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# A City Club Report on Measure 103: A Ban on Grocery Taxes

City Club of Portland (Portland, Or.)

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# A City Club Report on Measure 103: A Ban on Grocery Taxes

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## EXECUTIVE SUMMARY

Measure 103 proposes an amendment to the Oregon Constitution that would ban any changes to taxes, assessments, or fees related to the sale or distribution of groceries. Proponents claim that this amendment is needed to stop recent efforts to tax groceries in the state. They state that this measure is clear and straightforward. Opponents counter that this is an effort to create a tax carve-out for large national grocers. Furthermore, opponents argue that the measure is overly broad, which would lead to major disruptions in the state's ability to collect revenue from a variety of businesses. Concern was also raised about the imprecise language used throughout the measure, including the definition of groceries chosen by proponents.

After analyzing the measure, hearing testimony from both sides, and conducting our own research we have concluded that Measure 103 has the potential to create significant administrative and legal problems in the state because it is not clear what is covered and would likely create problems and increase administrative costs for collecting taxes from businesses unrelated to the sale of groceries but still covered by this measure—including hospitals and trucking companies. In addition, there appears to be no significant threat of a grocery tax being sought by any group, with the possible exception of a local tax on sugar-sweetened beverages and broad taxes intended to tax businesses in all industries. Therefore, this committee recommends a “No” vote on Measure 103.

**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 103. The outcome of the vote will be reported via email and online at [pdxcityclub.org](http://pdxcityclub.org).*

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	1
TABLE OF CONTENTS .....	3
INTRODUCTION.....	4
BACKGROUND.....	4
ARGUMENTS .....	5
DISCUSSION AND ANALYSIS.....	6
Constitutional Amendment Versus Statewide Ballot Initiative.....	6
Preemption of Local Governments and Sugar-Sweetened Beverage Taxes.....	9
Complexity of Proposed Amendment and Preventive Ballot Box Lawmaking .....	11
Revenue Impacts and Possible Future Impacts on Underserved Communities.....	12
CONCLUSION.....	15
RECOMMENDATION .....	16
SIGNATURES .....	16
APPENDIX A: METHODOLOGY .....	17
APPENDIX B: FULL INITIATIVE LANGUAGE.....	17
APPENDIX C: WITNESSES .....	19
APPENDIX D: BIBLIOGRAPHY .....	19
APPENDIX E: ACKNOWLEDGEMENTS.....	23
APPENDIX F: ABOUT CITY CLUB .....	23
ENDNOTES.....	24

## INTRODUCTION

Measure 103 will appear on the Nov. 6, 2018 ballot as follows:

### **Amends Constitution: Prohibits taxes/fees based on transactions for “groceries” (defined) enacted or amended after September 2017**

**RESULT OF “YES” VOTE:** “Yes” vote amends Constitution; prohibits state/local taxes/fees based on transactions for “groceries” (defined), including those on sellers/distributors, enacted/amended after September 2017.

**RESULT OF “NO” VOTE:** “No” vote retains state/local government authority to enact/amend taxes (includes corporate minimum tax), fees, on transactions for “groceries” (defined), including on sellers/distributors.

**SUMMARY:** Amends Constitution. Currently, state/local governments may enact/amend taxes/fees on grocery sales, including state corporate minimum tax, local taxes. Measure prohibits state/local governments from adopting, approving or enacting, on or after October 1, 2017, any “tax, fee, or other assessment” on sale/distribution/purchase/receipt of, or for privilege of selling/distributing, “groceries,” by individuals/entities regulated by designated food safety agencies, including restaurants, or operating as farm stand/farmers market/food bank. Measure prohibits “sales tax, gross receipts tax, commercial activity tax, value-added tax, excise tax, privilege tax, and any other similar tax on sale of groceries.” “Groceries” defined as “any raw or processed food or beverage intended for human consumption.” Alcoholic beverages, marijuana products, tobacco products exempted. Other provisions.

## BACKGROUND

The Chief Petitioners of this initiative are Ron Brake and Syd Hannigan. Disclosure reports show that by March 2018, the supporting campaign for Measure 103 (Yes! Campaign) received \$1.2 million in contributions from retailers Albertsons, Costco, and Kroger and \$97,000 in loans from the Northwest Grocery Association. These entities helped fund the campaign that defeated Measure 97 in 2016, an initiative to introduce a gross receipts tax that would have applied to most corporate sales, including groceries. As of June 22, 2018, the Yes! Keep Our Groceries Tax Free campaign has raised \$2,071,929.94 million dollars in contributions.

There have been several recent and ongoing policy attempts that have generated interest among grocers to push for Measure 103. One is the ongoing discussion within Multnomah and other

counties to possibly impose a sugar-sweetened beverage tax.<sup>1</sup> Another reason is recent and repeated attempts by the Oregon legislature and certain political organizations within the state to implement a gross receipts tax.<sup>2</sup> The proponents of the measure view a gross receipts tax as a back way to tax grocery sales. However, opponents characterize a gross receipts tax differently and are united in stating that there has never been a serious attempt to tax groceries in Oregon.<sup>3</sup>

## ARGUMENTS

According to Dan Floyd, who provided written testimony on behalf of the Yes! Keep Our Groceries Tax Free Campaign, the intended outcome of Measure 103 is simply to “prohibit state and local governments in Oregon from enacting taxes on the sale of groceries,” arguing that “politicians and special interests in Oregon have continued to push for a tax on the sale of groceries.” Testimony in opposition to Measure 103, on the other hand, expressed concerns that the measure would result in many unintended and potentially harmful consequences due in large part to the imprecise and broad language.

Measure 103 could have several political impacts on the state of Oregon including an effort in Multnomah County to impose a tax on sugar-sweetened beverages, such as soda—as other public health groups nationwide have been attempting to institute—and repeated efforts to establish a gross receipts tax that would tax companies in Oregon on their gross sales. Additionally, it could limit adjustments to the corporate minimum tax, assessment fees, revenue from bottle deposits, or any other government mandated tax or fee leveled against any corporation involved in the sale or distribution of food or agricultural products in Oregon.

The website for the group supporting the initiative proclaims that this constitutional amendment is necessary because “we need to permanently protect groceries from being taxed.”<sup>4</sup> In an editorial endorsing Measure 103, the Bend Bulletin stated that “[Oregon Legislators] have... tried to put new taxes on essentials such as food. Most states, at least, exempt food from sales taxes.”<sup>5</sup>

Meanwhile, Our Oregon, a political coalition focused on ballot measures, has come out in opposition to the proposed constitutional amendment. Katherine Driessen, Our Oregon’s communications director, asserted that the measure “is really an attempt by the grocers to codify their ability not to pay their fair share of taxes.”<sup>6</sup> Mary King, professor emeritus in economics at Portland State University, stated that the proposal is “a massive, unprecedented carve-out for some of the biggest retailers in the world that will apply to far more than just the food they sell.”<sup>7</sup> That same article also states that this would be the first such prohibition on taxation in the country.<sup>8</sup>

Aside from the groups campaigning for and against the measure, we did not know in advance how the witnesses would stand on the proposal. It was somewhat surprising to the committee to discover how unified varied interest holders were in their opposition to the initiative. When the committee reached out to the supporters of the measure they agreed to provide written testimony. We provided the Yes! campaign with a list of questions that the committee composed. Instead of providing answers to our questions, the Yes! Campaign sent what can best be described as a general outline of the measure that did not appear to respond to the questions or to engage with the committee. We sent a follow-up set of questions asking for some clarification on their written testimony and for a response to some testimony we had received from other sources. The campaign responded to these questions by referring back to their original testimony. Finally, Stacey Rice, a member of City Club's staff, reached out a third time to Dan Floyd, our contact at the Yes! Campaign, asking for names of other supporters who might be interested in testifying. Mr. Floyd did respond to this request with a list of some organizations but did not respond to additional follow-up requesting contact names and numbers for individuals at those organizations. We interviewed the organizations we were able to contact in the brief project timeline.

## DISCUSSION AND ANALYSIS

Measure 103 would prohibit not only grocery taxes, but any adjustments (including decreases) to the corporate minimum tax, assessment fees, the bottle bill, or any other government mandated tax or fee levied against any corporation involved in the sale or distribution of food in Oregon. No opposing perspective from which we received testimony suggests that they are in support of a grocery tax—in fact, many of those who spoke to us in opposition to Measure 103 said they support not taxing groceries. Their opposition to Measure 103 is seated, they say, in the fact that, as it is written, the measure does not guarantee more affordable groceries for Oregonians and instead codifies in our state constitution tax breaks for multinational and other corporations. While the supporters refute these claims, there is some uncertainty about what the actual ramifications of this measure's passage would be. Testimony from Ralph Mastromonaco, a Senior Economist for ECONorthwest, summarized it well. He stated that this measure does not affect any current taxes but it is uncertain how this might impact future attempts to raise revenue due to the preemptive nature of the measure.

### Constitutional Amendment Versus Statewide Ballot Initiative

Oregon law allows for citizens and organizations to gather signatures to propose a new state law or amend the state constitution.<sup>9</sup> The number of signatures required is based on the total number of votes cast in the previous gubernatorial election; with proposed laws requiring 6% (88,184 this

year) and constitutional amendments requiring 8% (117,578 in 2018) of the number of votes cast for governor in the previous election.<sup>10</sup> There are numerous other differences between the two, but the most substantial difference is that an amendment to the Constitution can only be changed by another constitutional amendment, or by judicial interpretation. Conversely, a statutory law proposed and passed by voters may be amended and adjusted by legislative action, without being referred back to the voters. This section will analyze possible unforeseen consequences and benefits of Measure 103 being a constitutional amendment and the reasons why this might be chosen as a strategy, as opposed to submitting this proposal as a statutory ballot measure.

Because this measure is a constitutional amendment, it would be extremely difficult for lawmakers to tax groceries in the future—a practice that has been shown to be regressive in implementation.<sup>11</sup> However, Oregon, like most states, does not have a tax on groceries. Kyle Camberg, Executive Director of Sunshine Division, a food pantry located in North Portland, provided testimony in support of Measure 103, noting his concerns over a potential future grocery tax. However, there has been no meaningful recent effort to tax groceries or pass a statewide sales tax that includes groceries in recent history.<sup>12</sup> Mr. Camberg's primary concern on this matter is preventing food insecurity for Oregonians. He was approached by someone who had been associated with a large grocer for many years about Measure 103, and it is his concern over potential future grocery taxes that lead him to support this proposal. He also stated that he was unaware of any meaningful attempts to pass a grocery tax and that he is not a lobbyist or lawyer. He did refer to the successful vote in St. Helens that prohibited taxes on all groceries, but that was in response to the city council considering a soda tax and not an attempt to tax groceries.<sup>13</sup> Similar concerns were raised by Kiersten Ware, Executive Director of Store to Door. Store to Door is a local non-profit that provides grocery shopping assistance to older adults and people with disabilities who are homebound. She is concerned that a future grocery tax might be passed onto consumers. However, her testimony did not provide information about any efforts to pass a grocery tax. While sweetened-beverage taxes are a tax on a specific grocery, that is a far different policy than a tax on groceries in general. Additionally, for reasons discussed below we do not find a gross receipts to be a tax on groceries. Our research concludes that there has been no meaningful effort to tax groceries or pass a statewide sales tax that includes groceries in recent history.

The regressive nature of a grocery tax and concerns about how it would impact Oregonians who are low-income are not lost on policymakers. It is, in fact, a concern that is reflected in ongoing policy discussions including the Portland Clean Energy Fund Initiative which was drafted to exclude groceries from the tax that would fund the measure.<sup>14</sup> The Yes on Measure 103



campaign argues that 2016's Measure 97, which would have implemented a statewide gross receipts tax, would have indirectly been a tax on grocers and thus on groceries.<sup>15</sup> However, Daniel Morris, Ph.D., Policy Consultant, and Board Member of Upstream Public Health,<sup>16</sup> provided the committee with a study he conducted highlighting that there is no link between effective state tax rates paid by corporations and retail prices paid by consumers.<sup>17</sup> Morris clarified that pricing, particularly for large national chains such as Albertsons, Costco, and Kroger, is set at the national level, so statewide taxes have very little influence on the price paid at checkout. For this reason, it does not seem accurate to frame a gross receipts tax as a tax on groceries.

We also found that there is concern about adding language that is traditionally statutory in nature to the Oregon Constitution. In a brief discussion relating to the strategies for lawmaking, former Oregon Secretary of State Phil Keisling stated that the purpose of a constitution is to outline the basic structure and duties of the government and that the defining of terms or additional language detailing how structures and duties apply to specific policy issues should be added in statute. Measure 103 seeks to add these sorts of statutory details, such as the definition of the term "groceries," into the state constitution.

This is not to say that Measure 103 is unique in its endeavor to create law by amending the Oregon constitution. Article 15 Section 4 (definitions relating to the workings of state lottery programs) and Article 1 Section 41 (requiring prisoners to work while incarcerated) are two examples of constitutional amendments that codify definitions as they were written in their respective initiatives and have prevented lawmakers from making any changes that may serve the public good. This concern regarding the inclusion of statutory language in constitutional amendments was echoed by the testimony of Dr. Morris. Dr. Morris stated that tax policy is always hard and that it becomes even harder when constitutional amendments "gum up the works." This measure in particular is so broad that it will lock a large number of corporations into their current tax structure and not allow for any changes except through future constitutional amendments.

It is not immediately clear what credible threat Measure 103 is attempting to prevent from occurring. A grocery tax would be regressive in nature, as it would hurt low-income communities by increasing the price of an essential commodity, a tax that upper income households could more easily pay. However, Measure 103 is not simply an attempt to amend the Constitution to forbid a grocery tax. The language of Measure 103 goes further than simply banning a sales tax on groceries. Subsection 4 prohibits "the imposition and collection of a tax, fee, or other assessment, including but not limited to a corporate minimum tax, on the sale or distribution of

groceries.” This language has led to concerns about what might ultimately happen if Measure 103 were to pass. Duncan Hwang, Associate Director of the Asian Pacific American Network of Oregon (APANO), commented that Measure 103 does not do what the proponents claim. APANO recently took a formal position in opposition to Measure 103, and in testimony for this report, Mr. Hwang expressed his opinion that the measure was counter to APANO’s goals of racial justice. This concern arises from the potential to limit revenue generating options by state and local governments while increasing the administrative costs and challenges to collecting taxes. This could all lead to a reduction in money available to fund education, state services that assist Oregonians in need, or infrastructure. The potential problems the imprecise and broad language might cause was echoed by Mr. Mastromonaco. He stated that the language of what could and not be taxes is clear, but uncertainty about what tax laws are forbidden could lead to a large swath of potential unintended consequences.

The vagueness of this language in Measure 103 is even more a cause for concern due to the legislature’s inability to adjust the wording later as needed. This limitation stems from the fact that Measure 103 is a constitutional amendment and can only be changed by another vote by the people and not by legislative action. Organizations in opposition argue that new laws, whether introduced as constitutional amendments or as statute, are rarely written perfectly and that changes to statute language over time are necessary; Measure 103 prevents this without an additional amendment, a process that is both expensive and time consuming. The Amendment may create significant unintended consequences that have serious impacts on the State of Oregon’s revenue stream while providing a major tax break to the large corporations funding this measure.<sup>18</sup> Finally, the success of Measure 103 would provide a potentially dangerous precedent that interest groups with deep pockets could fund constitutional amendments that create enormous tax carve-outs for their constituent businesses. Many of these potential consequences and concerns are examined in greater detail below.

## Preemption of Local Governments and Sugar-Sweetened Beverage Taxes

Understanding Measure 103 requires understanding what makes a preemptive measure unique from a standard measure. Preemptive measures prevent future bills, including proposals that are not currently under consideration, such as, in this case, a tax on groceries. Oregon law is filled with examples of the state government preempting local entities from enacting certain measures. Preemptive laws exist concerning tobacco taxes,<sup>19</sup> agricultural practices,<sup>20</sup> and, until recently, a statewide preemption on localities passing inclusionary zoning laws.<sup>21</sup>

While a common practice, the preemption of action by local governments limits their authority to address issues prevalent or relevant in their communities. An argument was made in

conversations with committee members that clear and meaningful definitions should be a priority when dealing with state preemption of local governments. As noted above there is concern that the language in Measure 103 is already vague even before considering preemption issues.

Dan Floyd's written testimony for the Yes! Campaign did not include a clear response to our request for clarification of initiative language. In particular, we sought an explanation from the Campaign to counter how the vaguely stated rule against new taxes, fees, and assessments would not result in greatly limited revenue raising measures for local governments in the future, but the Campaign testimony failed to address this.

If passed, Measure 103 would preempt local governments from pursuing any tax on products falling under the definition of "grocery" as defined in the language of Measure 103. This includes sugary beverage taxes, which have gained a wide amount of support as a revenue source in municipalities across the country in the past few years. But an important question to consider is whether or not these sweetened beverage taxes provide a benefit to the communities that enact them. Obesity is a major problem in Oregon, with rates above 30 percent in 2016; this made Oregon the most obese state in the West.<sup>22</sup> Some localities looked at soda taxes as a possible way to mitigate the obesity rate in their communities, with some groups actively trying to find a way to implement a soda tax in Multnomah County.<sup>23</sup>

While there is little argument that the consumption of sugar is tied to the obesity epidemic,<sup>24</sup> there is some debate as to the effectiveness of soda taxes to reduce the consumption of sugar-sweetened drinks and obesity. Recent data suggests that sugar taxes do reduce consumption of sugar-sweetened beverages.<sup>25</sup> Additionally, there is no current evidence that any cities that have taxed sweetened beverages have made any moves to tax other foodstuffs, and the evidence points towards people buying less soda and instead purchasing water or other unsweetened drinks.<sup>26</sup>

Doctor Jim Krieger, Executive Director of Healthy Food America, testified that most of the revenue being generated by currently existing soda taxes is being used to provide services targeted at low-income individuals and communities. A recent article concerning San Francisco's tax reports that \$10 million is expected to be invested in health and food programs for low-income communities.<sup>27</sup> The data is clear that the revenue from such taxes can provide needed funding for local investments. While there is not yet sufficient data to conclusively state the overall impacts of sugar taxes concerning obesity, employment, and consumption of sugar-sweetened beverages, the recent trend has been that these taxes have a measurable and positive impact on the problem localities are grappling with. Measure 103 would forbid Oregon local governments from utilizing this tool to increase revenue and improve health outcomes.

## Complexity of Proposed Amendment and Preventive Ballot Box Lawmaking

The language of the Amendment itself raises questions worth examining; specifically, it is unclear what types of businesses and possible future taxes would and would not be exempt under Measure 103. Subsection (4) includes critical language about what voters are voting on:

(4) The prohibition on the imposition and collection of a tax fee, or other assessment, including but not limited to a corporate minimum tax, on the sale or distribution of groceries by subsection (1) of this section applies only to state and local enactments relating to taxes, fees, or other assessments adopted, approved, or enacted on or after October 1, 2017.

It is the first and only mention of ‘corporate minimum tax’ in the initiative and seems to expand the scope of the ballot measure to include far more than just potential future grocery taxes. Mr. Hwang stated that he could not say with specificity what the language of Subsection (4) could relate to and that this is part of the problem with how the measure is written. This could lead to confusion and uncertainty within the state government. One such uncertainty, also raised by Mr. Hwang, is how Measure 103 would interact with Measure 101, which imposed a tax on hospitals. Would the food the hospitals sell be exempted from the tax? What about meals provided to patients staying in the hospital? We received testimony from Hannah Love, Campaign Director for Defend Oregon, claiming that these sales would be exempted from future tax changes. This is only one example of how Measure 103’s vagueness could lead to havoc within the state government.

This concern was echoed by Christina Bodamer’s testimony. Ms. Bodamer is the Government Relations Director for the Oregon branch of the American Heart Association and she relayed that her organization is uncertain if the retroactive nature of Measure 103 could imperil Oregon’s matching Medicaid dollars secured by the passage of Measure 101. Mr. Mastromonaco from ECONorthwest testified that the language in Subsection 4 could very likely lead to increased administrative costs and challenges in collecting corporate taxes. In a follow-up email he cited to the Oregon Department of Justice’s opinion that any firm that sells any food would be exempt from future tax increases. Mr. Mastromonaco expanded on this suggesting that, since it is so cheap to sell some form of groceries (such as candy bars at check-outs or vending machines), if the state ever tried to raise the corporate minimum tax all businesses would start selling some form of groceries in an attempt to be exempt from the increased minimum tax. We received no clear response from the Yes! Campaign to our request to clarify their position relating to potential confusion and future misinterpretations of the language in Measure 103.

The second point that came up repeatedly in testimony was that the definition of “groceries” as it is outlined in Measure 103 garners concern from opponents. Ms. Love also expressed concern for the broad definition of “groceries” and pointed out that vape juice falls under the current definition of groceries, according to Measure 103, because it is considered food grade in Oregon. Ms. Love testified that the carve-out excluding tobacco from Measure 103 does not exclude nicotine vaping products because they are explicitly not tobacco according to Oregon law.<sup>28</sup> Ms. Love argues that this measure would ban any proposed tax on vape products in the future, something that many voters would most likely find surprising given the language used in the initiative.<sup>29</sup>

Including Subsection (4), a significant, and by some readings the most important, part of the measure towards the end of the initiative only increases the concerns that voters will not comprehend the scope of what they are voting on. Further adding to the confusion is that this is a preventive constitutional amendment trying to prevent a law from being passed in the future. There are no grocery taxes in the state of Oregon. Measure 103 would restrict any future efforts to create such taxes, but also appears to limit other revenue-raising options the state legislature or local governments might wish to pursue. Preemption is not the way most people process how the law works, and there are scant examples of preventive constitutional amendments. In the last 20 years the example most closely related to Measure 103 is Measure 79 from 2012.

Measure 79 amended the State Constitution to prohibit any tax on real estate transfers. There was a statutory prohibition on such taxes at the time, but realtor groups spent nearly \$5 million to pass the amendment.<sup>30</sup> This is similar to the grocers’ backing of Measure 103 and the Measure’s preemptive prohibition on taxes. However, there are also some notable differences between the two. Measure 79 was attempting to prevent a tax that had been seriously considered by the legislature. Measure 103 is preventing a tax that the legislature has never considered and one that would, by most accounts, never be seriously considered. Second, Measure 103 attempts to use state law to circumvent local government attempts to combat obesity. Measure 79 did the opposite: It would have prevented the state legislature from overturning the statutory ban on such taxes. Finally, and perhaps most importantly, the measures differ in the specificity of their language. Measure 79 is a single section brief amendment clearly focusing on the sole issue of real estate transfer taxes.<sup>31</sup> Conversely, the language of Measure 103 is broad and could limit the legislature’s ability to raise revenue far beyond grocery taxes. The possible repercussions of Measure 103’s vagueness is discussed in the next section.

## Revenue Impacts and Possible Future Impacts on Underserved Communities

While there are no constitutional amendments that provide a direct comparison to Measure 103, Measures 5 and 50 from the 1990s can provide some insight into the potential impact that constitutional amendments dealing with taxation can have on the state's revenue stream. In 2011 the League of Oregon Cities published an overview of the cost to the state of Measures 5 and 50. Their report concluded that the two measures reduce revenue that cities take in by tens of millions of dollars every fiscal biennium.<sup>32</sup> An argument can be made that the impact of Measure 103 would be minimal compared to Measures 5 and 50 which impacted property tax. However, the uncertainty surrounding the language in Measure 103 creates a very real possibility that should it pass it could be used to limit the legislature's ability to tax any company that is even tangentially related to the sale of groceries.

Numerous witnesses predicted that this measure would have a sweeping impact on Oregon's ability to raise revenue and properly fund programs that help low-income communities.<sup>33</sup> According to testimony, Measure 103 might be interpreted so that any trucks carrying food could be exempt from increased fuel taxes, while those not carrying food would not be exempt.<sup>34</sup> This example, and the above mentioned question about how hospital food would be dealt with, were mentioned as points of confusion by multiple witnesses. The concern is that not only would Measure 103 limit revenue, but it would also create severe administrative challenges in imposing taxes on corporations.<sup>35</sup> When asked specifically about these examples and the possible expansive scope of Measure 103, Mr. Floyd, the Yes! campaign representative, referred back to their written testimony, which does not directly address this matter.

The Oregon Legislative Revenue Office (LRO) recently published a brief analysis of the potential revenue impacts measures appearing on this year's ballot might have.<sup>36</sup> Their findings on Measure 103 mirror the concerns raised by many others, including Mr. Mastromonaco from ECONorthwest. The LRO notes that crafting future revenue policy could be complicated by this measure and shift tax burdens away from grocers to other taxpayers. Furthermore, the addition of Subsection (4) of the measure is interpreted to prevent any increases in the corporate minimum tax from impacting grocers. Ultimately, the LRO finds that Measure 103 creates a lot of uncertainty that is difficult to analyze given the preemptive nature of the proposed amendment.

We received testimony about the possible impacts this measure could have on Oregon's taxes and revenue. Dr. Morris provided some specific examples of how this measure would impact revenue for various communities and at the state level. According to him, any adjustments to the bottle bill, or an attempt to add new containers to the bottle bill at the state or local level would be preempted. He stated that assessment fees on any company related to the production or

distribution would be preempted. As Ms. Love put it, “M103 will exempt transactions at every point throughout the entire chain of commerce for anything that can be consumed, including production and processing, packaging, transportation, all the way down to the food served at restaurants.” For this reason, it’s possible that the vagueness of Measure 103 would eliminate future tax revenue from many businesses not explicitly mentioned in the measure.

Ms. Bodamer from the Oregon American Heart Association testified that in Seattle, money generated from the sugar-sweetened beverage tax (Ordinance 125324) is being invested in providing low-income community members with access to fresh produce. Measure 103 would preempt such funding from being an option for Oregon localities. Dr. Morris stated that research shows the greatest way to improve the health of low-income community members is to invest in things like education and community health programs. All these points, in addition to Dr. Krieger’s comments and the above cited article concerning how cities with sugar-sweetened beverage taxes have utilized the revenue, lead to the conclusion that Measure 103 is an attempt to greatly limit revenue options for the state and local communities for decades to come.

Finally, and possibly most importantly, there is a real possibility that Measure 103 could be interpreted as a precedent to impact all corporate tax rates for any business even tangentially related to food distribution should there ever be an attempt to increase the corporate minimum tax. Ms. Love provided us with legal interpretation of Measure 103 prepared for Defend Oregon by Steven Berman, an attorney at Stoll Berne, which addresses some of the issues that concern Defend Oregon in Measure 103. In his memo, Mr. Berman states that it is “undisputed that IP 37 [Measure 103] applies to any changes or amendments to the corporate minimum tax.” Mr. Berman provides a lengthy list of the types of businesses that would be exempt from new taxes or fees including: slaughterhouses, restaurants, food served at movie theaters or hotels, and caterers. The Yes! Campaign, however, disagrees with this interpretation claiming that restaurants would not be included in the exemption, an interpretation that is disputed by Mr. Berman and the Oregon Attorney General.<sup>37</sup> Ultimately, the Yes! Campaign’s appeal to the Oregon Supreme Court to remove any mention of the corporate minimum tax from the ballot title was rejected.

It is also possible that the passage of Measure 103 could affect existing measures. Mr. Berman’s memo suggests that Measure 103 would substantially affect Measure 101 and the ways in which hospitals and other food vendors can and cannot be taxed. The concerns raised earlier about the fuel tax, bottle bill, and vaping products are also buttressed by Mr. Berman’s legal analysis. Finally, the memo outlines that Measure 103 would prevent taxes on small businesses from being decreased in the future, as the measure preempts all amendments to tax rates for affected businesses.

## CONCLUSION

On its face, Measure 103 is an attempt to protect an essential commodity from having a regressive tax levied against it. However, as the committee investigated the issue, it became apparent that the motivation for Measure 103 was not as straightforward as keeping groceries tax-free. There is clearly a desire among grocers to preempt local efforts to tax sugar-sweetened beverages, a point highlighted in the Yes! Campaign's written testimony. Despite repeated requests for evidence of specific attempts to tax groceries, no information was provided by supporters, and opponents resoundingly proclaimed that they knew of no attempts to tax groceries in Oregon.

This bill would ban a grocery tax that does not exist, is not under consideration, and has not been proposed in any significant way. The closest effort to tax groceries that has been identified by the Yes! campaign is the recent attempt to impose a gross receipts tax on companies conducting business in Oregon. Proponents of Measure 103 say that a gross receipts tax would be passed onto customers thus amounting to a grocery tax. Opponents counter that this argument would mean that almost any tax on corporations could be considered a grocery tax, offering corporate income and payroll taxes as examples. When asked for their counter-arguments on this point, the Yes! campaign replied that their initial testimony addresses this issue; however, there is no mention in their testimony concerning this point. Dr. Morris' study that gross receipts taxes don't affect prices of groceries combined with this framing from opponents that according to the Yes! campaign's logic any tax affecting companies would be a grocery tax we do not consider attempts to pass gross receipts taxes to be an attempt to tax groceries.

Adding to the concerns with Measure 103 is its broad and vague language. Numerous witnesses testified that the language of Measure 103 would have large and unforeseen impacts on Oregon's ability to collect revenue and increase the administrative costs of collecting taxes from corporations. The uncertainty could impact the taxation of hospitals, trucking companies, or any other company even tangentially related to the distribution of groceries. The Yes! Campaign once again pointed us to their testimony, which proclaims that the measure is simple and specific but does not respond to the above-mentioned concerns. Measure 103 is not simply about keeping groceries tax free but is an attempt to drastically alter the state's tax code to benefit companies involved with the sale and distribution of food. The imprecise and broad language and its preemptive nature obfuscate potential or specific outcomes, the list of which is long and deeply concerning.



Ultimately, there was testimony from numerous witnesses that Measure 103 would preempt local governments from implementing revenue-raising measures to combat societal problems. No supporting witnesses were found that were willing to provide an economic or legal analysis countering the claims made by opponents. Additionally, the imprecision and scope of the measure's language would most likely have drastically negative impacts on the state's and local governments' ability to raise revenue and tax corporations. Finally, Measure 103, as a constitutional amendment, would be very difficult to alter or correct if it is passed because any changes would also need to be a constitutional amendment.

## RECOMMENDATION

**This committee recommends a NO vote on Measure 103.**

## SIGNATURES

Respectfully submitted,

Sara Friedman, Chair  
Derek Bradley, Lead Writer  
Lindsey Klemp Hendren  
Robyn Johnson  
Alex Kerr  
Ken Rosenberg

## APPENDIX A: METHODOLOGY

The Committee has sought testimony on each of these issues from sources with varying opinions on the proposal. Additionally, we have undertaken significant independent research. Our approach to finding witnesses was to compile a list of groups that might have knowledge and experience that would be beneficial when considering this measure and impactful to writing this report. We reached out to people and organizations with a variety of stated positions and expertise. After creating an initial list, we asked the witnesses to recommend groups or individuals that they thought would be beneficial for us to speak to. Unfortunately, the short timeline for research and writing limited the opportunities to solicit testimony. We have endeavored to fill in holes in testimony with citations to research, news articles, and opinion pieces that are relevant to our analysis. The lack of testimony in support of Measure 103 is hard to miss in this report.

In evaluating the potential taxes (grocery tax, sweetened-beverage tax, gross receipts tax) discussed in this report, the committee considered a variety of factors utilized by previous City Club reports, including:

- The fairness of the proposed tax, specifically the progressive versus regressive nature of the proposal
- The level of revenue generated
- The ease with which a tax might be changed or interpreted in the future
- How understandable and clear the tax was
- The efficiency and simplicity of collecting the tax
- The impact the tax could potentially have on economic activity.

Unlike previous reports, the political viability of the taxes discussed was not a factor in our analysis. This is because all of the potential taxes discussed have been or are likely to be put before voters at the ballot box. Had we been analyzing a legislative attempt to create a new tax, this final prong would have been a central focus of the report.

## APPENDIX B: FULL INITIATIVE LANGUAGE

SECTION 16. (1) Subject to the limitations in subsection (4) herein, the state and a city county, district or other political subdivision or municipal corporation of this state may not adopt, collect, enact, or impose a tax, fee, or other assessment upon the sale or distribution of groceries or for the privilege of selling or distributing groceries.

(2) Nothing in subsection (1) of this section limits the authority to adopt, collect, enact, or impose:

- (a) A tax, fee, or other assessment on or measured by
  - (A) The sale of alcoholic beverages, marijuana products, or tobacco products
  - (B) Net income of an individual or entity.

(b) A fee or other assessment to operate the State Department of Agriculture's Food Safety Program or Commodity inspection Program or any successor agency or program that provides for the safety of groceries.

## DEFINITIONS

3) As used in this section:

(a) "Groceries" means any raw or processed food or beverage intended for human consumption except alcoholic beverages, marijuana products, and tobacco product

(b) "Sale or distribution of groceries" means any transaction for the sale, purchase distribution, or transfer of groceries sold, distributed, transferred to, or purchased or received from, any individual or entity that

(A) Is licensed, registered or inspected under the Food Safety Modernization Act, U.S. Food and Drug Administration, U.S. Department of Agriculture Federal Grain Inspection Service, or any successor agency or program that provides for the safety of groceries: or

(B) Is licensed and inspected by the State Department of Agriculture's Food Safety Program or Commodity Inspection Program or any successor agency or program that provides for the safety of groceries: or

(C) Operates as a farm stand, farmers market, or food bank.

(c) "Tax, fee, or other assessment" includes, but is not limited to, a sales tax, gross receipts tax, commercial activity tax value-added tax, excise tax, privilege tax, and any other similar tax on the sale of groceries.

(d) "Alcoholic beverage" means any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(e) "Marijuana product" means a product made from any part of the plant Cannabis family Cannabaceae or the seeds of the plant Cannabis family Cannabaceae

(f) "Tobacco products" means cigars, cigarettes, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

## IMPLEMENTATION

(4) The prohibition on the imposition and collection of a tax fee, or other assessment, including but not limited to a corporate minimum tax, on the sale or distribution of groceries by subsection

(1) of this section applies only to state and local enactments relating to taxes, fees, or other assessments adopted, approved, or enacted on or after October 1, 2017.

(5) It is the intent of the people that all parts of this amendment are independent and that if any part of this amendment is held unconstitutional all remaining parts shall remain in force. [3][1]  
*Additional Reference: Article IX, Oregon Constitution*

## APPENDIX C: WITNESSES

The following is a list of individuals who submitted testimony to our committee:

- Christina Bodamer, Director of Government Relations Oregon Branch of American Heart Association
- Kyle Camberg, Executive Director Sunshine Division
- Daniel Floyd, Contact person for Yes! Campaign [Written]
- Duncan Hwang, JD, Associate Director Asian Pacific American Network of Oregon
- Jim Krieger, MD, MPH, Executive Director of Healthy Food America; Clinical Professor of Medicine and Health Services at the University of Washington; former Chief of the Epidemiology Unit at Seattle & King County Public Health
- Hannah Love, Campaign Director Defend Oregon
- Ralph Mastromonaco, Senior Economist ECONorthwest
- Daniel Morris, PhD, Doctor of Public Health; Policy Consultant; Board Member of Upstream Public Health
- Kiersten Ware, Executive Director of Store to Doors [Written]

The following is a list of individuals who were asked to submit testimony and either did not respond or declined to testify:

Senator Mark Haas NO RESPONSE

Dr. Phillip Cooper, Department of Public Administration, Portland State University NO RESPONSE

Phillip Kennedy Wong, Susannah Morgan, Oregon Food Bank NOT TAKING POSITION  
Partners for Hunger Free Oregon NOT TAKING POSITION

Lisa Sedlar, Green Zebra Grocery Agreed to written response; did not follow up due to time

Kali Ladd, Kairos PDX NO RESPONSE

Deborah Kafoury, Multnomah County Chair NO RESPONSE

Annie Kirschner, Partners for a Hunger-Free Oregon NO RESPONSE

Professor Jim Oleske DECLINED

Professor Jack Bogdanski DECLINED

## APPENDIX D: INTERVIEW QUESTIONS

List of questions used for witness interviews. Choices regarding questions asked were made depending on the background and expertise of the witness. (For example, questions specific to the location of grocery stores were asked only of grocers).

- Briefly, please tell us about the mission of your organization and your position on Measure 103 (IP37).

- What impacts would a potential grocery tax have on your organization? On those community members who your organization serves?
- Who has been pushing for a general grocery tax in Oregon until now? Have there been any near successful attempts at passing a grocery tax? If so when?
- What do you feel is the likelihood of a future grocery tax? Has that possibility affected the way you've run your business?
- Measure 103 would change the Oregon constitution. In your opinion, is a constitutional amendment the best way to prevent taxes on groceries? Why or why not?
- Some have concerned about legislating complex tax issues from the ballot box, what are your thoughts on this point of view?
- What impact, if any, do you foresee this initiative having on currently existing fines and fees including the bottle deposit?
- How would the banning of grocery-related taxes impact the grocery business in Oregon? How might it impact those community members who shop at your store?
- Would a grocery tax impact where you locate your grocery stores?
- What would be the impact of a potential grocery tax for Oregonians who have challenges to food access, including rural areas?
- What would the impact of limiting fees, assessments, and the corporate minimum tax have on grocers?
- Who are the other supporters we can contact regarding this campaign and the grocery tax preemption?
- Why did you choose a constitutional amendment over bringing stakeholders together in Salem to have this conversation and bring change through other legislative processes?
- Why did you choose to develop a preemptive initiative campaign?
- What can you tell us about the public health implications of grocery tax?
- Some have concerned about legislating complex tax issues from the ballot box, what are your thoughts on this point of view?
- Please directly respond to the criticisms that this would be a tax windfall for major corporations while also imposing a vaguely worded amendment that could be used to greatly limit a variety of revenue raising measures in the future?

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## APPENDIX F: ACKNOWLEDGEMENTS

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## 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](http://pdxcityclub.org), email [info@pdxcityclub.org](mailto:info@pdxcityclub.org) or call 503-228-7231.

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