards for one year are given additional assistance. However, the results from California, the national leader in English immersion education, indicate that a loss of NCLB funding would not occur.

Furthermore, the accountability and assessment portion of No Child Left Behind is one of the most permissive sections of the Act. A state that adopts English immersion education could similarly make changes in its state assessment method to reflect that change.

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<sup>21</sup>American Institutes for Research, “Five Year Study of Proposition 227 Finds No Conclusive Evidence Favoring One Instruction Approach for English Learners.”

## **Conclusion**

Despite the provision in the Texas Education Code that “English is the basic language of this state,” approximately 700,000 students with limited English proficiency are considered eligible for bilingual education, which accounts for 5 percent of all education spending in Texas. Educational attainment results from California suggest that scaling back bilingual education programs can have a positive impact on student achievement. This, coupled with the growing cost of bilingual programs and the shortage of qualified bilingual teachers in Texas, leads to the conclusion that bilingual education programs in Texas public schools should be ended.

While public schools may have a role to play providing students with basic English language skills—perhaps following the California model of a one-year immersion course—it is not the role of public schools to teach “limited English proficiency” students in any language other than English.

This is costly and will become increasingly more costly as states’ Hispanic populations continue to grow rapidly. Bilingual programs are demonstrably no more beneficial academically than teaching students entirely in English, and they reduce the incentive for students to learn English. If English is truly the basic language our nation and states, it is the language in which all instruction in public schools should be carried out.