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A City Club Report on Measure 105: Repeal of Oregon's "Sanctuary" State Law

City Club of Portland (Portland, Or.)

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A City Club Report on Measure 105: Repeal of Oregon's "Sanctuary" State Law

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EXECUTIVE SUMMARY

Current Oregon law (ORS 181A.820) prevents state and local law enforcement from using money, equipment, or personnel to enforce federal immigration law. This law has been in place since 1987. Though the law was adopted with preservation of state and local resources in mind, the impetus for the policy was grounded in racial profiling by law enforcement, which was highlighted by a highly publicized class action lawsuit in 1977.

Measure 105, if passed, would strike down ORS 181A.820 and remove these limitations on enforcement agencies. In essence, the debate for Measure 105 concerns whether state and local law enforcement can or should enforce federal immigration law. The discussion raises issues of rule of law, racial profiling, and public trust in law enforcement.

Your committee reviewed the literature, heard expert testimony, and concluded that preserving ORS 181A.820 and voting no on Measure 105 is in the best interest of Oregon's community at large in order to (1) continue providing protection against racial profiling from law enforcement, (2) promote trust in law enforcement, especially among communities of color, and (3) maintain the rule of law and separation between criminal (state/local) and civil (federal) enforcement.

Recommendation: The committee recommends a "No" vote.

City Club members will debate this report on Wednesday, Aug. 22, 2018 at Ballotpalooza. Club members will vote on the report beginning Wednesday, Aug. 22 and concluding on Friday, Aug. 24. Until the membership votes, City Club of Portland does not have an official position on this report and Measure 105. The outcome of the vote will be reported via email and online at pdxcityclub.org.

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INTRODUCTION

Measure 105 will appear on the Nov. 6, 2018 ballot as follows:

Repeals law limiting use of state/local law enforcement resources to enforce federal immigration law

RESULT OF “YES” VOTE: “Yes” vote repeals law limiting (with exceptions) use of state/local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws.

RESULT OF “NO” VOTE: “No” vote retains law limiting (with exceptions) use of state/local law enforcement resources for detecting/apprehending persons suspected only of violating federal immigration laws.

SUMMARY: Measure repeals ORS 181A.820, which limits (with exceptions) the use of state and law enforcement money, equipment, and personnel for “detecting or apprehending persons whose only violation of law” pertains to their immigration status. Current exceptions allow using law enforcement resources to:

- Detect or apprehend persons accused of violating federal immigration laws who are also accused of other violations of law;
- Arrest persons “charged by the United States with a criminal violation of federal immigration laws” who are “subject to arrest for the crime pursuant to a warrant of arrest issued by federal magistrate”;
- Communicate with federal immigration authorities to verify immigration status of arrested persons or “requesting criminal investigation information with reference to persons named in records of” federal immigration officials.

BACKGROUND

Current Oregon law under ORS 181A.820 prohibits state and local law enforcement from using money, equipment, or personnel for apprehending persons only on a violation of foreign citizenship.¹ It does not prohibit a law enforcement agency from exchanging information with the United States Bureau of Immigration and Customs Enforcement (ICE), the United States Bureau of Citizenship and Immigration Services (USCIS), or the United States Bureau of Customs and Border Protection (CBP), in order to: verify the immigration status of a person if the person is arrested for any criminal offense; or request criminal investigation information concerning persons named in records of ICE, USCIS, and CBP. Oregon law does prohibit the

use of state and local resources to enforce federal immigration law if an individual's only crime is being in the country illegally.

The impetus for ORS 181A.820 began in 1977 after the interrogation of a long-time Oregon resident, which led to a class action lawsuit.² On January 9, 1977, several police officers approached four Latino men at the Hi Ho Restaurant in Independence, Oregon. The police officers began interrogating the men about their citizenship status. One of the officers forced Delmiro Trevino, a U.S. citizen of Mexican descent, into the middle of the restaurant and asked patrons to identify him. Trevino was only released after being identified as a "long-time resident" of Independence, but he was left feeling publicly humiliated. Trevino and others filed a class action lawsuit and accused the officers of enforcing federal law by acting under the authorization of the federal Immigration and Naturalization Service. Following the incident, Oregon's Attorney General issued an opinion that there is no existing legal authority for state and local law enforcement to enforce federal immigration laws.³

In 1987, State Representative Rocky Barilla, the lawyer who brought the lawsuit on behalf of Trevino, introduced House Bill (HB) 2314, enacted as ORS 181A.820 and referred to as Oregon's Sanctuary Law. Debates for and against HB 2314 centered on racial profiling by law enforcement of Hispanic and other ethnic minorities, citizen and noncitizen alike, who were being detained, interrogated, and harassed by local law enforcement agencies on the basis of skin color, language, and dress.⁴ These actions were seen as a violation of their individual right to privacy and equal protection. HB 2314 passed with only one vote against in each chamber of the Oregon state legislature.⁵

Governor Kate Brown strengthened the law in February 2017 by issuing an executive order to limit any state agency from using money, equipment, or personnel for detecting or apprehending persons in violation of federal immigration law. Later that same year, HB 3464 was signed into law after passing on party-line votes in both chambers of the Legislature. This bill expanded the law to prohibit public bodies (such as schools, hospitals, courthouses, etc.) from asking about citizenship or immigration status or from disclosing specific information about persons for purpose of enforcing federal immigration laws except as required by state or federal law.⁶

The passage of HB 3464 along party line votes reflects a larger political divide around immigration that stands in stark contrast to the near legislative unanimity with which Oregon's original sanctuary protection became law three decades before. In the wake of the 2016 presidential election that saw the Trump Administration ramp up immigration enforcement and deportation efforts of an estimated eleven million undocumented immigrants nationwide,⁷ state

and local governments across the country have also taken up the sanctuary debate. According to the National Conference of State Legislatures, in 2017, 37 states considered more than 120 bills related to sanctuary protections and the total legislation enacted relating to immigration more than doubled from its 2016 total.⁸

History of a “Sanctuary” State or City

The term “sanctuary” does not appear in the text of ORS 181A.820. The term has become shorthand for state and local laws limiting cooperation between local law enforcement agencies and immigration enforcement. This association of the term complicates the debate about what exactly ORS 181A.820 does and does not do. The term “sanctuary” has no legal standing, but instead refers to the extent to which local jurisdictions cooperate or limit their information sharing with federal immigration authorities.⁹ Federal law prohibits state and local governments from passing policies that forbid the sharing of immigration information with federal authorities, but disagreement exists over the extent to which cooperation is voluntary or obligatory.¹⁰ Sanctuary policies, including Oregon law, do not shield noncitizens from federal immigration action. Federal immigration officials can, and do, conduct enforcement actions nationwide, including in localities that have adopted sanctuary protections.

The modern sanctuary movement began in the 1980s as hundreds of thousands of Central American immigrants sought to enter the United States fleeing from armed conflict and persecution in their home countries. In response to the federal government’s frequent rejection of asylum claims by these individuals,¹¹ faith-based organizations began declaring publicly they would offer “sanctuary” in their places of worship, including access to an array of resources including legal services to protect against deportation. These faith-based “sanctuaries” were still subject to immigration enforcement despite their designation of a place of worship, however. As more religious institutions and private citizens declared their support, local jurisdictions passed ordinances to limit their cooperation with Immigration and Naturalization Service, the federal agency then responsible for arrest and deportation of noncitizens.¹²

The 1986 passage of the federal Immigration Reform and Control Act, which stands as the last comprehensive immigration reform passed to date, resulted in expanded enforcement nationwide and the detention of noncitizens with immigration violations. The renewed focus on immigration enforcement after the attacks of September 11, 2001 led to a series of federal programs from the early 2000s that made it possible for state and local authorities to participate more closely in federal immigration enforcement, through programs such as 287(g) agreements, the Secure Communities Act, and Criminal Alien Program.¹³ During the Obama Administration, critics of “sanctuary” policies accused local jurisdictions of not informing the federal government when

they had a noncitizen in custody. Since the 2017 reinstatement of the Secure Communities Act, anyone booked into a local prison has their fingerprint information shared with federal authorities, including ICE, regardless of whether or not they have been charged with or convicted of a crime.¹⁴

Today, much of the debate around sanctuary protections now centers on information sharing and the willingness of law enforcement agencies to voluntarily hold a noncitizen beyond when they would normally be released for the sole purpose of facilitating a transfer to federal ICE custody. Following a 2014 federal lawsuit, Oregon counties stopped honoring these detainer requests in the absence of a warrant or court order,¹⁵ which means that ICE enforcement actions that might have otherwise taken place inside a jail now occur in more visible and public places, such as outside courthouses and thereby increase news coverage and debate.¹⁶

ARGUMENTS

Below is a summary of the arguments from supporters and opponents of the measure:

In favor of Measure 105:

- Reduces crime as a repeal will discourage undocumented individuals from coming to Oregon and engaging in criminal activities, such as fraudulently obtaining U.S. birth certificates, Social Security numbers, drivers' licenses, and much more serious crimes.
- Brings Oregon into compliance with federal immigration law and permits cooperation with federal law enforcement in order to restore the rule of law.
- Curbs increased population levels that have caused congestion as well as environmental, social, economic, and political turmoil.

In opposition of Measure 105:

- Opens the door to civil rights violations through racial profiling as local law enforcement could stop, detain, and/or interrogate someone they suspect to be an undocumented immigrant.
- Tasks law enforcement with immigration enforcement, which takes away already limited local resources, particularly in rural communities.
- May put law-abiding immigrants in fear of police and affect their willingness to report crimes, seek help, and/or provide information to police to solve cases, for fear that they could be arrested, deported, or separated from their families.

DISCUSSION AND ANALYSIS

Focusing the discussion on the United States immigration policy context and drawing on relevant literature and expert witness testimony, your committee finds the arguments for and against Measure 105 generally focus on four broad areas: (1) legal and constitutional issues; (2) impacts on law enforcement and public safety; (3) impacts on our economy; and (4) impacts on our communities. In the following sections, we discuss and analyze the proponent and opponent arguments in each of these areas.

Legal and Constitutional Issues

The repeal of ORS 181A.820 implicates various legal and constitutional issues. Repeal would muddy the line between local, state, and federal law enforcement, where local and state agencies would not have clear guidance on their role in enforcing federal immigration laws or regulations. An individual's presence in the U.S. illegally is not a criminal violation, but a civil violation. Repeal of ORS 181A.820 alters Oregon's current stance that local and state agencies not be involved in enforcing federal law when the only violation of law pertains to their immigration status. Using police to assist in enforcing civil violations raises search and seizure issues under state and federal protections, as local and state law enforcement officials do not have legal authority to arrest people for a civil immigration violation alone. In Oregon, a detainer (or a request to hold someone in detention) based on a civil violation has already been determined to be a violation of the Fourth Amendment of the U.S. Constitution. A repeal of ORS 181A.820 thereby repeals additional protections against federal law violations of the Fourth Amendment.¹⁷

Another constitutional issue pertains to the 10th Amendment. The 10th Amendment to the U.S. Constitution explicitly references the uniquely American form of federalism: States have the right, within their jurisdiction, to exercise political and legal power not specifically granted to the federal government. This understanding of the political and legal power of states in comparison to the federal government originates in the original vision of the U.S. Constitution by James Madison, the key drafter of the 1789 Constitution. In two famous Federalist Papers, #45 and #46,¹⁸ Madison makes clear this revolutionary and fundamental doctrine that a state is free to refuse to cooperate with the exercise of power by the federal government when the state determines that the federal goals are overreaching or inappropriate for that state:

“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the

objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

- *Federalist Paper #45 written by James Madison*

“(S)hould an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to cooperate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.”

- *Federalist Paper #46 written by James Madison*

The explicit point of the 10th Amendment is that the federal government may only exercise those powers explicitly granted to it by the Constitution; all remaining political and legal powers are reserved to the many states or to the people. This fundamental statement of federalism is key to understanding that Oregon has a right to retain ORS 181A.820 as its political and legal stance in regard to Oregon’s refusal to allow state resources to be used for apprehending persons whose only violation of law is that they are persons of foreign citizenship in violation of federal immigration laws. The US Constitution makes clear that each state may decide for itself the degree to which it will “cooperate” with federal power where the exercise of that power is “unwarrantable” in that state. In short, American federalism, also sometimes known as “States’ rights,” allows Oregon to determine the extent to which it cooperates with federal enforcement of immigration law.

The U.S. Supreme Court has interpreted the 10th Amendment to explicitly mean that states are free, politically and legally, to not cooperate with the federal exercise of power within a state, especially where the federal authorities seek to “compel” the state to cooperate, either by directly “commandeering” resources of the state toward federal goals (enforcing federal law), or administering federal programs (for example, enforcing federal laws requiring background checks for gun purchases or in regard to sports betting). Put another way, each state may decide how its own money and resources are spent in assisting federal authorities. This is what current law provides under ORS 181A.820. As the 10th Amendment has been interpreted by the US

Supreme Court, neither Congress nor the President can force or “commandeer” states into enforcing federal regulations or laws, such as immigration laws, against their will.

On the other hand, Congress can encourage states to cooperate or help federal authorities via monetary incentives and may enter into agreements for federal enforcement of law or programs, but states are also free to decline without penalty. Current Oregon law is consistent with Oregon’s political and legal power under the 10th Amendment, and represents traditional “States’ Rights” exercised under the US Constitution. Oregon’s choice (for nearly 30 years) to decline to assist federal enforcement of immigration laws in Oregon against persons where their “only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws (as stated in ORS 181A.820)” is consistent with American federalism. Retention of ORS 181A.820 is not in any way mandated or required by the needs or goals of the federal authorities.

Ironically, this “states’ rights” approach to preserving Oregon independence is one that is typically utilized by political conservatives to enshrine the power of local authorities, and nearly always a constitutional argument avoided by political progressives. Here, the argument to preserve Oregon independence and state rule of law is used by progressives, and dismissed by conservatives. The repeal of ORS 181A.820 creates unusual alliances, making the analysis of the effect of the Measure 105 difficult to discern.

Impact on Law Enforcement and Public Safety

This section discusses the impacts on law enforcement and public safety framed by three themes: racial profiling and public trust, rule of law, and public safety and crime. Each theme includes arguments by proponents and opponents.

Racial Profiling and Public Trust

Proponents of Measure 105 view the claim of ‘racial profiling’ as “the free pass for criminal aliens bills.”¹⁹ Cynthia Kendoll, president of Oregonians for Immigration Reform, explains the measure does not turn police into ICE agents, but instead creates a setting for seamless cooperation between immigration and local authorities “...that put[s] the best interests of citizens first, and for education of the public to elect legislators and administrative officials who also put the best interests of citizens first.”²⁰ This rings true to Dan Cadman, a fellow at the Center for Immigration Studies who describes “profiling” as the “murky world of politics” used to impede the proper functioning of the federal immigration system.²¹

For opponents of Measure 105, the threat of racial profiling is a legitimate fear from a not so distant past. The state’s sanctuary law was implemented to combat racial profiling in a historical

context of continued discrimination against perceived non-white Oregonians.²² Reyna Lopez, executive director of the labor union PCUN, states, “The law can’t solve the problem by itself, but it is [an] important tool in making sure we don’t repeat mistake[s] of the past.”²³ Although progress has been made towards reducing racial profiling since the implementation of ORS 181A.820, perceptions of trust remain fragile in many communities. The 2016 City of Portland’s Community Policing Survey found confidence in the statement “Portland police do not stereotype” was measurably lower among African-Americans, Hispanics, and Native Americans.²⁴ Other research supports the assertion that communities of color in Oregon face disparate outcomes when dealing with law enforcement as compared to white residents.²⁵ An analysis of more than ten years of state court data by the Portland Tribune found that Latinos were more likely to be cited for minor traffic violations than whites.²⁶ The study on disparities in automobile violations is significant because a traffic stop is the most common interaction between citizens and law enforcement.²⁷ If a broken taillight or a failure to signal is the first interaction in a process ending in deportation for a noncitizen, the stakes of this interaction are even higher.

Feelings of mistrust have real consequence. A study focused on the impacts of state and local immigration enforcement found universal enforcement gives rise to substantial negative community impacts—including, avoidance of public places, changes in driving behavior, fear and mistrust of authorities, and reluctance to report crimes.²⁸ Multnomah County Sheriff Mike Reese, who has been public in his opposition to Measure 105, argues that “our community is safer when all people feel confident about going to local law enforcement when they need help. We need all [local] residents, no matter their immigration status, to feel confident going to law enforcement [without] worry of deportation. Law enforcement begins with understanding that all people have a right to be treated with respect and equal protection. Local law enforcement should be focused on building trust within the community, not doing the job of federal immigration enforcement... [O]nce trust is lost, it cannot be easily repaired.... Forcing local law enforcement to act like immigration agents makes all of us less safe.”²⁹

Testimony by Lewis and Clark law professor Juliet Stumpf suggests a repeal of ORS 181A.820 will further exacerbate feelings of distrust by sending a “commandeering” message to local law enforcement agencies. Without a uniform statewide policy to demarcate the boundaries of civil and criminal enforcement, discordant localized effects can create feelings of uncertainty among the community at large.³⁰

The evidence suggests the repeal of ORS 181A.820 may lead to an increase in racial profiling and decline in community trust that can be detrimental in sustaining the rule of law and safe communities.³¹ Survey data indicates local law enforcement agencies that participate in

immigration enforcement tend to undermine public safety through eroding trust and relations between police and immigrant communities, which often leads to a higher incidence of unreported crime.^{32 33 34} In 2009 testimony before the Senate Judiciary Committee, Tom Manger, President of Major Cities Chiefs of Police Association, stated: “It’s tremendously challenging to deliver police services to a community of people who are afraid to have any contact with the police. The results are an increase in unreported crime, reluctant victims and witnesses, and the targeting of immigrants by criminals, because the bad guys know that many immigrants will not call the police.”³⁵

For Sheriff Reese, the current law provides clarity. He asserts: “It creates clear guidelines to help local law enforcement navigate the complicated immigration strategies and policies at the federal level. It keeps our local police focused on solving crimes by letting victims and witnesses know that they can report crime to us without fear of their immigration status. It also ensures our deputy sheriffs and police officers don’t become embroiled in the politics of immigration enforcement.”³⁶ By building trust across communities, ORS 181A.820 helps local law enforcement keep Oregon safe because it empowers state and local police to focus their limited resources on key public safety objectives of preventing, investigating, and punishing crime.³⁷

Rule of Law

Measure 105 is receiving substantial support from Oregonians for Immigration Reform (“OFIR”), organized as an Oregon non-profit and advocating since at least the early 2000’s for reforms aimed at reducing immigration, both legal and illegal. Advocates of Measure 105, such as OFIR’s Kendoll, argue that sanctuary policies erode the rule of law by preventing state police officers from doing their jobs. Kendoll warns that allowing politics to be a factor in who does or does not have to obey the law can lead to contempt of the law. Quoting Attorney Charles Smith, she adds: “When elected officials force police and sheriffs to turn a blind eye to immigration violations, they compound that contempt.”³⁸ Billy J. Williams, US Attorney for the District of Oregon, characterizes law enforcement responsibilities as increasingly complex due to conflicting policies between state and federal law and the insertion of unreasonable milestones, such as requiring ICE agents to obtain federal crime arrest warrants in unreasonable time frames.³⁹ While the U.S. Constitution makes important distinctions between state and federal responsibilities as discussed in the previous section, Kendoll asserts that Measure 105 would “not turn local police into ICE agents; it only allows much-needed cooperation which ICE should have and does not have now in Oregon.”⁴⁰ Supporters conclude that allowing communication and cooperation between federal immigration authorities and local jurisdictions can protect against committing contempt and reduce the local barriers immigration faces to enforce immigration law.

According to opponents, the proposition that Oregon’s sanctuary law shields undocumented immigrants from the rule of law is false. Testimony by Roberto Gutierrez, representing Oregonians United Against Profiling, points out that while ORS 181A.820 prohibits apprehending an individual solely based on a violation of immigration law, the law allows law enforcement agencies to exchange information with federal immigration agencies.⁴¹ Preserving the rule of law and safety is equally important for PCUN’s Reyna Lopez. During her testimony she stated, “Oregonians, including immigrant Oregonians, care about the safety of our families and communities. Oregon’s sanctuary law doesn’t protect those who commit crimes and harm others. That’s never okay. And any Oregonian who does that can and should be held accountable.”⁴²

Public Safety and Crime

In matters of public safety, proponents argue sanctuary policies help harbor criminals causing a threat to public safety. High profile cases are often cited as evidence, such as the San Francisco case of Juan Francisco Lopez-Sanchez who, after being deported from the country five times, was released back into the community and charged with murder.⁴³ Some in law enforcement, like U.S. Attorney Billy Williams, reacting to another high-profile case in Portland, feel that current law limiting information sharing is a threat to public safety.⁴⁴ In a statement issued by the Oregon Republican Party, Chairman Bill Currier said, “It is an outrage that Portland’s public officials are choosing to unlawfully harbor these criminals, helping them avoid deportation. The same criminals are then free to commit further rapes, murders, and other felonies against our families and friends.”⁴⁵ Organizations such as Stop Oregon Sanctuaries, the leading advocate for passage of Measure 105, firmly assert that sanctuary cities cause more crime, particularly a surge in fraud or stolen identification for work and rent, and for access to “entitlement” programs.⁴⁶

Outside a small number of high profile cases there is limited analysis to support these claims. David Olen Cross, who devotes a blog to the tracking of crime by undocumented immigrants, wrote: “On June 1, 2018 Oregon’s Washington County had 201 of the 957 foreign nationals (criminal aliens) incarcerated in the Oregon Department of Corrections (DOC) prison system; the county was second in foreign national crime in the state with 21 percent of the criminal aliens in DOC prisons.”⁴⁷ Cross’s reports are informative, but the data is not disaggregated between undocumented and documented immigrants and lacks empirical rigor. In a 2009 report published by the Center for Immigration Studies, a think-tank that favors stricter immigration policies, found that immigrant crime data remains obscure due the challenges of data collection.⁴⁸ Their study concluded that, even though immigration incarceration rates are high in some populations, there is no clear evidence that immigrants commit crimes at higher or lower rates than other populations.⁴⁹ In the absence of concrete empirical data, Kendoll provides a

different argument. “People who willingly violate laws pertaining to a nation's very sovereignty will be prone to break and undermine other of its laws as well,”⁵⁰ she said. Among those crimes she describes—unlawful employment, fraudulently obtaining U.S. birth certificates, social security numbers, and drivers' licenses. Though these are inherently nonviolent crimes, Kendoll asserts these crimes “wreak havoc on the innocent Oregonians to whom local law enforcement agencies owe their foremost responsibility.”⁵¹

Oregonians United Against Profiling, an opponent of Measure 105, discredits the argument ORS 181A.820 is a threat to public safety on the basis that the current law gives local law enforcement the ability to arrest undocumented immigrants when they commit crimes independent of their immigration status.⁵² The law has been in place for 31 years and continues to provide guidance to local law enforcement on complicated immigration issues. Not only do Oregon law enforcement agencies already share fingerprint data for all arrests with the FBI and Department of Homeland Security, they also have the ability to turn over undocumented immigrants to immigration authorities when a warrant is furnished.⁵³

Narratives to advance arguments that immigrants commit more crime, such as high-profile cases, are rooted in public perception and media anecdote, but they are not empirical realities. Empirical findings indicate undocumented immigrants commit crimes at lower rates than native-born citizens.⁵⁴ Moreover, recent data suggests immigrants are associated with a statistically significant decrease in the prevalence of violence.⁵⁵ A 2017 study by Tom Wong, a professor of political science at the University of California at San Diego, compared how sanctuary counties perform across a range of social, economic, and crime indicators when compared to non-sanctuary counties. Using data from ICE and statistically matching counties based on a broad range of demographic characteristics, Wong finds crime by undocumented immigrants is significantly lower in sanctuary counties.⁵⁶ He finds these results hold true across counties of various sizes, including large central metro counties, small metro counties, micropolitan counties, and noncore, rural counties. Studies such as these lead us to conclude that the suggestion that the presence of undocumented immigrants leads to higher crime rates is not supported by empirical evidence.

Impact on Our Economy

Immigrants constitute a material portion of Oregon communities, leading to important economic implications when these communities are disrupted. The Oregon Justice Resource Center estimates that one in ten Oregonians is an immigrant and one in eight Oregon workers is an immigrant.⁵⁷ In brief written testimony by Tom Potiowsky, Director of the Northwest Economic Research Center, he highlights important economic questions to consider around Measure 105,

many of which remain unsettled—such as the extent to which farming (including the wine industry) would be left hurting for seasonal workers and the related danger of increasing consumer prices, the financial consequence of any loss of federal grant moneys that go to criminal justice agencies, and the costs of fully complying with ICE.⁵⁸

Oregonians for Immigration Reform and other supporters of Measure 105 frequently claim that the presence of undocumented residents creates an economic burden, especially as it pertains to government spending in “public education, English instruction classes, health care, justice and law enforcement, public assistance and general government services.”⁵⁹ Those in favor of reducing immigration frequently cite a study from the Federation of Americans for Immigration Reform (“FAIR”) that claims the net cost of public benefits, including educational costs, medical care and safety net programs is more than \$100 billion per year, nationwide.⁶⁰ When repeated by a member of Congress, Arizona’s largest newspaper investigated this claim and found it to be “mostly false.”⁶¹ Another researcher argued that the study overestimates the number of undocumented immigrants, includes their US-citizen children in the tally, undercounts the tax revenue they will produce as adults and accuses the authors of “concocting a method of estimating the fiscal costs that is rejected by all economists who work on this subject,” estimating the cost of “illegal immigration” to be 87-97% lower than FAIR’s account.⁶²

A 2014 study by Oregon Justice Resource Center estimated immigrant-led households in Oregon contributed more than \$736 million in Oregon state income tax and nearly a billion dollars at the federal level.⁶³ One of every 20 Oregon workers is an undocumented immigrant, according to the American Immigration Council, and in 2014 they paid more than \$80 million in state and local taxes.⁶⁴ The same study estimates that Deferred Action for Childhood Arrivals (DACA) recipients paid \$20 million in state and local taxes in 2016.⁶⁵

In Tom Wong’s study of the effects of sanctuary policies on crime and the economy, he compared economic data between counties that had adopted sanctuary policies and those that had not and concluded that economies where sanctuary policies had been adopted were stronger by multiple measures.⁶⁶ In “sanctuary counties,” median income was found to be higher, poverty rates were lower, and enrollment in public assistance (including SNAP, formerly known as food stamps, and Supplemental Security Income) lower when compared to non-sanctuary counties. In general, labor force participation, unemployment rates, and employment-to-population ratio⁶⁷ were also higher in sanctuary counties by a statistically significant margin than in non-sanctuary counties.

A criticism from those in favor of more restrictive immigration policies is that immigrants take jobs at the expense of U.S. citizens. More than half of the respondents in a 2015 Rasmussen poll felt that “illegal immigrants are taking jobs away from citizens.”⁶⁸ Oregonians for Immigration Reform’s (OFIR) Cynthia Kendoll, in written testimony to the committee, asserts that “...illegal entry precedes unlawful employment, via which illegal immigrants get and keep jobs that Oregonians—especially the lower-skilled among them—need.”⁶⁹ Although studies have concluded that the long-term impact of immigration on the U.S. economy is positive, and furthermore has little impact on the wages or overall employment levels of US-born workers,⁷⁰ your committee could not analyze the extent to which the potential passage of Measure 105 would affect immigration levels in the state, and then the resulting economic impacts. In terms of the economic impact on sanctuary jurisdictions, Professor Wong found that poverty rates in jurisdictions that have adopted sanctuary protections are lower, for both white and Latino populations, than in counties without these protections.”⁷¹

The economic impact of undocumented immigrants accessing benefits of entitlement programs is also a topic of heated debate. OFIR’s website links “exploding entitlement programs...related to un-checked illegal immigration” to other factors such as crime and unemployment analyzed earlier in this report.⁷² Conversely, the libertarian Cato Institute dismisses these kinds of claims by concluding, in a May 2018 policy brief, that “overall, immigrants are less likely to consume welfare benefits and, when they do, they generally consume a lower dollar value of benefits than native-born Americans.”⁷³ In Oregon, undocumented immigrants are generally not eligible for federal benefits such as SNAP, Temporary Assistance to Needy Families (welfare), Social Security, Medicare, and similar state benefit programs.⁷⁴

A final economic impact your committee studied was the threat from the Trump Administration’s executive order to withhold federal law enforcement funding from sanctuary jurisdictions made in January 2017.⁷⁵ Across the state, Oregon agencies have been awarded 33 grants to support various law enforcement efforts, totaling more than \$40 million dollars in 2017 according to the Justice Department.⁷⁶ Two recent lawsuits as of this report’s writing cast doubt on the federal government’s ability to withhold these funds, which would negate a potentially negative economic impact on these Oregon communities. In one recent case, a federal judge sided with the city of Chicago in a ruling that concluded the Trump administration could not require localities to permit Homeland Security personnel access to local law enforcement facilities or remove restrictions on sharing immigration status with federal authorities as a condition to apply for future grants.⁷⁷ On August 1 of this year, a three-judge panel on the Ninth Circuit Court of Appeals declared the threat to withhold funds from San Francisco and Santa Clara counties unconstitutional, stating that “absent congressional authorization, the

administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.”⁷⁸

Impact on Our Community

Beyond the impact on law enforcement and public safety, both proponents and opponents argue that the repeal of ORS 181A.820 will more broadly impact our local communities. Proponents assert that the passage of Measure 105 could result in a drop in population as immigrants may no longer see Oregon as a safe haven. Cynthia Kendoll states: “There could possibly be a drop in population, benefitting the physical environment which is already adversely impacted by overpopulation. The affordable housing crisis could benefit [as well] from having less people living in Oregon, in general.”⁷⁹ Over-congestion and social and political turmoil are also suggested as potential concerns related to overpopulation caused by illegal immigration. The Federation for American Immigration Reform finds that: “America has reached a point where perpetual growth cannot realistically continue within limited space. ... [W]ithout common sense limitations on immigration and the resulting population growth, virtually every social cause is a lost cause.”⁸⁰ Proponents believe that enabling local law enforcement to cooperate with federal immigration enforcement will positively impact Oregon communities by potentially resulting in a drop in population as fewer immigrants seek safe haven in Oregon.⁸¹

Conversely, opponents of Measure 105 believe that repealing ORS 181A.820 will negatively impact Oregon communities, as it will result in increased fear among communities of color. As stated throughout this report, ORS 181A.820 provides additional protection against racial profiling by local law enforcement. ORS 181A.820 was a victory for Oregon’s communities of color, but the passage of Measure 105 would be a defeat amid Oregon’s continued struggles with a past of being unwelcoming to minorities and the re-surfacing of white-supremacist sentiments.⁸² Without the protection of ORS 181A.820, individuals will live in increased fear of being profiled by law enforcement based on their ethnicity or perceived immigration status.⁸³ Further, individuals, including undocumented and documented immigrants, will worry that their families will be torn apart and may avoid basic activities such as going to work or school.⁸⁴ Individuals may also avoid seeking public supports from health providers, school personnel, and other resources when necessary. Linda Castillo, Chair of the Oregon Commission on Hispanic Affairs, states:

“No one should live in fear...Our community has been traumatized enough now and historically, and this creates even further vicarious traumatization to our health and service providers, school personnel, and businesses who are constantly on alert to react

and deflect the harrowing effects of people being accosted and asked to prove who they are, if they belong, and their immigration status.”⁸⁵

The repeal of ORS 181A.820 will cause communities of color to live in fear, potentially not seek resources, and ultimately feel less welcome in Oregon.⁸⁶

Ultimately, arguments from both sides are rooted in individual and community values and beliefs. Your committee recognizes the challenge in debating such arguments, and the uncertainty in anticipating the changes that the passage of Measure 105 may produce.

CONCLUSIONS

Measure 105, if passed, would strike down ORS 181A.820 and enable state and local law enforcement agencies to use money, equipment, or personnel to enforce federal immigration law. Preserving ORS 181A.820 and voting no on Measure 105 is in the best interest of Oregon’s community at large in order to (1) provide protection against racial profiling from law enforcement, (2) promote trust in law enforcement, especially among communities of color, and (3) maintain the rule of law and separation between criminal (state/local) and civil (federal) enforcement. Our main conclusions are summarized as follows:

- *Rule of Law:* ORS 181A.820 prevents state and local law enforcement from arresting individuals when their only violation is of federal immigration law. Law enforcement still holds the ability to arrest individuals when they commit criminal violations independent of their immigration status.⁸⁷ The law has been in place for more than 30 years and gives guidance to state and local law enforcement on complicated federal immigration issues.
- *Public Safety:* Empirical findings indicate undocumented immigrants commit crimes at lower rates than native-born citizens.⁸⁸ Moreover, recent data suggests immigrants are associated with a statistically significant decrease in the prevalence of violence.^{89 90}
- *Public Trust:* ORS 181A.820 provides additional protection against racial profiling by local and state law enforcement. Without this protection, individuals will live in fear of being profiled by law enforcement based on their ethnicity or perceived immigration status. Not only does this have an emotional impact on Oregon’s communities of color, but it also may result in additional safety issues as individuals are more averse to working with law enforcement or other government agencies.

RECOMMENDATION

This committee recommends a NO vote on Measure 105.

SIGNATURES

Respectfully submitted,

Nathan Miley-Wills, Chair

Samantha Holquist

Jennifer Martinez

Paul Newton

Tim Wood

APPENDIX A: METHODOLOGY

This research committee originally had eight members; however, two dropped out before our first meeting and one recused himself due to a conflict of interest. The remaining five members are: Samantha Holquist, Jennifer Martinez, Nathan Miley-Wills, Paul Newton, and Tim Wood. Our committee met weekly for an hour and a half in person, by conference call, and via video conferencing to facilitate member participation. We conducted a majority of our work with Google Drive and related applications to further promote participation. We organized our sessions to maximize time available and coordinate representation of perspectives. Our research committee met for the first time on June 27, 2018 and met for the last time on August 8, 2018.

Our committee undertook significant independent research by using academic research databases and available media to understand the history, current practices, and arguments concerning Measure 105. We also sought testimony from the proponents and opponents of Measure 105 as well as from experts in the field with varying opinions on the issue, such as lawyers and law enforcement personnel.

Our approach to finding witnesses was to compile a list of groups that we believed to have knowledge and experience with ORS 181A.820 and Measure 105 based on their occupation and previous statements for or against the measure. After creating an initial list, we also asked witnesses to recommend groups or individuals that they thought would add more perspectives to the report. Unfortunately, the short timeline for research and writing limited the opportunities to solicit testimony. We strived to fill in holes in testimony with citations to research, news articles, and opinion pieces that are relevant to our analysis. The lack of multiple sources of testimony in support of Measure 105 is a limitation of this report.

Our committee centered the discussion and analysis around proponents' and opponents' assertions regarding Measure 105. We examined each assertion using witness testimony as well as independent research. Ultimately, following several discussions, our committee voted and unanimously concluded that passage of Measure 105 was not in the best interest of Oregon's community at large.

APPENDIX B: FULL INITIATIVE LANGUAGE

Be It Enacted by the people of the state of Oregon

SECTION 1. ORS 181A.820 is repealed.

[ORS 181A.820 Enforcement of federal immigration laws. (1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is

that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may exchange information with the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and Border Protection in order to:

(a) Verify the immigration status of a person if the person is arrested for any criminal offense;
Or

(b) Request criminal investigation information with reference to persons named in records of the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services or the United States Bureau of Customs and Border Protection.

(3) Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person who:

(a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and

(b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

(4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

(5) As used in this section, “warrant of arrest” has the meaning given that term in ORS 131.005. [Formerly 181.850]]

APPENDIX C: WITNESSES

Witnesses that provided oral or written testimony:

Linda Castillo, The Commission on Hispanic Affairs (written testimony)

Wayne Cornelius, Professor of Political Science and U.S.-Mexican Relations, University of California-San Diego (written testimony)

Roberto Gutierrez, Causa and Oregonians United Against Profiling (oral testimony)

Cynthia Kendoll, Oregonians for Immigration Reform (written testimony)

Reyna Lopez, Pineros y Campesinos Unidos del Noroeste (oral testimony)

Tom Potiowsky, Director of the Northwest Economic Research Center (written testimony)

Mike Reese, Multnomah County Sheriff (oral testimony)

Juliet Stumpf, professor of immigration and criminology at Lewis and Clark Law School (oral testimony)

Individuals that were invited to testify, but either declined or did not respond:

Phil Cooper, Professor of Public Administration, Portland State University (did not respond)

Jack Corbett, Professor on Transnational Migrant Identities and Latin America, Portland State University (did not respond)

Representative Teresa Alonso Leon, Oregon House of Representatives (did not respond)

Representative Diego Hernandez, Oregon House of Representatives (did not respond)

Representative Greg Barreto, Oregon House of Representatives (did not respond)

Representative Sal Esquivel, Oregon House of Representatives (did not respond)

Representative Mike Nearman, Oregon House of Representatives (declined)

Sheriff Tom Bergin, Clatsop County (did not respond)

Linda Roman, Deputy Health Care Policy Advisor, Officer of Governor Kate Brown (did not respond)

Linda Schott, President, Southern Oregon University (did not respond)

General inquiry emails were sent to the League of Oregon Cities, Hood River Valley Orchardists, Portland Business Alliance, and the Oregon Attorney General's Office (did not respond)

APPENDIX D: INTERVIEW QUESTIONS

Your committee asked the following questions of witnesses:

- What would be the largest impact of the passage of IP 22 on your agency and/or community?
- What do you consider to be most at stake with regards to IP 22?
- What is your perception of what is happening (with law enforcement and/or in your community) under current law?
- If the measure is resolved in your favor what would do you expect to be the greatest benefit to Oregonians?
- Is there anything else you would like us to know as we continue our research?

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APPENDIX F: ACKNOWLEDGEMENTS

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Julia Meier, Executive Director
Stacey Rice, Program Strategist
Dan Rivas, Director of Communications & Marketing
Robin Ye*

* Robin Ye recused himself from this committee and we would like to thank him for all of the work he performed.

APPENDIX G: ABOUT CITY CLUB

City Club was founded in 1916 by a group of young leaders who felt the city was not responding to the needs of everyday people. Today, we're building on that legacy by bringing together a diverse community of thinkers and doers to spark change across our region. Through trusted

research, open dialogue, and advocacy for our best ideas, City Club is working to make Oregon a place where everyone can thrive.

For more information about City Club of Portland or for additional copies of this report, visit pdxcityclub.org, email info@pdxcityclub.org or call 503-228-7231.

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