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Proposition 58:

English Proficiency. Multilingual Education.
“California Education for a Global Economy Initiative”

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 58, the California Education for a Global Economy Initiative, will repeal key provisions of 1998's Proposition 227, removing restrictions to bilingual education programs.¹ Under Proposition 58, public schools can plan and develop a variety of programs to teach English proficiency to English learners (ELs).² Parents would no longer be required to sign waivers each year to allow their children access to bilingual educational programs as required by current law.³ Also, the measure would require school districts to address parental demands for bilingual education program requests.⁴ Additionally, Proposition 58 would provide access to community stakeholders to offer public input on new bilingual education proposals.⁵

- A **YES** vote would replace English-only education and allow optional bilingual immersion programs in public schools.
- A **NO** vote would leave Proposition 227 as is and would retain mandated English-only education in public schools.

II. BACKGROUND

A. Pre-Proposition 227

1. Public Policy Regarding Multilingual Education

On the national front, the Bilingual Education Act of 1968, modeled after the 1964 Civil Rights Act, was passed to provide equal educational opportunities for ELs. Its purpose was to provide federal funds to public school districts that offered innovative educational programs for EL students.⁶ The next milestone came in 1974, with the Supreme Court's ruling in *Lau v. Nichols*.⁷ This case dealt with a class action suit filed on behalf of Chinese-speaking students against the San Francisco Unified School District.⁸ In its unanimous ruling, the Court held that the students were denied a "meaningful education" because they were not truly English proficient.⁹

¹ Cal. Proposition 58 (2016); SB 1174, 2014 Leg., 2013–2014 Reg. Sess. (Cal. 2014).

² Cal. SB 1174, at 2.

³ Cal. SB 1174, at 5.

⁴ *Id.*

⁵ Cal. SB 1174, at 3.

⁶ See *Effects of the Implementation of Proposition 227 on the Education of English Learners, K-12*, AM. INST. FOR RESEARCH & WESTED (Jan. 24, 2006), https://www.wested.org/online_pubs/227Reportb.pdf (on file with the California Initiative Review).

⁷ 414 U.S. 563, 564 (1974).

⁸ *Id.*

⁹ *Id.* at 566.

Later that year, Congress passed the Equal Educational Opportunities Act (EEOA).¹⁰ This federal law provided English instruction for all EL students and required school districts to implement programs that removed barriers, such as a lack of necessary funding for adequate English proficiency educational programs for ELs.¹¹ In 1981, the U.S. Fifth Circuit Court of Appeals heard *Castaneda v. Pickard*.¹² The case was filed against the Raymondville, Texas Independent School District claiming that Mexican-American pupils were discriminated against because of their ethnicity, and the district failed in three areas essential to the adequacy of bilingual education, curriculum, staffing, and testing.¹³ The Court established a three-pronged test to evaluate whether EL programs were met based on certain criteria including that: (1) the program be based on sound educational theory, (2) it be implemented according to sound educational principles, and (3) the educational programs for ELs must produce effective results toward English proficiency.¹⁴

California's bilingual education landscape took shape in 1976 when the State enacted the Chacone-Moscone Bilingual-Bicultural Education Act, requiring school districts to offer academic instruction through students' primary language for the purpose of sustaining achievement in the basic subject areas until the transfer to English was made.¹⁵ This was the most common EL academic instructional model in California until the passage of Proposition 227.¹⁶

2. Political Climate of 1998's Proposition 227

California experienced a wave of anti-immigrant sentiment in the 1990s, which culminated in several pieces of hard line anti-immigrant legislation and laid the groundwork for Proposition 227.¹⁷ Proposition 187 (1994)—ushered in by 60 percent of the vote—eliminated health care, access to education, and other public services for immigrants who entered the country unlawfully.¹⁸ In 1996, Proposition 209 ended the affirmative action policy regarding public hiring decisions and admissions to public colleges and universities, which extended to

¹⁰ Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (1974).

¹¹ *Id.*

¹² 648 F.2d 989, 1009-10 (5th Cir. Unit A June 1981).

¹³ *Id.* at 1010.

¹⁴ *Id.* at 1009.

¹⁵ CAL. EDUC. CODE § 52160 (1976).

¹⁶ See AM. INST. FOR RESEARCH & WESTED, *supra* note 6.

¹⁷ Melanie Mason & Patrick McGreevy, *Latino Lawmakers Move to Reverse Decades of Anti-Immigrant Legislation*, L.A. TIMES (June 22, 2014, 6:16 PM PDT), <http://www.latimes.com/local/la-me-pol-legislature-latinos-20140622-story.html> (on file with the *California Initiative Review*).

¹⁸ *Id.*

undocumented immigrants.¹⁹ Voters approved Proposition 209 with fifty-five percent of the vote.²⁰

In 1998, Proposition 227 passed with 61 percent of the vote.²¹ Considered by some as a voters' initiative response to an intransigent Legislature set on maintaining a broken system, Proposition 227 was aimed at ending bilingual education.²² Prior to 1998 arguments against bilingual education included the analysis that bilingual education provided a means to marginalize ELs, while maintaining steady streams of revenue for programs that paid more for EL pupils.²³ Proposition 227 supporters believed the fastest and best way toward English proficiency was English immersion.²⁴ Although Proposition 227 represents a one-size fits all pedagogy, this made sense to a majority of California voters who saw English as the universal language of the world and the best way for our workforce to remain competitive.²⁵ Still others including many state Latino leaders, bilingual education activists, and a growing number of voters see this era as not only anti-immigrant, but also as part of a larger anti-Latino political agenda.²⁶

B. Proposition 227

1. Path to the Ballot

Proposition 227 was the brainchild of Ron Unz, a Silicon Valley millionaire and 1994 gubernatorial candidate.²⁷ Although many within the immigrant community viewed Proposition 227 as anti-immigrant, Unz sold the measure as a law that would help immigrants assimilate into U.S. mainstream culture faster.²⁸ During the 1994 campaign, the Unz's agenda centered heavily on opposing Governor Pete Wilson's efforts to pass Proposition 187.²⁹ Although Unz ultimately lost the gubernatorial race, Proposition 187 failed.³⁰ Unz's staunch opposition to Proposition 187 helped him build up a positive reputation within the immigrant community.³¹

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Interview with Roger Mackensen, Consultant, Senate Republican Policy Office, Sacramento, Cal. (Oct. 3, 2016) (notes on file with the *California Initiative Review*).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Matt A. Barretto and Ricardo Ramirez, *Anti-Immigrant Politics and Lessons for the GOP from California*, LATINO DECISIONS (Sept. 20, 2013), <http://www.latinodecisions.com/blog/2013/09/20/anti-immigrant-politics-and-lessons-for-the-gop-from-california/> (on file with the *California Initiative Review*).

²⁷ William Ryan, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C. L. REV. 487, 488 (2002).

²⁸ *Id.* at 499.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

In 1997, Unz witnessed a handful of Latino parents protesting the Spanish-bilingual programs their children were forced into.³² In response to these protests, Unz created the “English for the Children” campaign, which sought to establish English-only immersion curriculum in California public schools.³³ Unz, along with a handful of other wealthy individuals, funded Proposition 227.³⁴ At the 1998 election, Proposition 227 passed with 3.5 million votes (61% of the total vote).³⁵

2. Motivation and Elements of Proposition 227

The theory posited by proponents of Proposition 227 was that EL students learn English best by being instructed entirely in English.³⁶ Proponents of the proposition also claimed that switching to English-only programs would mitigate the “poor job” California public schools did of educating immigrant children.³⁷

Although Unz—and his fellow proponents—claimed the motivation behind Proposition 227 was improving an ineffective education system, a fundraising letter sent out on behalf of the English for the Children campaign suggests Unz considered immigrants burdensome if they did not assimilate and learn English as quickly as possible.³⁸ This letter only referenced the Spanish language and referred only to Latinos.³⁹ Based on his opposition to Proposition 187 it seems fair to state that Unz’s motivation was not anti-immigrant, but was pro-assimilation.⁴⁰

Proposition 227 mandated that EL students be taught in English-only classrooms as early as possible.⁴¹ These “Sheltered English” classrooms replaced the bilingual education programs that were used to educate EL students.⁴² Once EL students attained a good working knowledge of English, students were transitioned into the mainstream, English-only classrooms.⁴³ The

³² ENGLISH FOR THE CHILDREN, <http://www.onenation.org/unz.html> (last visited Sept. 20, 2016) (on file with the *California Initiative Review*); RYAN, *supra* note 27 at 498.

³³ See Ryan, *supra* note 27, at 499.

³⁴ *Id.*

³⁵ *California Proposition 58, Non-English Languages Allowed in Public Education (2016)*, BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_58,_Non-English_Languages_Allowed_in_Public_Education_\(2016\)](https://ballotpedia.org/California_Proposition_58,_Non-English_Languages_Allowed_in_Public_Education_(2016)) (last visited Aug. 30, 2016) (on file with the *California Initiative Review*).

³⁶ See Ryan, *supra* note 27, at 488.

³⁷ CAL. EDUC. CODE § 300 (1998).

³⁸ See Ryan, *supra* note 27, at 499.

³⁹ Luis Rodriguez, *Discretion and Destruction: The Debate Over Language in California’s Schools*, 4 TEX. F. ON C.L. & C.R. 189, 192 (1999).

⁴⁰ *Id.*

⁴¹ *Proposition 227 – English Language in Public Schools*, LEGISLATIVE ANALYST’S OFFICE, http://www.lao.ca.gov/ballot/1998/227_06_1998.htm (last visited Aug. 30, 2016) (on file with the *California Initiative Review*).

⁴² CAL. EDUC. CODE § 305 (1998).

⁴³ LEGISLATIVE ANALYST’S OFFICE, *supra* note 41.

measure also limited the amount of time an EL student could spend in a “sheltered English” program to one year.⁴⁴

Proposition 227 had a provision that allowed its requirements to be waived if the EL parents provided written informed consent and could demonstrate that their child: (1) already knew English; (2) was ten years or older; or (3) had special needs.⁴⁵ However, because this waiver required annual renewal, an EL student was not guaranteed exemption from Proposition 227 every year.⁴⁶

To provide some bite to Proposition 227’s mandates, the initiative also incorporated a private right of action as an enforcement mechanism.⁴⁷ If a parent felt their child had been denied proper English language instruction, the parent could sue the teacher, the school administrator, or any other elected official for enforcement of the proposition’s provisions.⁴⁸ This meant that a teacher could be personally liable for either unintentionally or willfully disregarding the provisions of Proposition 227.⁴⁹

Finally, Proposition 227 included a section that would only allow amendments to the initiative if the amendments were in furtherance of the original purpose of the initiative and passed by a two-thirds majority of each legislative house, or approved by the electorate.⁵⁰

3. Legal Challenges to Proposition 227

Ordinarily, the legal challenges of a precedent proposition would not warrant such in depth analysis. However, in the case of Proposition 227, it is necessary to analyze these attempts at repealing the law through litigation because the separate attempts demonstrate the difficulty in even amending the mandates of the proposition. Both the students and teachers brought claims alleging the new law was unconstitutional. However, as analyzed below, neither the state court nor the federal court agreed. This inability to amend or repeal Proposition 227 through the legal system is important to note because Proposition 227 is unlikely to be amended or repealed without the California Legislature passing and submitting legislation to the people as Proposition 58 does.

⁴⁴ CAL. EDUC. CODE § 305.

⁴⁵ CAL. EDUC. CODE § 311 (1998).

⁴⁶ Catherine Johnson, *The California Backlash Against Bilingual Education: Valeria G. v. Wilson and Proposition 227*, 34 U.S.F. L. Rev. 169, 177 (1999).

⁴⁷ CAL. EDUC. CODE § 320 (1998).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ CAL. EDUC. CODE § 335 (1998).

a. *Student Challenge: Valeria G. v. Wilson*⁵¹

As a result of Proposition 227's implementation, nearly every bilingual program in California was shut down.⁵² The day after the 1998 election, Proposition 227 was challenged for the first time in a federal court.⁵³ In *Valeria G. v. Wilson*, a group of students and their parents challenged Proposition 227 for violating the Equal Educational Opportunity Act (EEOA), the Supremacy Clause, Title VI of the Civil Rights Act, and the Fourteenth Amendment's Equal Protection Clause.⁵⁴ The district court denied their request for an injunction and upheld Proposition 227 with respect to each of the four claims.⁵⁵

The court analyzed the EEOA claim first.⁵⁶ Here, the court applied the three-part *Castaneda* test to determine whether Proposition 227's English-immersion programs constituted an appropriate action under the EEOA.⁵⁷ The court ultimately held that Proposition 227's programs were effective and appropriate under the EEOA.⁵⁸

The court then proceeded to analyze the Supremacy Clause arguments.⁵⁹ The plaintiff's made two arguments. The first argument claimed that Proposition 227 interfered with a school's obligations to comply with the EEOA. The second argument posed by plaintiffs was that the initiative bars the "congressionally-favored option" of primary language instruction.⁶⁰ The court disagreed, however, and held that Congress deliberately chose not to mandate bilingual education, which merely suggests that Congress did not wish to discourage bilingual educational programs.⁶¹

Next, the court analyzed the plaintiff's contention that Proposition 227 violated Title VI of the Civil Rights Act and its implementing regulations.⁶² The court held that, on the face of the initiative, there was no evidence of discriminatory intent.⁶³ Finally, the court analyzed and rejected plaintiff's claim that Proposition 227 violated the Equal Protection Clause of the

⁵¹ 12 F. Supp. 2d 1007 (N.D. Cal. 1998).

⁵² See Johnson, *supra* note 46, at 179.

⁵³ *Valeria G.*, 12 F. Supp. 2d at 1007.

⁵⁴ *Id.* at 1015.

⁵⁵ *Id.* at 1027-28.

⁵⁶ *Id.* at 1016.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1021.

⁵⁹ *Id.*; see also Johnson, *supra* note 46.

⁶⁰ *Valeria G.*, 12 F. Supp. 2d at 1022.

⁶¹ *Id.*

⁶² *Id.*; see also 42 U.S.C. § 2000(d) (1964) ("no person shall, on the ground of race, be excluded from participation in, benefits of, or be subjected to discrimination under any program receiving federal financial assistance").

⁶³ *Valeria G.*, 12 F. Supp. 2d at 1023.

Fourteenth Amendment to the United States Constitution.⁶⁴ The court went out of its way to note that the plaintiff's argument, although unconventional for an Equal Protection claim, was not frivolous.⁶⁵ However, the court reasoned that since bilingual education is not a right provided within the federal constitution, California voters have the right to impose restrictions upon themselves.⁶⁶

Ultimately, the court found that the claims raised by the students had a low probability of success based on the merits of each claim.⁶⁷

b. *California Teacher's Association Challenges*

The students were not the only ones affected by Proposition 227's requirements. Although many of the provisions set up requirements that directly affected the way many students would learn, it also created a private right of action to hold teachers accountable who refused to enforce the Proposition's mandates.⁶⁸ In response to this single provision of Proposition 227, a group of California teachers sued in federal court and argued that the Proposition implicated protected speech and should therefore comply with the more stringent vagueness and due process standards.⁶⁹ The district court rejected the teachers' claims, but the teachers appealed the lower court's decision regarding the vagueness challenge.⁷⁰ The Ninth Circuit affirmed the lower court's ruling on appeal.⁷¹

i. *District Court: California Teacher's Association v. Davis*⁷²

First, the district court had to determine whether Proposition 227 implicated protected speech.⁷³ The teachers argued that because the law was so overbroad they were unsure as to what behaviors would subject them to liability.⁷⁴ In order to determine what was and was not considered protected speech the court had to first determine what, if any, First Amendment rights a teacher had while in the classroom.⁷⁵ The court reasoned that since a classroom is not a public forum, restrictions could be placed on a teacher's speech as long as the restrictions are reasonable.⁷⁶ The court quickly determined that there were rights that attach to some of the

⁶⁴ *Id.* at 1025.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 1027.

⁶⁸ CAL. EDUC. CODE § 320 (1998).

⁶⁹ *Cal. Teachers Ass'n v. Davis*, 64 F. Supp. 2d 945, 952 (C.D. Cal 1999).

⁷⁰ *Id.* at 975.

⁷¹ *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141 (9th Cir. 2001).

⁷² *Davis*, 64 F. Supp. 2d at 952.

⁷³ *Id.*

⁷⁴ *Id.* at 953.

⁷⁵ *Id.* at 953.

⁷⁶ *Id.*

teacher's activities outside of the classroom.⁷⁷ The court concluded that the plain language of the enforcement provision only applied to instances of "teaching" and "instruction;" therefore, the enforcement provision would not reach the protected rights outside of the classroom.⁷⁸

The teachers also argued that the Proposition was vague because it did not provide teachers with adequate notice as to what conduct was prohibited and what conduct could expose them to personal liability.⁷⁹ The court began by explaining that a statute is void for vagueness if it does not provide adequate notice regarding the proscribed conduct to people of ordinary intelligence, or if the enforcement of the statute is arbitrary and discriminatory.⁸⁰ The court found that the enforcement provision did give teachers adequate notice and did avoid arbitrary enforcement.⁸¹

The final argument raised by the teachers was a due process argument.⁸² The teachers claimed that the enforcement provision violated due process because it did not specify an intention to override California common law, it was silent as to a metric for damages, and it lacked procedural safeguards against arbitrary lawsuits.⁸³ The court rejected each of the teachers' due process arguments.⁸⁴ Most notably, the court stated that the teachers, like all other potential litigants, are free to defend themselves against arbitrary lawsuits.⁸⁵

In the end, the court rejected every claim made by the teachers and upheld the substance of the enforcement provision of Proposition 227. The teachers did appeal this lower court decision, but only challenged the lower court's ruling on the vagueness issue.

ii. *Appellate Court: California Teacher's Association v. State Board of Education*⁸⁶

On appeal to the Ninth Circuit Court of Appeal, the Teacher's Association made two arguments regarding the claim for vagueness. First, the teachers argued that they were uncertain when they were required to use English because the scope of Proposition 227 is undefined.⁸⁷ Second, the teachers argued that there was too much uncertainty about how much non-English

⁷⁷ *Id.* at 954.

⁷⁸ *Id.*; CAL. EDUC. CODE § 320 (1998).

⁷⁹ *Davis*, 64 F. Supp. 2d at 954.

⁸⁰ *Id.* at 955.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 956-57.

⁸⁴ *Id.*; CAL. EDUC. CODE § 320 (1998).

⁸⁵ *Davis*, 64 F. Supp. 2d at 957.

⁸⁶ 271 F.3d 1141 (9th Cir. 2001).

⁸⁷ *State Bd. of Educ.*, 271 F.3d at 1151.

would be permitted because the Proposition uses imprecise language such as “overwhelmingly” and “nearly all.”⁸⁸

As to the Teacher’s Association first point, the court reiterated the lower court’s ruling and stated that the Proposition was limited to the language the teachers use when presenting curriculum in the classroom.⁸⁹ The court noted that there could inevitably be situations where it may be unclear whether a teacher is providing instruction, but in the vast majority of interactions between students and teachers it should be clear when a teacher is providing instruction.⁹⁰ The court swiftly addressed the Teacher’s Association second argument regarding the lack of precision in words like “overwhelmingly” and “nearly all” by stating that these phrases are terms of common understanding.⁹¹ The court concluded that despite the ambiguity inherent in these terms, the amount of protected speech being restricted was negligible.⁹²

C. Post-Proposition 227: A Shift in Policy

Over the past decade, California has begun to revisit its stance on immigration issues.⁹³ Just in the last couple of years, several pieces of legislation were signed into law that would be considered a huge departure from the policies of the 1990s. For example, in 2013, Governor Brown signed the TRUST Act into law, which limited the reasons a local jail could hold immigrants in detention.⁹⁴ In 2014, Governor Brown signed the Safe and Responsible Driver Act, which allowed all Californians to apply for a driver’s license regardless of immigration status.⁹⁵ Just this past June, Governor Brown signed SB 10 (Lara), which directed the State to apply for a waiver under the Affordable Care Act to allow undocumented immigrants and DACA recipients⁹⁶ to purchase a health plan through Covered California with their own money.⁹⁷ This trend demonstrates the California Legislature’s willingness to revisit policies that were established twenty years ago.

⁸⁸ *Id.* at 1152.

⁸⁹ *Id.* at 1151.

⁹⁰ *Id.* at 1152.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Mason & McGreevy, *supra* note 17.

⁹⁴ AB 4, 2013 Leg., 2013–2014 Reg. Sess. (Cal. 2013).

⁹⁵ AB 60, 2014 Leg., 2013–2014 Reg. Sess. (Cal. 2014).

⁹⁶ *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> (last visited Sept. 29, 2016) (a DACA recipient refers to an individual who was illegally brought into the United States as a child and meets the guidelines set forth by USCIS and has been granted deferred action as regards their applicability for removal) (on file with the *California Initiative Review*).

⁹⁷ SB 10, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

III. PROPOSITION 58 | THE LAW

A. Path to the Ballot

1. *Citizen-Backed Initiatives v. Legislative Referred Initiatives*

Proposition 58, unlike any other initiative on the ballot this cycle, was placed on the ballot by the California Legislature. The process by which an initiative is placed on the ballot by the legislature is slightly different from the process a citizen-backed initiative goes through.

a. *Citizen-Backed Initiatives*

Article IV, Section 1 of the California Constitution expressly grants the people of the State the power of initiative.⁹⁸ Article II, Section 8(b) of the California Constitution provides the process by which an elector may place an initiative on the ballot.⁹⁹

The first step in qualifying an initiative is to write the text of the proposition. The proponent can draft the language alone, with the advice or assistance of a lawyer, or can seek assistance from the Office of the Legislative Counsel.¹⁰⁰ Once this step is completed the proponent must submit a draft, along with a fee, to the Attorney General and submit a request for a title and summary to be prepared and circulated.¹⁰¹ Upon receiving an official summary, proponents are allowed to circulate a petition to gather signatures.¹⁰² Once the appropriate amount of signatures has been gathered, the proponent submits the petition to the appropriate

⁹⁸ “The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.”

⁹⁹ “An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.”

¹⁰⁰ *Statewide Initiative Guide*, CALIFORNIA SECRETARY OF STATE, <http://www.sos.ca.gov/elections/ballot-measures/how-qualify-initiative/initiative-guide> (last visited Aug. 30, 2016) (on file with the *California Initiative Review*).

¹⁰¹ *Id.*

¹⁰² *Id.*

county elections officials.¹⁰³ If the signatures can be verified, and all deadlines are met, the initiative become qualified and can be placed on the ballot.¹⁰⁴

One mechanism often incorporated into citizen-backed initiatives, and happens to be fairly unique to this type of legislation, is the requirement for a two-thirds vote of the Legislature in order to amend the propositions measures only if those amendments are in furtherance of the propositions original purpose. This mechanism is used to ensure that the Legislature cannot easily undo the laws created by the initiative process.

b. *Legislative referred Initiatives*

Article II, Section 10(c) of the California Constitution authorizes the California Legislature to amend or repeal initiative statutes by passing a statute through the normal legislative process and then submitting the amending or repealing statute to the voters for their approval.¹⁰⁵

Unlike citizen-backed initiatives, the Legislature does not need to submit their proposed language to the Attorney General. Nor does the Legislature have to gather signatures on a petition and verify that the appropriate number of signatures has been obtained. Instead, the Legislature follows the ordinary procedures required for passing a bill as set out under Article IV, Section 8 of the California Constitution. A bill must pass through both houses and be signed by the Governor and then it can be placed on the ballot for voter approval.¹⁰⁶ When the Legislature opts to place amendments to a past proposition on the ballot they often do so because the initial proposition mandates the people approve the amendments. One way to avoid the two-thirds voting mechanism often employed in citizen-backed initiatives is to submit a repeal of the proposition to the people, but include a simple majority provision that will allow the Legislature to easily amend the new law rather than a two-thirds voting requirement.

2. *Journey Through the Legislature*

Proposition 58 was introduced by Senator Lara during 2013-2014 Regular Session in February of 2014 as SB 1174.¹⁰⁷ The bill was titled the “California Education for a Global Economy Initiative.”¹⁰⁸ SB 1174 received bipartisan, unanimous support as it went through the

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ “The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.”

¹⁰⁶ *Overview of Legislative Process*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, <http://www.leginfo.ca.gov/bil2lawx.html> (last visited Oct. 5, 2016) (on file with the *California Initiative Review*).

¹⁰⁷ SB 1174, 2014 Leg., 2013–2014 Reg. Sess. (Cal. 2014).

¹⁰⁸ Cal. SB 1174, at 1.

Senate Education Committee and the Senate Appropriations Committee.¹⁰⁹ After passing through the two Senate committees SB 1174 received bipartisan support on the Senate Floor with a vote of 27–8.¹¹⁰

Once the bill traveled to the Assembly side of the Legislature, it only received partisan support from the democratic caucus in both the Assembly Education Committee and the Assembly Appropriations Committee.¹¹¹ Some political maneuvering occurred on the floor of the Assembly before the bill was passed and sent back to the Senate for concurrence on the amendments.¹¹² Assembly Republicans attempted to attach hostile amendments to SB 1174 at the last minute, but failed to do so.¹¹³ The bill made it off of the Assembly Floor on a strict party-line vote of 53-26.¹¹⁴

After SB 1174 made its way back to the Senate Floor to concur in the amendments from the Assembly Floor and committees, it faced a much more vocal opposition.¹¹⁵ Senator Huff, who voted for the bill when it first went through the Senate, opposed the bill when it came back to the Senate Floor on concurrence.¹¹⁶ Somewhere between the first vote on the Senate Floor and the bill making its way to the Assembly side, Republicans began arguing that language within the bill would allow the Legislature to make changes to language education law with a simple majority vote.¹¹⁷ In Senator Huff’s words, the bill created “an end run around the vote of the people.”¹¹⁸ Even with the newfound opposition, SB 1174 passed the Senate Floor with a vote of 25–10 in August 2014.¹¹⁹

¹⁰⁹ Senate Education Committee Vote of SB 1174, Unofficial Ballot (Apr. 30, 2014) https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016); Senate Appropriations Committee Vote of SB 1174, Unofficial Ballot (May 12, 2014) https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

¹¹⁰ Senate Floor Vote of SB 1174, Unofficial Ballot (May 27, 2014) https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

¹¹¹ *Complete Bill History of SB 1174*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Assembly Floor Vote of SB 1174, Unofficial Ballot (Aug. 25, 2014) https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

¹¹⁵ Senate Floor Session Bills, *Senate Concurs in Assembly Amendments 2:26.44* (Official California Legislative Information video Aug. 26, 2014), http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=2399&meta_id=57920 (on file with the *California Initiative Review*).

¹¹⁶ *Id.*

¹¹⁷ See Mason & McGreevy, *supra* note 17.

¹¹⁸ *Id.*

¹¹⁹ Senate Floor Vote of SB 1174, Unofficial Ballot (Aug. 26, 2014) https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

SB 1174 was signed by Governor Brown on September 28, 2014, and was scheduled to be placed on the next statewide general election ballot in November 2016.¹²⁰

B. Proposed Law

Proposition 58 seeks to amend and repeal the codified sections of Proposition 227 in the California Education Code. Sections 2-5 and 7-8 seek to establish a new stance on public policy towards multilingualism and attempt to change procedures and substantive law by amending Sections 300, 305, 306, 310, 320, and 335 of the Education Code. Section 6 of Proposition 58 would entirely repeal Section 311 of the Education Code.

1. Establishing New Public Policy

Section 2 of Proposition 58 would amend Section 300 of the Education Code.¹²¹ Specifically, it would remove language that states that California public schools do a poor job of educating immigrant children, that experimental bilingual programs are a waste of resources, and that the easiest way for students to attain fluency in English is to be heavily exposed to the language at an early age.¹²² In its place, Section 2 would declare that multilingualism is a necessary skill for our country's national security, diplomacy, and economic trade.¹²³ Section 2 would also note that parents deserve the option of having their students participate in multilingual programs because new studies show that access to language programs provide cognitive, economic, and long-term academic benefits and increases a child's preparation for college.¹²⁴ Finally, Section 2 would resolve that by amending and repealing the codified sections of Proposition 227, the State would "advance the goal of voters to ensure that all children in California public schools receive the highest quality education, master the English language, and access high-quality, innovative, and research-based language programs."¹²⁵

Section 7 of Proposition 58 would amend Section 320 of the Education Code.¹²⁶ Currently, Section 320 of the Education Code holds the private right of action enforcement provision.¹²⁷ Section 7 would remove this right of action completely and replace it with the

¹²⁰ SB 1174, 2014 Leg., 2013–2014 Reg. Sess. (Cal. 2014).

¹²¹ Cal. SB 1174, at 2.

¹²² CAL. EDUC. CODE § 300 (1998).

¹²³ Cal. SB 1174, at 2(e)-(f).

¹²⁴ Cal. SB 1174, at 2(k), (m).

¹²⁵ Cal. SB 1174, at 2(n).

¹²⁶ Cal. SB 1174, at 7.

¹²⁷ CAL. EDUC. CODE § 320 (1998).

following policy statement: “All California school children have the right to be provided with a free public education and an English language public education.”¹²⁸

2. Adopting New Language Program Regulations

Section 3 of Proposition 58 would amend Section 305 of the Education Code.¹²⁹ This section would delete the requirements that currently establish the mandated English immersion programs.¹³⁰ In Section 305’s place, Section 3 of Proposition 58 would grant school districts the authority to determine the best language programs to implement by consulting experts, school administrators, teachers, and parents.¹³¹

Section 4 of Proposition 58 would amend Section 306 of the Education Code.¹³² Section 306 defines terms such as “English learner,” “English language classroom,” “English language mainstream classroom,” and “sheltered English immersion.” Section 4 would update the definition of “English learner” to match that of the No Child Left Behind Act.¹³³ It would also delete the terms “English language classroom,” “English language mainstream classroom,” and “sheltered English immersion,” and replace them with the term “Language acquisition programs.”¹³⁴ This term would be defined as an educational program that ensures English acquisition while providing students with multilingual proficiency.¹³⁵

Section 5 of Proposition 58 would amend Section 310 of the Education Code.¹³⁶ Specifically, it would remove the waiver requirement parents are currently required to use if they want to secure access to bilingual education programs for their students.¹³⁷ Section 5 would replace the waiver language with a mechanism to allow parents to request a bilingual program be created at their student’s school.¹³⁸ This mechanism can only be triggered if the parents of 30 students or more per school or the parents of 20 students or more in any grade request a bilingual program.¹³⁹ If a school should decide to create a bilingual program, it must consult the stakeholders as laid out in Section 3 of Proposition 58 as well as comply with all other Education Code requirements, such as class size and parental notice requirements.¹⁴⁰

¹²⁸ Cal. SB 1174, at 7.

¹²⁹ Cal. SB 1174, at 3.

¹³⁰ CAL. EDUC. CODE § 305 (1998).

¹³¹ Cal. SB 1174, at 3.

¹³² Cal. SB 1174, at 4.

¹³³ Cal. SB 1174, at 4(a).

¹³⁴ Cal. SB 1174, at 4(c).

¹³⁵ *Id.*

¹³⁶ Cal. SB 1174, at 5.

¹³⁷ CAL. EDUC. CODE § 310 (1998).

¹³⁸ Cal. SB 1174, at 5(a).

¹³⁹ *Id.*

¹⁴⁰ Cal. SB 1174, at 5(b).

Section 6 of Proposition 58 would repeal Section 311 of the Education Code.¹⁴¹ This section of the Education Code contains the circumstances under which parents could apply for waivers.¹⁴² If Proposition 58 were to pass, this section would no longer be necessary because Section 5 would remove the need for a waiver.¹⁴³

Section 8 of Proposition 58 would amend Section 335 of the Education Code.¹⁴⁴ This section of the Education Code currently states the only amendments the Legislature can make to the provisions of Proposition 227 must be made in furtherance of the act and must pass both houses of legislature by a two-thirds vote.¹⁴⁵ Section 8 of Proposition 58 would remove these requirements altogether and would instead state that Proposition 58 may be amended by a statute that is approved by the voters or by a statute passed by a simple majority vote in each house.¹⁴⁶ This is important to highlight because the Legislature is giving itself more power to amend the legislation than it had when trying to amend Proposition 227.

IV. DRAFTING ISSUES

Proposition 58 does not appear to have any drafting issues. As noted above, legislative referred initiatives go through a more rigorous drafting process than many citizen-backed initiatives. Proposition 58 went through an incredibly thorough vetting process in the Legislature. The first layer occurred in Legislative Counsel, which is a non-partisan public agency tasked with drafting all legislative proposals that flow through the Legislature.¹⁴⁷ The next layer occurred in the Legislature itself as the bill passed through two Senate committees, the Senate Floor, two Assembly committees, the Assembly Floor, back again to the Senate Floor, and finally to the Governor for signing.¹⁴⁸ Having gone through this rigmarole, the risk that there are any drafting issues present in the language of the Proposition is reduced.

V. CONSTITUTIONAL ISSUES

¹⁴¹ Cal. SB 1174, at 6.

¹⁴² CAL. EDUC. CODE § 311 (1998).

¹⁴³ Cal. SB 1174, at 5(a).

¹⁴⁴ Cal. SB 1174, at 8.

¹⁴⁵ CAL. EDUC. CODE § 335 (1998).

¹⁴⁶ Cal. SB 1174, at 8.

¹⁴⁷ *Firm Overview*, STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL, <http://legislativecounsel.ca.gov/firm-overview> (last visited Oct. 5, 2016) (on file with the *California Initiative Review*).

¹⁴⁸ *Complete Bill History of SB 1174*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB1174 (last visited Oct. 5, 2016).

Ballot propositions are subject to several constitutional rules.¹⁴⁹ One such rule is known colloquially as the “single-subject rule.”¹⁵⁰ This rule states that an initiative cannot be submitted to the voters if it embraces more than one subject.¹⁵¹ If a court finds that the provisions of an initiative are not reasonably germane to a single subject, the proposition would be considered unconstitutional.¹⁵² It is unlikely that Proposition 58 will face a single-subject challenge. Proposition 58 speaks only to amending and repealing Proposition 227, which dealt solely with a language education scheme.¹⁵³ Because Proposition 58’s provisions are all in furtherance of a single common purpose (establishing optional bilingual education programs for California’s public schools) a single subject challenge would likely fail.

Because Proposition 58 does not actually mandate that California public schools create a bilingual education program it is difficult to see where a federal constitutional challenge could arise. Proposition 58 does not force students to attend schools with bilingual programs, and allows each school the discretion to create a program that suits its students’ individual needs. It is possible that someone might be able to challenge the specific programs of individual schools once a program’s parameters have been established. However, on its face, Proposition 58 appears to be constitutional.

It is probable that some parents will not want their children to participate in a bilingual immersion program. Currently, there is nothing within the Proposition that would afford these parents any recourse. Because the mechanism that will be used to request bilingual programs is set to thirty students per school, or twenty students per grade, some schools would have the option of adopting a program based on the desires of a minority of students. However, because the programs are not mandatory, and each school is able to decide what type of program—if any—the school should adopt this may not be a major concern.

Additionally, there could be issues related to resource allocation for schools that do not have teachers who are equipped to provide bilingual education. However, because the Proposition does not mandate any particular requirements for individual immersion programs many of these issues will likely not occur. For example, Proposition 58 requires that a school district consult with experts, stakeholders in the community, parents, teachers, and school administrators before even contemplating what the specifics of a program will look like.¹⁵⁴ Also, this preparation period required by Proposition 58 allows a school to determine what resources they have and what level of need there is for a bilingual immersion program before ever agreeing to start a program. Furthermore, Proposition 58 allows greater control to local schools that wish

¹⁴⁹ CAL. CONST. art. II, § 8.

¹⁵⁰ *Id.* § 8(d).

¹⁵¹ *Id.*

¹⁵² Senate of the State of Cal. v. Jones, 21 Cal. 4th 1142, 1146 (1999).

¹⁵³ SB 1174, 2014 Leg., 2013–2014 Reg. Sess. (Cal. 2014).

¹⁵⁴ Cal. SB 1174, at 3(b).

to alter bilingual immersion programs once they are established. The Proposition allows for flexibility intentionally.

VI. PUBLIC POLICY CONSIDERATIONS

A. Proponent Arguments

1. *New Testing Outcomes*

Proponents of Proposition 58 claim that new studies show multilingual classes create beneficial long-term effects for the students. Although evidence points to higher test scores for ELs in the initial stages of English immersion language programs, a growing body of research suggests that those students in two-language programs catch up and even surpass their counterparts during a longer period of assessment.¹⁵⁵ The findings suggest that if given enough time, EL students from two-language programs test substantially above their English immersion counterparts over time in English proficiency standards.¹⁵⁶ Those reports offer a different look at student outcomes and trajectories both academically and linguistically between the English immersion and dual language immersion models since Proposition 227 was enacted.¹⁵⁷

2. *New Science*

Supporters of bilingual education in California tout research evidence that the process of moving back and forth from one language to another (code switching) can change the networks in the brain that support language fluency, skilled cognition and may also facilitate new learning.¹⁵⁸ This process of code switching may improve what is called executive function, or the abilities that control thought and behavior, including focusing, ignoring distractions, switching attention and planning for the future.¹⁵⁹ Proponents want the discussion around EL education to include the enhancement of executive function, the systems in our brain that maintain focus on what is relevant information and what may be discarded as distractions in the act of choosing

¹⁵⁵ Ilana Umansky & Sean F. Reardon, *Reclassification Patterns Among Latino English Learner Students in Bilingual, Dual Immersion, and English Immersion Classrooms*, 51 AMERICAN EDUCATIONAL RESEARCH JOURNAL 879 (2014).

¹⁵⁶ Ilana Umansky et al., *The Promise of Bilingual and Dual Immersion Education*, STANFORD CENTER FOR EDUCATION POLICY ANALYSIS (Oct. 2015), <https://cepa.stanford.edu/sites/default/files/wp15-11v201510.pdf> (on file with the *California Initiative Review*).

¹⁵⁷ *Id.*

¹⁵⁸ Ed Yong, *The Bitter Fight Over the Benefits of Bilingualism*, THE ATLANTIC (Feb. 10, 2016), <http://www.theatlantic.com/science/archive/2016/02/the-battle-over-bilingualism/462114/> (on file with the *California Initiative Review*).

¹⁵⁹ See Yong, *supra* note 158.

between two or more languages at one time.¹⁶⁰ Proponents use research that suggests when using more than one language at a given time, both language options present a challenge to the executive control system requiring the brain to sort out what is relevant at that moment.¹⁶¹ Advocates maintain that bilinguals are able to take better advantage of exercising executive function so that regular back and forth use of language makes this cognitive system more efficient and the brain more capable of thinking more flexibly.¹⁶²

3. *Global Citizens*

A growing number of educators in California seek to prepare students for a global economy that is quite different from the industrial world that most schools were created in that exist today.¹⁶³ They argue that if we are to compete in a globalized world, the United States needs diplomats, intelligence and foreign policy experts, politicians, military leaders, business leaders, scientists, physicians, technicians, entrepreneurs, managers, historians, artists, and writers who are proficient in English and other languages.¹⁶⁴ Supporters of Proposition 58 posit that because the world is shifting into a global community it is necessary to create and support more multilingual programs in public schools in order to thrive in a global economy.¹⁶⁵ These arguments are central to the California Education for a Global Economy Initiative.¹⁶⁶ Proponents argue that bilingualism in a globalized economy is a tool by which any employee with multilingual abilities may build cross-functional and cross-cultural relationships that improve financial success.¹⁶⁷ For example, a 2014 UCLA report on the benefits of bilingualism suggests

¹⁶⁰ Claudia Dreifus, *The Bilingual Advantage*, THE N.Y. TIMES (May 30, 2016), http://www.nytimes.com/2011/05/31/science/31conversation.html?_r=0 (on file with the *California Initiative Review*).

¹⁶¹ Ellen Bialystok and Fergus I.M. Craik, *Cognitive and Linguistic Processing in the Bilingual Mind*, YORK UNIV. AND ROTHMAN RESEARCH INST. OF BAYCREST (Feb. 2010), <http://cdp.sagepub.com/content/19/1/19.abstract> (on file with the *California Initiative Review*).

¹⁶² *Dual Language Learning: What the Research Says About Improving Student Outcomes*, EARLY EDGE CALIFORNIA, <http://www.earlyedgecalifornia.org/our-issues/dll/dll-facts.html> (on file with the *California Initiative Review*).

¹⁶³ Xavier De La Torre, *Educating for Global Competence: The Value of Multilingualism*, SANTA CLARA CNTY. OFFICE OF EDUC. (2014), [http://mes.sccoe.org/bwlct/about/BWLCT_Doc_Library/EGC - Educating Global Competence.pdf](http://mes.sccoe.org/bwlct/about/BWLCT_Doc_Library/EGC_-_Educating_Global_Competence.pdf) (on file with the *California Initiative Review*).

¹⁶⁴ *Id.*

¹⁶⁵ Santa Clara County Office of Education, *Shaping our Global Future: The Role of Multilingualism*, VIMEO (2014), <https://vimeo.com/87694174> (on file with the *California Initiative Review*).

¹⁶⁶ Cal. Proposition 58 (2016).

¹⁶⁷ Melinda Anderson, *The Economic Imperative of Bilingual Education*, THE ATLANTIC (Nov. 10, 2015), <http://www.theatlantic.com/education/archive/2015/11/bilingual-education-movementmainstream/414912/> (on file with the *California Initiative Review*).

that fully learning more than one language is an economic bonus.¹⁶⁸ Advocates for bilingual education stress that a growing number of employers in the California labor market prefer employees with a bilingual skill set.¹⁶⁹

Other studies show that being bilingual is economically advantageous, especially in areas like Los Angeles, where those who speak two languages earn almost \$2,000 to \$3,000 more per year than their monolingual counterparts.¹⁷⁰ Reports describe economic benefits of Spanish-English bilingualism that vary according to the concentration of Spanish speakers living in a given area, and where there is more economic benefit for workers in communities that have a higher percentage of non-English speakers.¹⁷¹ Proposition 58 intends to make the case before the voters that preparing California's ethnically and linguistically diverse communities to better take advantage of more than one language can yield individual and regional economic benefit.¹⁷²

4. Local Control Over School Decisions

Proponents argue that enacting Proposition 58 will place the control of local school programs back into the hands of school districts who know their needs best.¹⁷³ Proponents believe that any wholesale denial of regional best practices, through the initiative process, usurps the power of elected school boards to develop flexible, viable, and accountable policies that may be customized to meet local conditions.¹⁷⁴

The Legislature and Governor Brown are working to ensure that the State is aligned with local school districts to close the achievement gap between English Learners and native English speakers through recent changes in district planning, accountability and base funding for ELs.¹⁷⁵ In 2013-2014, Governor Brown signed into law the Budget Act which created a new system of school funding, support and intervention designed to ensure better outcomes and accountability

¹⁶⁸ Patricia Gandara, *The Value of Bilingualism and the Seal of Biliteracy in California Labor Market*, CIVIL RIGHTS PROJECT (Oct. 3, 2014), <http://www.calsa.org/wp-content/uploads/2014/10/Value-of-Bilingualism-UCLA.pdf> (on file with the *California Initiative Review*).

¹⁶⁹ R.L.G., *Johnson: What is a Foreign Language Worth?*, THE ECONOMIST (Mar. 11, 2014), <http://www.economist.com/blogs/prospere/2014/03/language-study> (on file with the *California Initiative Review*).

¹⁷⁰ Rubén G. Rumbaut, *English Plus: Exploring the Socioeconomic Benefits of Bilingualism in Southern California*, ACADEMIA, http://www.academia.edu/13128731/English_Plus_Exploring_the_Socioeconomic_Benefits_of_Bilingualism_in_Southern_California (on file with the *California Initiative Review*).

¹⁷¹ *Id.*

¹⁷² See R.L.G., *supra* note 169.

¹⁷³ ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 1174 (June 25, 2014).

¹⁷⁴ *Id.*

¹⁷⁵ Mac Taylor, *Review of School Districts' 2014-15 Local Control and Accountability Plans*, LEGISLATIVE ANALYST'S OFFICE (Jan. 20, 2015), <http://www.lao.ca.gov/reports/2015/edu/LCAP/2014-15-LCAP-012015.pdf> (on file with the *California Initiative Review*).

for EL students and other low-income, and lower performing students.¹⁷⁶ The new funding system, known as the Local Control Financing Formula (LCFF), was designed to provide additional direct funding for ELs and struggling students.¹⁷⁷

In addition to establishing the LCFF, a more concentrated base funding formula for districts with higher rates of ELs, the 2013-2014 Budget Act also created the Local Control Accountability Plans (LCAPs), which require districts to set program goals and describe actions they plan to take to achieve those goals.¹⁷⁸ LCAPs provide for performance evaluations which assess districts' performance and help to guide county offices of education, the California Collaborative for Educational Excellence, and the State Superintendent of Public Instruction in providing assistance when districts fail to meet their educational program objectives.¹⁷⁹

Proposition 58 supporters ask the voters to give public schools the authority to promote local innovative educational programs they believe are correctly aligned with the LCFF and LCAP.¹⁸⁰ Advocates want Proposition 58 to provide local school districts, administrators, educators, and families the authority to ensure implementation of research-based English proficiency programs for ELs that are clearly defined, flexible, accountable and aligned with current local educational program budgeting standards.

5. Legislature should have the ability to make changes

Proposition 58 allows future changes in the law be made by simple majority vote of the Legislature, without any subsequent voter approval. Proponents suggest that as the State continues its support for local control and accountability, seeking a voter initiative response to making changes runs counter to state support for local school district education program innovation.¹⁸¹

B. Opponent Arguments

1. Old Science is Still Good Science

Opponents argue that previous studies conducted shortly after Proposition 227 was enacted demonstrate a rise in test scores; therefore, the English-only programs of Proposition 227 work. Ron Unz—author of Proposition 227—contends that test scores and English proficiency levels of ELs increased by 30 percent or more due to the success of sheltered English

¹⁷⁶ *Id.*

¹⁷⁷ AB 97, 2013 Leg., 2013–2014 Reg. Sess. (Cal. 2013).

¹⁷⁸ *Id.*

¹⁷⁹ Cal. Educ. Code § 52072.5 (2013).

¹⁸⁰ See Taylor, *supra* note 175.

¹⁸¹ Assembly Education Committee Vote of SB 1174, Unofficial Ballot (June 25, 2014) http://calchannel.granicus.com/MediaPlayer.php?view_id=&clip_id=2290&meta_id=34931 (last visited Oct. 16, 2016) (on file with the *California Initiative Review*).

programming from Proposition 227.¹⁸² Supporters of Proposition 227 point to standardized test scores among EL's that showed a rise following its passage, which some believe is characteristic of the failed mandated bilingual education programs of the past and the lack of quality bilingual instruction.¹⁸³ Ron Unz argues that Latino admissions to top-colleges including the University of California system are increasing dramatically and are directly attributable to the effects of Proposition 227 and its restrictions on bilingual education.¹⁸⁴ He believes that since voters approved English immersion in California nearly all Latino children in California public schools are immediately taught in English and are therefore doing much better.¹⁸⁵

2. Difficult Implementation

Opponents argue that implementing bilingual programs for individual schools will require resources that schools simply do not have, and a level of expertise most educators do not possess. While fewer people are entering the teacher profession overall since the 2008 recession, there is also a sharpening decline in the number of certified bilingual teachers.¹⁸⁶ With almost 1.4 million students classified as ELs current data suggests the State is only currently prepared to commit just one bilingual teacher for every 52 English Learners.¹⁸⁷ The opposition sees this as a major challenge for the State in terms of its ability to commit the necessary supply of bilingual teachers to provide adequate support for bilingual education as intended by Proposition 58.¹⁸⁸ The opponents suggest these factors present an overwhelming challenge in terms of serving California's 2.3 million ELs (1 out of 4 in the US) that may harm English proficiency outcomes for ELs in California.¹⁸⁹

¹⁸² Ron Unz, *Bilingualism vs. Bilingual Education*, FOX AND HOUNDS (Sept. 14, 2016), <http://www.foxandhoundsdaily.com/2016/09/bilingualism-vs-bilingual-education/> (on file with the *California Initiative Review*).

¹⁸³ Alexei Koseff, *Bilingual Education Back on Ballot 18 Years After Voters Rejected It*, SACRAMENTO BEE (Aug. 8, 2016), <http://www.sacbee.com/news/politics-government/capitol-alert/article94068542.html> (on file with the *California Initiative Review*).

¹⁸⁴ Times Staff Writer, *California Latinos Surpass Whites in Freshman UC Admission Offers*, L.A. TIMES (Apr. 21, 2014), <http://www.latimes.com/local/lanow/la-me-ln-uc-california-latinos-surpass-whites-20140421-story.html> (on file with the *California Initiative Review*).

¹⁸⁵ *Id.*

¹⁸⁶ Lillian Mongeau, *Bilingual Battle Brewing in California...Again*, HECHINGER REPORT (Apr. 19, 2016), <http://hechingerreport.org/bilingual-battle-brewing-californiaagain/> (on file with the *California Initiative Review*).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

Opponents say that the challenges to hiring and retaining bilingual teachers reflects a dismal reality that includes high teacher turnover, large classes and struggling students, making bilingual teaching a particularly demanding job.¹⁹⁰ The opposition has major concerns that the shallow pool of credentialed bilingual teachers makes Proposition 58 especially inadequate to meet potential student demands; especially in low-income communities and in a state where ELs experience a high dropout rate (almost 24 percent, of any drop out group in California), making it a potentially harmful initiative statute if future implementation efforts fail.¹⁹¹

Critics and supporters of Proposition 58 can agree that the initiative's effects will be limited without addressing the need to rebuild career pathways for bilingual teachers.¹⁹² Reports show that annual credentialing of bilingual teachers in California has dropped by two-thirds of what was just 10 years ago.¹⁹³ One impediment to change is that any future bilingual education policy passed by the Legislature may be toothless if current downward trends of bilingual education teacher shortages continue to persist.¹⁹⁴ If Proposition 58 is enacted certainly the state will need to consider how to best support local efforts to proactively recruit and hire bilingual teachers, provide adequate professional development, and language instruction and local program assessment.¹⁹⁵

3. *A Majority Vote is Not Enough to Amend the Education Code*

Opponents believe that Proposition 58 is flawed in that by a majority vote, the legislature can override the voice of the people without a supermajority in furthering or amending the measure, thereby effectively creating an end run around the vote of the people.¹⁹⁶

As discussed earlier, Senator Huff provided an affirmative vote for SB 1174 on the Floor of the Senate, endorsing the policy of bilingual education as a necessary component of economic growth and opportunity for the State. Then as the bill moved through the legislative process Senator Huff changed his position sharing concern that a majority vote was too low a threshold when amending a voter approved initiative statute.¹⁹⁷ Assemblymember Olsen also stated her

¹⁹⁰ *Id.*

¹⁹¹ See Anderson, *supra* note 167.

¹⁹² Conor P. Williams, *Commentary: Why CA's 'Multilingual Education Act' matters: Politics, Language and Los Angeles' Future*, L.A. SCHOOL REPORT (Feb. 29, 2016), <http://laschoolreport.com/why-californias-multilingual-education-act-matters-politics-language-and-los-angeles-future/> (on file with the *California Initiative Review*).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Sean F. Reardon et al., *Differences Among Instructional Models in English Learners' Academic and English Proficiency Trajectories*. FINDINGS FROM THE SFUSD/STANFORD RESEARCH PROJECT (Feb. 20, 2014), <http://www.edpolicyinca.org/sites/default/files/PACE%20slides%20feb2014.pdf> (on file with the *California Initiative Review*).

¹⁹⁶ See Mason & McGreevy, *supra* note 17.

¹⁹⁷ Senate Floor Session Bills, *Senate Concurs in Assembly Amendments 2:26.44* (Official California Legislative Information video Aug. 26, 2014),

objection in the Assembly Education Committee stating that a simple majority vote of the Legislature should not be allowed to amend the education code after its approval by the voters.¹⁹⁸ Both members of the California State Legislature stated that the effect of allowing the Legislature to make changes to a measure with a simple majority established too powerful a precedent for future attempts to undermine all manner of voter approved initiative statutes without subsequent voter approval.¹⁹⁹

Opponents argue that the language in Proposition 58 would allow the Legislature to make sweeping changes to the voter approved bilingual education measure without the need for a two-thirds vote of both houses, thereby disempowering the minority vote.²⁰⁰

VII. CONCLUSION

Proposition 58 represents a fundamental shift in California's outlook on bilingualism. The proposition itself states that the shift to multilingual skills is necessary for not only our state, but for our country to continue to grow and succeed in the current globalized economy. This fact is laid out in the title of the Proposition – the “California Education for a Global Economy Initiative.” Passage of Proposition 58 is unlikely to immediately create sweeping reforms throughout the State. However, it will allow everyday California parents a greater say in how their children are taught in school.

http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=2399&meta_id=57920 (on file with the *California Initiative Review*).

¹⁹⁸ Assembly Committee on Education Vote of SB 1174, Unofficial Ballot (June 25, 2014)

http://calchannel.granicus.com/MediaPlayer.php?view_id=&clip_id=2290&meta_id=34931 (last visited Oct. 16, 2016) (on file with the *California Initiative Review*).

¹⁹⁹ *Id.*

²⁰⁰ Senate Floor Session Bills, *Senate Concurs in Assembly Amendments 2:26.44* (Official California Legislative Information video Aug. 26, 2014),

http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=2399&meta_id=57920 (on file with the *California Initiative Review*).