Bilingual Ban Could Override Proposition 187

**Primary**: The English-only initiative vows education for ‘all’ children, even those here illegally.

By ALLAN J. FAVISH

The June 1998 California ballot will contain a proposition that will significantly reduce the extent of bilingual education in California public schools. However, virtually unnoticed is that this “English for the Children” proposition also will override Proposition 187’s prohibition on public elementary and secondary school education for children who are illegally present in the United States.

The California Education Code section created by Proposition 187 states: “No public elementary or secondary school shall admit or permit the attendance of any child who is not a citizen of the United States, an alien lawfully admitted as a permanent resident or a person who is otherwise authorized under federal law to be present in the United States.”

But the “English for the Children” proposition will add a section to the education code to say: “Whereas the government and the public schools of California have a moral obligation and a constitutional duty to provide all of California’s children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important.”

A subsection does not say “all of California’s children who are legally entitled to attend public elementary or secondary school,” but broadly says “all of California’s children,” which necessarily includes those who are here illegally.

The chief sponsor and author of “English for the Children” is Ron Unz. When he ran against Pete Wilson in the 1994 Republican gubernatorial primary, he opposed Proposition 187. While it is unclear whether the overriding of Proposition 187’s ban on public education for illegal aliens was deliberately intended by Unz, it is clear that the day after “English for the Children” passes, you can expect Proposition 187’s opponents to be in court arguing that its key provision has been overridden.

Many people support Proposition 187’s ban on publicly financed education for illegal immigrants and believe that eventually it will be upheld by the courts. We also support the significant reduction, if not the elimination of bilingual education and wish that Unz had written his initiative without overriding any part of Proposition 187. I will vote against “English for the Children” because it repeals the key portion of Proposition 187.

Corrective action is possible. As noted by the California Supreme Court in 1975 in White v. Davis, when courts interpret a law enacted through the initiative process, the ballot pamphlet arguments for the initiative are part of the “legislative history” that guide their interpretation.

Therefore, the ballot pamphlet arguments for “English for the Children” should expressly say that the initiative is not intended to extend public education to illegal aliens and the intent is to leave that area of law undisturbed.

I hope Unz can make “English for the Children” something I can support.

Allan J. Favish is an attorney in Torrance.
Unz’s bilingual measure assailed from right

By Phil Garcia
Bee Deputy Capitol Bureau Chief

Early polls have shown Silicon Valley businessman Ron Unz attracting broad support for his June ballot measure to dismantle the current system of bilingual education in California’s public schools.

But that support doesn’t include one vocal segment of California’s body politic: conservative anti-immigration activists.

Be it on talk radio, the Internet or opinion pieces, Unz is hearing the thunder from the right.

While proponents of bilingual education organized the formal campaign against Unz’s self-titled “English for the Children” initiative, the more virulent opposition today is voiced by his conservative ideological opponents.

It’s coming from people who vehemently disagree with Unz’s favorable views on immigration and fear his initiative would undermine Proposition 187, if and when the 1994 anti-illegal immigration ballot measure is upheld on appeal. In November, a U.S. judge struck down most of the measure.

In addition, the conservative opponents say the Unz initiative’s mandate of an English-immersion method of instruction will not result in the elimination of all bilingual education programs.

For his part, Unz says a small percentage of the arguments made by his conservative critics might be legitimate, but he attributes the bulk of the criticism to the fact that he’s Ron Unz.

“I come from a pro-immigrant background and I think that is the thing that probably really annoys them,” said Unz, who unsuccessfully challenged Gov. Pete Wilson for the GOP gubernatorial nomination in 1994 and later that year opposed Proposition 187.

In an Internet posting on Jan. 3, conservative San Francisco radio talk-show host Geoff Metcalf denounced Unz’s initiative as a “Troj-Unz horse trap.”

He wrote that the measure is “a direct end run around Proposition 187” and “creates waivers that ensure the survival of bilingual education in ANY language.”

“Californians have been conned, stroked, fussed,” Metcalf wrote. “... Voters and politicians who apparently want English as an official language to be embraced, learned and used, flocked to sign the Unz initiative much the way they flocked to Proposition 187 and Proposition 209 (the 1996 anti-affirmative action measure).”

Ron Unz

Ron Unz

He believes most attacks on his measure are coming from “fringe people.”

Ron Prince, a Southern California anti-immigration activist and a key supporter of Proposition 187, called the Unz initiative “an out-and-out scam.”

“It does not end bilingual education. ... All it is really doing is changing the name from bilingual education to sheltered English,” Prince said. “When you read the initiative itself (you) see that it does not end bilingual education. It creates all kinds of waivers. It creates new mechanisms.”

Dan Stein, executive director of the Federation for American Immigration Reform, took aim at a part of the measure that calls for spending $50 million a year for 10 years - $500 million - in adult English literacy instruction.

“There has got to be a better way to end bilingual education than through a half-billion-dollar buyout,” Stein said. “In the end, people want less immigration, and the Unz initiative doesn’t deal with the root causes.”

Unz countered that this criticism comes from “fringe people overly excited by ideas that most people view as implausible. About 90 percent of what they’re saying is complete nonsense.”

Unz said it’s true his measure would not eliminate all bilingual education instruction in state public schools.

“I’ve never claimed that it completely outlaws all bilingual education but ... probably 95 percent of the bilingual education programs in California will disappear,” he said. “It will get rid of the overwhelming majority of bilingual education programs that don’t work.”

As for Favis’s arguments, Unz replied that “the text is the text” and that his backers in the Legislature have asked the legislative analyst for an opinion on whether Favis’s argument is valid.

Assemblyman Tom McClintock, R-Simi Valley, a strong backer of the Unz measure said:

“Their argument entirely revolves around some judge misapplying the law (the Unz initiative) to undermine Proposition 187. A common-sense reading of it is that the Unz initiative has no bearing on 187. I view it as being slightly legally paranoid.”

GOP consultant Sal Russo said voters have some frustration with the lack of control at the border. But that doesn’t necessarily translate to opposition to the initiative, Russo said, adding: “I don’t think this strong anti-immigration rhetoric moves many people.”
Unz, above, says it's 'fringe people' who are upset.

Unz takes blow from the right

Conservatives attacking Unz's English initiative

UNZ
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expected within a couple of weeks.

For anti-immigration conservatives, the problem is tucked away in the third paragraph of the Unz initiative. It would add a sentence to the Education Code declaring that California schools "have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society."

By obligating the state to educate "all" children, the initiative appears to conflict with the part of Proposition 187 that prohibits the public education of any child who is not a citizen of the United States or is otherwise here illegally, Tarzana attorney Allan Pavish said.

"This is not complicated. All means all," said Pavish, who maintains a politically conservative Web site and has written opinion pieces about the Unz initiative. "I looked at that and said, 'Hey, if this becomes law, this will overturn Prop. 187.'"

California voters passed Proposition 187 in 1994, intending to keep public education, health services and welfare benefits from undocumented immigrants. But federal Judge Mariana Pfaelzer struck down most of the measure in November, ruling that it conflicts with a narrower ban on benefits for illegal immigrants enacted by Congress in 1996. Unlike Proposition 187, the federal law does not bar undocumented children from public elementary and secondary schools.

"Proposition 187 was declared unconstitutional," said Joe Jaramillo, a staff attorney with the Mexican American Legal Defense and Education Fund. "It's deadletter. As far as the Unz initiative, the legal effect is nil."

Proposition 187 appeal
But Pavish and other Proposition 187 supporters say they expect to appeal the Pfaelzer ruling and they do not want the Unz initiative to interfere with its becoming law.

"I think 187 is legal, and I think eventually the 9th U.S. Circuit Court of Appeals and the Supreme Court will make the law of the land... unless this Unz thing proceeds," Pavish said.

San Francisco constitutional law attorney Joe Remcho agreed that the Unz initiative would take precedence if any conflict with Proposition 187 is established.

"The one that comes later would always supersede," said Remcho, who specializes in ballot initiatives.

Unz publicly opposed Proposition 187 when he ran for governor in 1994. That has fueled suspicions that he purposely planted an end run around Proposition 187 in his initiative.

Unz denies the charge.
"The whole impact of this initiative on 187 was the furthest thing from my mind," said Unz, adding that he is unqualified to evaluate the supposed legal conflict.

Some conservatives also are concerned that Unz's initiative creates a law mandating bilingual education where none now exists. Although the state Department of Education strongly encourages districts to use bilingual education strategies, it is not required by law.

Clause cited
Ron Prince, co-author of Proposition 187, said that would change with the Unz initiative. He points to a clause in the initiative that forces schools to provide bilingual instruction if at least 20 parents per school request it. Prince predicted that droves of parents would exploit that loophole, effectively undermining the initiative's stated intent.

"So now you have a law that says school districts must do it," Prince said. "There are going to be a large number of students who want bilingual education and get it."

Prince's concerns have been echoed on talk radio, particularly KSFO-AM (560) in San Francisco, where conservative host Geoff Metcalfe recently called the Unz initiative "sleazy" and "duplicitous."

Unz flatly dismissed the criticism as "complete nonsense" attributable to "a few of these fringe people."

Changing the system
He acknowledged that some bilingual programs could continue to operate if his measure passes. But for the most part, he said, his ballot measure would "change a system in which bilingual education is theoretically required 98 percent of the time to one in which it would be used maybe 2 percent of the time."

"There are a lot of bizarre theories out there," Unz said. "Politics has gotten a lot more interesting ever since the mentally ill began to be deinstitutionalized a few years ago."

Many conservative critics said they are still looking for a way to support Unz and are hoping the legislative counsel finds no conflict with Proposition 187.

"I think it's difficult to say no to Unz without an alternative," Prince said. "But I don't see this helping the situation right now. I see it hurting the situation."