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Undocumented Immigrants, Driver's Licenses, and State Policy Development: A Comparative Analysis of Oregon and California

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I: Introduction

The United States federal government has plenary power over immigration legislation. However, in the face of federal inaction on immigration reform, states have taken the lead on immigration legislation. To date, state governments have passed over 1700 pieces of immigration legislation since 1980, roughly equal in the number of permissive immigration laws to restrictive immigration laws. Driver's Licenses are a policy area directly under state jurisdiction and states are creating legislation regarding licenses for those unable to prove legal residence. Driver's licenses are also a de facto form of federal identification and subject to the REAL ID Act of 2005. This makes the passage of driver's licenses for those unable to prove legal presence an important federal issue as well.

Since 1980, 122 pieces of state drivers license legislation were enacted in state legislatures in the United States. Currently, eleven states, Washington DC, and Puerto Rico offer a driver's license to those who will not or cannot prove legal presence or residency in the state. This brief considers California and Oregon as case studies to examine state variation on driver's licenses for undocumented immigrants, and suggests that structural opportunities and the agency of state issue entrepreneurs opposing driver's licenses for undocumented immigrants influence the process and ultimate outcome of driver's license legislative efforts. The way these formal legislative institutions address the ability of undocumented immigrants to travel is an important question not only for policy makers, but also for the larger undocumented immigrant civil rights movement in the United States.

II: Case Selection

California and Oregon share have a similar regional history and political climate. These two states offer low-wage and agricultural employment, making them economic destinations for undocumented immigrants. Legacies of turn-of-the-century Progressivism, both states have an initiative and referendum process, used in the past to address state immigration legislation.

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Further, states lean towards a professionalized legislature; Oregon Legislators reported spending more than two-thirds of a full time job legislating, while the California legislature is completely professionalized (National Conference of State Legislatures 2014). Lastly, both states acted early on state immigration legislation (1993 and 2007, respectively), relative to other states (Ingram 1993, Tanyos 2013). In spite of the similarity of these states, the direction of their immigration legislation has differed—Oregon passed legislation on Drivers Cards, which was overturned in a referendum and California very easily passed AB 60 after attempting for over 20 years. Through this comparison, I investigate the influence of issue entrepreneurs on both attempts to pass legislation on driver's licenses for those who cannot prove legal presence.

III: Background on Drivers License Issue

State-issued licenses are the de facto form of identification in the United States and the 9/11 terrorists had used loopholes to obtain valid drivers licenses. Four years after the 9/11 bombing, Congress passed the REAL ID Act of 2005 to “improve the reliability and accuracy of state-issued identification documents,” to “inhibit terrorists’ ability to evade detection by using fraudulent identification” (DHS.gov 2015). Prior to the REAL ID Act, states autonomously decide which documents would be accepted as a valid identification for a state-issued driver's license. These acceptable documents included birth certificates and social security cards in combination with any number of secondary identifying documents. Further, some states, did not require immigrants to show proof of legal presence before issuing a license, creating inconsistencies that had allowed the 9/11 terrorists to gain access to Drivers Licenses to carryout their nefarious deeds. At the suggestion of the 9/11 Commission, future applicants for state-issued identification (i.e. a drivers license) would be required to present a photo ID or a non-photo ID that includes full legal name and birthdate, a birth certificate, a document showing name and residence AND some documentation of their legal status. This standardization of state-issued documents has become troublesome in the context of drivers license.

IV: Oregon Senate Bill 833, Measure 88

Even though Oregon groups opposed driver's licenses for undocumented immigrants and they had a low level of political sophistication, they were able to overturn the driver's license bill with. Their success can be explained by the existence of: a) an expanded political opportunity structure, b) the direct and indirect assistance of politically sophisticated allies, and c) divisions between pro immigrant rights groups in Oregon. During his Gubernatorial campaign, Governor John Kitzhaber and Democrats in the state legislature had promised the Latino community they would focus on a series of equitable reforms in return for Latino support in the last election (Jones 2011). His party and administration had committed to passing legislation on tuition equity, cultural competency, increased demographic information on communities of color, pre and post natal coverage and what would become the most contented bill, drivers licenses for Oregonians who could not or would not prove legal residence (Lopez 2015). One of those reforms was the return of driver's licenses for those who were undocumented in the state of Oregon. Until November of 2007, the Oregon DMV did not verify or require a social security number to obtain a drivers license.

In December of 2007, former Governor Ted Kulongoski issued Executive Order No. 07-22 requiring new driver's license applicants to show proof of citizenship or legal presence. In February of 2008, the Oregon Legislature passed this Executive Order in to law with SB 1080. Three years later, after John Kitzhaber's win, the Governor created a bipartisan group to start working on creating a driver's license. Law enforcement associations, Labor Unions, Faith-Based and Immigrant Rights

Groups, the Department of Motor Vehicle, Oregon Winegrowers, Dairy, and Restaurant Associations (Leslie 2015, Ramirez 2015, Perry 2015). Oregon Anti-immigrant groups were not invited to the working group. The working group had decided OFIR had stated its position on drivers license for undocumented immigrants when it worked to have them revoked in 2007 and 2008 (Garcia 2015).

Before Senate Bill 833 was introduced, certain pro-immigrant groups negotiated with State Senate Republicans to change the initial eight-year Driver's License to a four-year Driver's Card to broaden their political coalition in the legislature (Ramirez 2015, Lopez 2015). This move disappointed and alienated supporters of the driver's license movement who saw no reason for the negotiation and who felt a license was an attainable goal (Sosa 2015, ACLU 2015). Unlike the previous bills on tuition equity and prenatal care, SB 833 did not include an emergency clause at the behest of the DMV who asked for time to prepare the Department for the changes in standards (Lopez 2015, Perry 2015). The lack of emergency clause was not a cause for concern for pro immigrant groups at the time, who doubted the opposition could mount a referendum if given the opportunity (Ramirez 2015). This would have been the case if another states' anti-immigrant group leader had not brought this lack of emergency clause to the attention of the President of Oregonians for Immigration Reform (Kendoll 2015).

On April 30th, 2013 with a super majority in the Oregon State Legislature, SB 833 passed with bipartisan support. The next day, Governor Kitzhaber signed SB833 with great fanfare on the steps of the capitol building (Lopez 2015, Perry 2015). At the signing celebration, Oregonians for Immigration Reform began circulating a press release that they were going to submit a citizens veto referendum on the newly signed Drivers License law (Kendoll 2015). Before this announcement, pro-immigrant groups had been told by the leadership to say little or nothing about OFIRs attempt to introduce a referendum. OFIR had little money and pro-immigrant groups were banking on OFIRs inability to gather enough signatures on their own to introduce a referendum.

OFIR received important help from out-of-state issue entrepreneurs in their attempt to collect enough signatures to introduce a referendum. First, California Assemblyman Timothy Donnelly, a former Minuteman, offered OFIR campaign advice and counsel, giving OFIR the idea to have drive thru petition signing events (Donnelly 2015, Kendoll 2015). Secondly, during the weeks leading up to the deadline, an Oregon native living in Nevada donated approximately \$98,000 dollars to hire professional signature gathers around state (Zheng 2013, Kendoll 2015). A move that surprised supporters of SB 833 who attempted to halt the referendum by contesting signatures, with no success. Third, this was one of the first tests of Oregon's Electronic Signature Sheet for referendums and initiatives. Oregon residents could print a form from the Secretary of State website and electronically "sign" the petition from the privacy of their own home, increasing the number of petition signatures for what would become Measure 88 (ACLU 2015).

In the end, OFIR boasted a 97% valid signature rate, winning a place for their referendum on the ballot by over 150 signatures (Ludwick 2015, Ramirez 2015, Huang 2015). Cynthia Kendoll, President of Oregonians for Immigration Reform stated, "We set up booths at the state fair" and encouraged people to use electronic signature gathering for a referendum (Kendoll 2015). By the end of October, OFIR had enough valid signatures to have a referendum on SB 833. Referendum 301 was officially on the ballot as Measure 88 and would be decided on by voters in the upcoming November election. After the Measure was officially on the ballot, the naming of Measure 88

would become a point of contention between these two advocacy groups, a battle that would eventually involve the State Legislature and the Oregon Supreme Court (Kendoll 2015, Lleras 2015, Lopez 2015).

After Measure 88 was put on the November 2014 ballot, the battle shifted from validating OFIRs signatures to naming the referendum for voters. The Attorney General chose from a number of ballot titles submitted by OFIR and “Yes on 88” and selected the initial ballot title: “Provides Oregon resident driver card without requiring proof of legal presence in the United States” (Zheng 2014). This title was politically beneficial for anti-immigrant groups as polls on the title showed an unfavorable reaction on any ballot measure title that included the words “legal presence.” Pro-immigrant advocates were disappointed with the ballot title and attempt to use the legislature and the courts to focus the ballot measure away from the topic of legal presence, with no success (Lopez 2015, Lleras 2015, Ramirez 2015). On February 27, 2014, the Oregon House passed HB 4054, a bill that would have overturned the Attorney General’s title to “Establishes limited purpose, duration driver cards for individuals who prove Oregon residency, meet driving requirements” (Zheng 2014c). HB 4054 died in the Senate a week later with some advocates positing the inaction on the part of the Democratic majority was a result of Oregon’s Republican PACs running negative campaign ads against Democrats that included mention of SB 833.

Supporters of the driver’s card measure later appealed the ballot title to the Oregon Supreme Court. On April 2nd, The Oregon Supreme Court decided that the certified ballot title would include a reference to legal presence (Zheng 2014). With the referendum set, the ballot title decided and vote a few months away, supporters of Measure 88 were somewhat certain they were going to lose, but hoped to use this opportunity to build stronger coalitions within the Latino and immigrant communities in Oregon (Lopez 2015, Huang 2015). Helena Huang of Oregon Voice said they knew they were facing a “difficult battle” (2015). Oregonians for Immigration Reform, a group with low political sophistication, was able to leverage a political opportunity: the lack of an emergency clause, and the political sophistication of out of state allies to overturn SB 833. OFIR’s work was only assisted by the difficulties pro-immigrant groups faced in sustaining a coalition with State Legislators.

V: California Assembly Bill 60

In 1993, Democrats in the California state legislature voted to revoke driving privileges for undocumented immigrants at the threat of worse legislation against immigrants by State Republicans (Associated Press 1993, Carmona 2015, Reyes 2015). Since 1996, specifically in 2000 and 2002, State Assembly member Gil Cedillo led the attempted to restore driving privileges to undocumented immigrants. Although the bill passed three times in both houses, Governor Schwarzenegger repealed *and* vetoed two enrolled drivers license bills during his tenure (Ingram 2002, Salladay and Delson 2005).

Coming into the 2013 legislative session and during the bill’s procession through the legislature, legislators and groups invested eliminating the requirement of a Social Security Number to obtain a driver’s license were also encouraged by two signals from the Governor’s office before and during the process. First was the promise of Governor Jerry Brown to then Assembly member Gil Cedillo in 2012 that Brown would sign a driver’s license bill if it passed in the legislature (Reyes 2015). The second sign was during the legislative process, the Governor’s office entertained meetings about AB 60 and worked with legislators on how to write amendments that would increase the likelihood of the Governor signing the state law (Elliot 2015, Blackney 2015). The

previous year, Los Angeles Police Department Chief Charlie Beck came out in support of licensing drivers irrespective of their legal presence (Rubin 2012). The support of the police chief of one of the nations largest cities as well as perceived gubernatorial support only increased the momentum for drivers cards in the California state legislature, but, as in Oregon, the problem between permissive immigration advocates would be the layout of the driver's license REAL ID markers. Assemblyman Alejo introduced what would be known as AB 60 at the start of the 2013 legislative session.

However, mainstream immigrant advocacy groups in California state had received the directive from their members to pursue driver's privileges irrespective of whether it was a card or a license and with little disagreement, at first, to its' possible markings (Carmona 2015, Villela 2015, Coleman 2015). High profile groups like the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), the California Immigrant Policy Center (CIPC), and the National Immigrant Law Center (NILC) were on board to support a new attempt to pass driver's licenses in 2013. Assemblyman Luis Alejo continued the cause in his first year in the legislature along with new members of the Latino Legislative Caucus, Senators Kevin De León (Pro Temp) and Ricardo Lara. The bill was introduced in January of 2013, and was passed in the Assembly and read in the Senate for the first time on the same day where it was stalled by a disagreement by pro immigrant issue entrepreneurs (Legiscan 2015).

The California anti-immigrant movement had been working to bring the California Dream Act to a state referendum in 2012, but fell almost 60,000 signatures short of the 504,000 signatures required (Sanders 2012). When AB 60, a bill to change Driver's licenses eligibility and required documentation, was read for the first time in the State Assembly in January of 2013, anti-immigrant groups were still recovering from their Dream Act defeat. While the bill was in Committee, one group that opposed AB 60 testified against the bill. This seems to be the extent to which anti immigrant groups worked against AB 60 (Rosenberg 2013). Restrictive immigration groups in California left AB 60 mostly unopposed from anti-immigrant advocacy groups (Donnelly 2015). One of the few times restrictive immigration advocates engaged the legislature on AB 60 was during the Spring of 2013 where groups unlicensedtokill.org and Californians for Population Stabilization opposed AB 60 in a committee hearing and a letter sent to the Governor's office (California Assembly Committee on Transportation 2013, Elliot 2015).

Assembly bill 60 moved quickly through the legislature until early September 2013 pro-immigrant groups threatened to pull support if two amendments were included in the bill. The first was an affidavit requirement for those who could not prove legal presence. The second amendment was a discussion of the markings to be put on the license. A driver's card without a legal presence requirement needed to be REAL ID compliant, and compliance meant a sign on the license that stated the card was not for federal uses. Advocacy groups were concerned that the marks making licenses REAL ID compliant could lead to increased persecution of undocumented immigrants and offered suggested to minimized markings while staying in compliance. CIPC and CHIRLA said their stakeholders were "very concerned" with the markings and the signing of the affidavit (Coleman 2015, Villela 2015).

On September 10th, 2013, Assemblyman Alejo's office announced the discord between pro-immigrant advocacy groups about the markings was serious enough that his office would hold the bill until the next legislative session to negotiate the markings between the Governor's office and immigrant groups (Megerian 2013, Blackney 2015). According to immigrant advocacy groups their

stakeholders, the decision to hold the bill until 2014 was a less desirable outcome than markings on a Driver's license (Villela 2015, Elliot 2015). Groups like Presente.org organized call-in campaigns targeting the Sacramento offices of Senator de León and Assemblyman Alejo to continue with the bill. By the next day, Alejo's office decided to continue with AB 60 and the bill was passed that evening, near the end of the legislative session (Megerian 2013). To add to this pressure, after the Governor was made aware of the bill postponement after a meeting with Senator De León, told the legislator to "Send me that bill!" (Elliot 2015). Senator Lara's office "jumped into high gear on the language" of the bill nearing the last days of the 2013 legislative session after this clear signal of gubernatorial support (Elliot 2015).

Senators De Leon and Lara worked with the Governors office to revise the bill language to ensure the Governors signature (Elliot 2015). This bill with bipartisan support passed on the last day of the legislative session. In Oregon, the difference between a driver's license and a driver's card became a point of contention that divided immigrant advocacy groups to the detriment of the campaign and was exacerbated by decreased legislative support during the referendum. In California, even pro-immigrant groups that who were initially dissatisfied with the markings still supported the passage of the license as an important step. Further, the bill was strongly supported by legislators throughout the process.

VI: Analysis

The structural opportunities differed between Oregon and California during their attempts to pass drivers licenses for those who could not provide proof of legal presence, both in terms of backlash and the cost of participation. First, Oregon broke conservative in the last midterm election, making Democrats less likely to take on controversial topics during a midterm election, like the one held for Measure 88 (The Oregonian 2010). California remains a liberal state even during midterm elections, making those more likely to support immigrants' rights less likely to worry about losing their seats. Second, Oregon and California's drivers license bills both left out emergency clauses, but in a state where the threshold of participation for actors is already low (Oregon), the opportunity and return for action is greater. Oregon had both a smaller population and a smaller percent of valid registered voters required to place a referendum on the ballot. To place a referendum on an Oregon ballot requires a number of signatures equal to four percent of the total votes for Governor during the previous election (approximately 60,000 signatures). To place a referendum on the ballot in California requires five percent of the total votes for Governor (approximately 500,000 signatures).

Oregon was able to successfully pass legislation on tuition equity and pre and post natal care for undocumented women and not drivers licenses for undocumented immigrants because the other equity bills had emergency clauses, which put the legislation into immediate effect. Bills that took immediate effect were more difficult for Oregon's anti-immigrant groups to challenge. The passage of a law would require the enacting of another law, a task OFIR claims they "would have to let go" (Kendoll 2015). Instead, an emergency clause offered OFIR the opportunity to introduce a referendum and continue to fight against driver's licenses for undocumented immigrants. When investigating the political opportunity structures available to anti-immigrant groups in Oregon, while electoral strength was high, it had not been enough for Oregonians for Immigration Reform to make change on other pieces of immigration legislation in the state.

This case comparison also shows that agency was important in the passage of state level immigration legislation. The passage or failure of drivers license bills for undocumented

immigrants in California and Oregon was not insulated from the actions of state immigration activists. Issue Entrepreneurs also played different roles in Oregon, and their presence was significant in the result of the driver's license action. If the entrepreneurs had not been active, Measure 88 might never have occurred. First, an anti-immigrant group in the state of Washington told OFIR about the opportunity for a citizen's referendum. The president of OFIR "didn't know what a referendum was" until it was explained to her by out of state actors (Kendoll 2015). Further, OFIR was assisted by large amounts of money to fund professional signature gathers by out of state funders, specifically a businessman named Loren Parks. Parks' donations went straight to signature gatherers, helping OFIR meet the threshold for a referendum (Kendoll 2015).

Table 3: Variation in Relative Organization of Anti-Immigrant Groups in Oregon

		Driver Licenses (Pre-contact)	Driver's Licenses (Post-contact)
Political Opportunity Structure	Institutional Rules	<i>Open</i>	<i>Open</i>
	Electoral Strength of Anti-Immigrant Groups	<i>High</i>	<i>High</i>
Actor Agency	Relative Organizational Sophistication (Anti to Pro)	<i>Low</i>	<i>High</i>
Outcome	Repeal of legislation	<i>No (Counterfactual outcome)</i>	<i>Yes (Actual outcome)</i>

The pro-immigrant cause was racked with internal divisions, disagreements, and weak coalitions with Democratic legislators during an uphill battle that required a strong united front. The concessions made by group leaders to gain legislative support, upset and alienated some community groups. Specifically, the political bargaining to change the driver's license to a driver's card upset members in the pro-immigrant camp (Lopez 2015). Second, the unwillingness of Democratic Senators to pass HB 4054 in the face of GOP attacks and rename Measure 88 was a defeat from which pro-immigrant groups could not recover (Lleras 2015, Lopez 2015). Further, the Democratic legislators who were attacked for their connection with SB 833 did not lose their seats, making their inaction questionable by pro-immigrant groups (Lleras 2015).

Activists were also influential in the passage of AB 60 in California. First, California's anti-immigrant movement, previously a national vanguard for anti-immigrant mobilization, was largely silent during the legislative process for AB 60. These groups were unable to mobilize members after the defeat of a recent attempt to collect signatures to bring the California Dream Act to a state referendum (Donnelly 2015). Further, pro-immigrant groups were important sources of support during the legislative process for AB 60. Pro-immigrant advocates had assisted legislators to repeal the social security requirement for licenses since the mid-1990s. While AB 60 was moving through the state legislature, these actors worked with their stakeholders and legislators to write press releases, have community meetings, and keep the public abreast of AB 60's progress. When these groups became skeptical about amendments requiring an affidavit or heavy markings, they threatened to withdraw support if their concerns were not address. These concerns weighed

so heavily with state legislators that AB 60 was about to be postponed until the next legislative session, primarily to win back the support of these pro-immigrant groups. Lastly, when legislators decided to hold the bill until the next legislative session, they were inundated with phone calls from constituents organized by immigrant groups, pressure legislators to move forward with AB 60. This calling campaign seemed to be a surprise to legislators, who took it as a directive from their constituents. The mobilization of pro-immigrant groups during the end of the legislative session was critical for the eventual passage of AB 60.

The Oregon undocumented immigrant driver's license bill was one in a series of permissive state immigration bills offering an opportunity for a within case comparisons. A driver's license bill for undocumented immigrants in Oregon was one of four pieces of legislation on immigrants passed in 2013. In April of 2013, Governor Kitzhaber signed a bill that tuition equity bill for undocumented students. The bill granted in-state tuition to any Oregon high school graduates who had been in the United States for at least five years, had studied and graduated from an Oregon high school and intended to apply for citizenship or permanent residency (Zheng 2013b). In May of 2013, the Oregon legislature passed a cultural competency bill for health professionals. The bill allowed state health professional boards to require training for cultural competency to obtain a license (The Oregonian 2013). Third, in October of 2013, legislature passed legislation allowing pregnant women unable to prove legal presence access to pre and post natal care (Castillo 2013).

These three bills passed and avoided referendums thanks to a contracted opportunity structure for anti immigrant groups to act. Specifically, these bills were written with emergency clauses that immediately enacted the legislation. Both tuition equity and cultural competency laws were passed immediately, making it very difficult for anti-immigrant groups to repeal the law. Including an emergency clause required any repeal or changes to the law would have to be made by introducing another piece of legislation, which OFIR knew it did not have the legislative support to achieve (Kendoll 2015). The difficulty to repeal a driver's license law for undocumented immigrants was more difficult than bringing a bill to a referendum. In essence, the political opportunity structure was different between the laws on tuition equity and cultural competency and drivers license bills.

California was able to pass Dream Act, the Trust Act, and repeal the legal presence requirement for driver's licenses over three years. The California Dream Act was passed in 2011 and offered undocumented immigrants who could prove California residency access to financial aid to attend state colleges (Jacobs 2011). Secondly, in October of 2013, the Governor signed the Trust Act. This bill limited California's cooperation with the federal governments' Secure Communities program. This bill meant California officials would no longer offer the Department of Homeland Security access to fingerprints taken by local police. It would also stop law enforcement from screening detained individuals for immigration status (Foley and Planas 2013). California's anti-immigrant groups were unable to successfully obtain enough signatures to bring the Dream Act to a referendum and had been finding it difficult to stop any other permissive immigrant legislation since 2011 (Donnelly 2015). None of these California law included an urgency clause. It also would not have mattered if a clause were included as the immediate enactment of legislation would also have been unable to prevent groups from mounting a referendum. Because the opportunity structure was contracted for anti-immigrant groups, they were unable to affect the larger legislative structure.

VII: Conclusion

The political opportunity structure within a state can significantly influence the passage of permissive state immigration legislation. Further, the agency of immigrant groups within states also affects the passage of state immigration policy. The same is shown through a close examination of the attempt to pass legislation allowing driver's licenses for undocumented immigrant in two politically similar states, California and Oregon, with very different results. Investigating the interaction of state-level advocacy groups and with the political opportunity structure might offer more leverage in explaining the conditions under which permissive or restrictive immigration legislation might pass. Perhaps this explanation can further the work of immigrant advocacy groups more than identifying factors that correlate with the passage of state immigration legislation. Immigrant organizations should carefully examine the strategic factors of their campaigns, specifically the timing and the strength of their coalitions, particularly with state legislators. The political opportunity structure is most open to advocates when they are invited or accepted by either the legislature or the state executive to influence policy. However, this alone will not ensure success. Advocates with low sophistication may choose to wait until a more opportune time to mount a campaign for immigrant rights. Highly sophisticated advocacy groups should also be vigilant of the political opportunity structure to ensure their policy goals are not reversed. Using social movement theory to explain state immigration legislation passes offers a new paradigm for advocates to understand the policymaking process and find new ways to exploit the political system for their benefit.