

# State Immigration Policy and Direct Democracy Mechanisms: Political Opportunity Structures and Political Actors

By

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## **Abstract**

In the face of federal inaction on immigration reform, state governments have started addressing immigration. States are creating legislation in policy areas like law enforcement, health care policy, and driver licenses. State driver licenses are particularly interesting because licenses are also de facto federal identification. State actors that work to provide driver licenses for those who cannot prove legal presence must balance federal regulations, protections for undocumented immigrants, and the actions of pro-immigrant and anti-immigration groups. This paper uses cross-case and in-case comparisons of Oregon and California's attempts to pass driver licenses for those who cannot prove legal presence in the United States. I investigate how structural political opportunities and state actors influence the passage or failure of state immigration legislation. I find that the contraction or expansion of political opportunity structures at the state level, as well as the agency of state actors, can determine the passage or failure of state driver licenses for undocumented immigrants.

Since 2009, state legislatures have considered almost 1,600 bills or resolutions related to immigrants or immigration (National Conference of State Legislatures 2015). This phenomenon is of interest to American politics as another example of the tenuous relationship between state and federal governments. In short, states have taken a prominent role in developing state immigration policy. Given the rising role of states in immigration policy, why do some states pass permissive state immigration laws while others do not? There is a rich and growing scholarship in the study of immigration federalism. Increasingly, scholars look to state laws to study immigration policy and the role of states in legislating the privileges and rights of non-citizens. Previous scholarship has argued a correlation between demographic and partisanship variables and state immigration legislation (Chavez and Provine 2009, Newton and Adams 2009, Ramakrishnan and Wong 2007). This work highlights the influence of time and context-specific processes that influence passage, specifically the role of institutional rules and actors in states with direct democracy.

My argument provides new insights into the relationship between these mechanisms and gives attention to previously overlooked factors. I argue two components are pivotal to explaining the expansion of immigration policy at the state level—institutional rules and social movement actors. Legislative institutions, particularly direct democracy mechanisms, structure the political opportunities available to policy actors. Second, actors work within these structures attempting to enact their policy preferences. The interaction of issue activists and political opportunity structures explain when and why states pass immigration legislation. The role of direct democracy institutions, like referenda, defines a state's political opportunity structure. Favorable political structural opportunities must be in place for issue activists to succeed.

However, as explained by the social movement literature (McAdam 1999), these rules only structure the opportunities; issue activists must recognize the opening and have the resources to exploit it. I evaluate this argument using Oregon and California, while accounting for alternative explanations like the percentage of the Latino electorate and state partisanship. I use a cross-case comparison of restrictivist groups working against driver license legislation in Oregon and California, and a within-case comparison of four immigration laws in the Oregon Legislature in one legislative session. The referent category for these restrictive groups is the level of skills, resources, sophistication is permissive groups in their respective states.

With this in mind, I organize this investigation by first discussing the literature on direct democracy, political opportunity structures, issue activists, and their effect on state immigration law. Second, I explain the utility of case studies to highlight political opportunity structures in each state and the role of issue activists on driver license legislation. Third, I undertake cross-case and in-case comparisons of immigration laws in Oregon and California over time to highlight the importance of these structures and actors in the policy process. Lastly, I draw conclusions on the role of issue activists and opportunity structures in the future study of state immigration legislation. The following section discusses political opportunities and issue activists in detail, and uses these concepts to create a working theory for their interaction and effect on driver license laws.

### **What Factors Influence State Immigration Policy?**

The social movement literature has focused on the power of citizens to affect change but literature has recently become interested in the legislative outcome (Amenta et al 2010, Giugni 1998). There is also work that analyzes the effect of social movements on the policy process (Burstein 1999, Kingdon 1995). Political opportunity structure theorists argue that changes in the

political system are integral for understanding the creation and success of social movements (McAdam 1982; Tarrow 1998). These features include the availability of elite allies, meaningful access points, elite fragmentation, and repression. In these cases, the “relative openness or closure of the institutionalized political system” is that of the state legislature. The relative openness or closure is how willing a legislature is to incorporate the policy preferences of citizens (McAdam 1999). The second and third dimensions are the “presence or absence of elite allies” and the stability “of elite alignments” (McAdam 1999). These dimensions represent informal power relations working within formal institutions. Issue activists must make allies with political and policy elites to enact their policy preferences. Further, these alliances must remain stable over the length of the policy process; losing elite alliances can mean the closure of the opportunity structure and the inability to enact change. The last dimension is the “states capacity or propensity for repression,” that is, the extent to which the legislature is willing to repress those who work against its legislative interests (McAdam 1999). In this analysis, the passage of state immigration laws is the result of actors taking advantage of the political opportunity structure in their state. Elite alignments and alliances change over time, changing the political opportunity structures within which immigration legislation passes and fails.

This understanding of a political opportunity structure means issue activists must first coalesce a strategy before they can make structure changes. Therefore, “political opportunity structures influence the choice of protest strategies and the impact of social movements on their environment” (Kitschelt 1986). This framework explains the contextual influences mobilizing actors when the political and the opportunity structure most strongly predicts a movement’s success (Amenta and Caren 2004). Social movement scholars distinguish between open and

closed political opportunity structures as those structures offering actors easy access to the political system and those where access is more difficult (Tilly 1978, Amenta and Caren 2004). Even with its critics (Gamson and Meyer 1999, Skrentny 2006, Luders 2010) this approach has been a well-known explanation of the success of the civil rights movement (McAdam 1982; Meyer and Minkoff 2004).

Political opportunity structures explain when institutions are open to passing immigrant legislation, but activists, specifically anti-immigrant groups, must exploit this opportunity to block permissive (or pass restrictive) state immigration laws. In the political opportunity structure framework, political actors are less stable than structural components: alliances between actors can end or change (Kriesi 2004). Further, movements have less access to elites and resources, increasing the difficulty in changing policy (Piven and Cloward 1978). However, compared to the federal level, state level actors, particularly those in direct democracy states, enjoy more options and power to affect policy change. Scholars show that state interest groups are active participants in direct democracy mechanisms in the states that allow it (Gerber 1998, Alexander 2002). Citizens in states with direct democracy mechanisms have used them to make policy on abortion, death penalty, etc. (Arceneaux 2002, Gerber 1996). Particularly, groups have used statute and constitutional initiatives to restrict the rights of underrepresented groups like the LGBT community, immigrants, and people of color (Matusaka 1995, Gerber and Hug 2001, Bowler et al. 2006, Hosang 2010). Schildkraut (2001) lends evidence to the influence of direct democracy institutions when states pass restrictive immigration legislation. She found states without an initiative process had almost no chance of passing restrictive immigration laws while similar states with initiatives were more likely to do so.

The next section theorizes the interaction between the political opportunity structures in state immigration legislation with actor sophistication to explain how both influence immigration legislation. I pull from the work of Amenta, Carruthers, and Zylan (1992), who are skeptical of overstating the ability of movements to change policy. For example, Amenta, et al argue, “the political context mediates the impact of movement organization and action on its goals and sets the range of possible outcomes” (1992, 309). These groups succeed when political action and strong organizations work under favorable political opportunity structures. In this case, challengers were influential in shaping policy adoption, but influence was contingent on political context (Amenta et al 2005). I theorize that within established institutions, the political actors working in open political opportunity structures have a stronger influence on state immigration policy than political actors working in closed political opportunity structures. Actors with high levels of expertise in the policy process, and the political system, in an expanded political opportunity structure, will have the highest likelihood of implementing their policy choices. These actors have the expertise to use the political system (i.e. the initiative/referendum process) and support within the formal legislative structure to carry out their goals. Actors with low political sophistication are less likely to influence the immigration policy process, but have a greater chance when the political opportunity system is open. While these actors may be unfamiliar navigating the political system, a political opportunity structure that is open, is advantageous for them. The open structure offers actors more choices than a closed system. Actors with high political sophistication find it more difficult to influence policy when the political opportunity structure closes. Despite their knowledge of the policy process and the political system, highly sophisticated actors can find no options available in a closed opportunity structure. Lastly, when actors have little knowledge of the policy process *and* they are working

within a contracted political opportunity structure, it is highly unlikely they will influence state immigration legislation. They lack the skills to influence the policy process and have no influence in the political opportunity structure.

Table 1: Theory of Political Opportunity Structure and Actor Political Sophistication

	<b>High Political Sophistication</b>	<b>Low Political Sophistication</b>
<b>Open Political Opportunity Structure</b>	<i>High likelihood of influencing the policy process</i>	<i>Unlikely to influence the policy process</i>
<b>Closed Political Opportunity Structure</b>	<i>Unlikely to influence the policy process</i>	<i>Highly unlikely to influence the policy process.</i>

## **Variables**

### *Political Opportunity Structure*

I operationalize the openness or closure the political opportunity structure using the legislative rules and procedures. First and most important in both cases, Oregon and California have mechanisms for direct democracy: petitioners in both states can introduce citizen initiatives. Petitioners can also place enacted legislation on the election ballot as a citizen's referendum, as long as the legislation does not contain an urgency or emergency clause. Although there is no way to objectively measure, I can subjectively compare the openness/closure of political opportunity structures using previous investigations on the extent to which citizens have access to creating legislation (Eisinger 1973; Tilly 1978; Kitschelt 1986; Tarrow 1998; Banaszak 1996). A closed political opportunity structure would be a place with little to no access to legislators or legislation, perhaps a place where legislators are appointed and not elected. A real-world example of a closed opportunity structure might be the upper legislative house of the Sultanate of Oman: The Council of State (*Majlis al-Dawla*), whose members are appointed by the Sultan.

Civilians have little institutionally created influence on their law-making officers. This case is an example of a closed opportunity structure relative to legislative system where citizens elect legislators. A relatively more open political opportunity structure would allow citizens have some influence on their representatives, perhaps in the election representatives to represent constituents' policy preferences. An example of a relatively open political opportunity structure might be the United States Congress. The U.S. Congress is a house of representatives elected by constituents, allowing more constituent input relative to The Council of State (Majlis al-Dawla), but still constituents are still limited in their participation (i.e., constituents cannot introduce or vote on proposed legislation). Relative to these two structures, an even more open political opportunity structure could be a legislative system that allows citizens to bypass the legislature and present their bill directly to the public for consideration. In this context, states with statute initiatives and referendums would be examples of open political opportunity structures relative to Congress or the Council of the State. For the purposes of this investigation and for these reasons, I operationalize Oregon and California as open political opportunity structures (Jordan 2019)

### *Political Sophistication*

State actors create state immigration policy by organizing their resources and knowledge of the state context to create a strategy they believe will enact their policy preferences. Political sophistication is the extent to which an actor understands the policy process and the political system to act within it (Maloney et al 1994). An actor with high sophistication has extensive knowledge about the policy process and uses the political system to achieve their desired outcomes. An actor with low sophistication would have little knowledge about the policy process and little ability to use the political system to achieve results.

In addition to a working knowledge of the policy process and political system, sophisticated political actors can collect resources towards achieving their goal. While the most well-known and researched resource is money, other resources can influence the chances of a group's success in passing policy (Lupia and Matusaka 2004, Matsusaka 2005). Knowledgeable contacts and allies, in-kind donations and committed volunteers can make the difference. Actors operating within the state political system need professional skills and knowledge related to that state and time (McGrath 2006, Edwards and McCarthy 2004). Highly sophisticated actors have a working knowledge of the state political system they seek to change and the ability to lobby legislators and mobilize constituents in addition to acquiring and spending material resources for their cause. For this investigation, I operationalize political sophistication as a combination of (1) the knowledge of the policy process, (2) the type, and amount of resources a group can access. These resources and knowledge are organized into a strategic plan that leads to the failure or success of state actors working within state legislative institutions.

## **Method**

To test this theory, I employ a cross-case comparison of two states similar in relevant respects, except in the type of immigration legislation they pass. I also use a within case comparison of Oregon's previous immigration legislation, investigating why those passed while citizens vetoed the driver license bill. Goldstone (1997) argues that narratives are imperative for cross-case analysis because they "preserve the essence of the case...and...facilitate comparison by encapsulating the case as a storyline." Case studies allow for greater emphasis on how institutional rules shape policy choices and highlight the political and institutional processes influencing the proliferation of anti-immigrant legislation (Tichenor 2009). Further, parsimony

would unnecessarily oversimplify the mechanisms of the policy process. For these reasons, I use process tracing to map a potential causal path consistent with these respective outcomes and the data gathered. I also trace the progression of events that may have led to different outcomes in these cases (George and Bennet 2005). I build a theory from the cross-case analysis as causal paths to “reveal given outcomes as well as the conditions under which they occur” (Khan and Van Wynsberghe 2008). The scope of this investigation is anti-immigrant groups who are likely to support restrictive state immigration policy, or laws that restrict the political or civil freedoms of non-citizens, and their access to public services or assistance. They are also more likely to work to block permissive state immigration policy. Permissive state immigration laws increase the political or civil freedoms of non-citizens or their access to public services or assistance. Pro-immigrant groups are likely to support permissive state immigration legislation and attempt to block states from passing restrictive immigration laws. We know that direct democracy mechanisms have been the primary tool used by nativist groups to enact policies that restrict the rights or liberties of marginalized groups like immigrants and people of color (HoSang 2010). These groups work as political activists to move their policy preferences through the legislative process. The time window for this investigation is the same legislative sessions in California and Oregon (2013-2014). This short period allows me hold state demographic change, and legislative and state partisanship constant.

### **Case Selection**

Oregon and California share similar regional histories and political climate. These two states offer low-wage and agricultural employment, making them economic destinations for undocumented immigrants. Both states have access to the same type of initiative processes, and both states allow for direct constitutional and statute initiative (Bowler et al 1998). In Oregon,

petitioners can file a citizen's referendum against any legislation that does not have an emergency clause. An emergency clause immediately enacts a piece of legislation after the Governor signs it. Petitioners need written approval from the Secretary of State no later than 90 days after the Legislature adjourns to circulate the text of the act among registered voters and collect signatures. The number of signatures required to qualify a referendum to the ballot is four percent of the votes cast in the most recent gubernatorial election. For the 2014 election, petitioners had to submit 58,141 valid signatures to the Secretary of State by October 4, 2013 to place a referendum on the Oregon ballot (Oregon Secretary of State. 2015a). In California, electors have the power to approve or reject statutes or parts of statutes, with the exception of laws with urgency statutes. Urgency statutes are legislation immediately enacted with a governor's signature. Petitioners have 90 days from the date of a bill's enactment to request and receive a circulating title and summary from the Attorney General. Within these three months, petitioners must also gather the required number of valid signatures, and file the petitions with county elections officials (Secretary of State 2016). Referenda can qualify for the statewide ballot up to 31 days before an election to appear on the next general election ballot (California Secretary of State 2015). To place a referendum on the California driver license law on the next general ballot, petitioners needed to gather 504,760 valid signatures from October 2013 to 90 days after the enactment date of January 1, 2015. Both Oregon and California's driver license bills lacked urgency or emergency clauses and were open to referendum.

Anti-immigrant groups in both states have used direct democracy to enact state immigration legislation. Further, both states lean towards a professionalized legislature; Oregon Legislators reported spending more than two-thirds of a full-time job legislating, while California is completely professionalized (NCSL 2014). Lastly, both states acted earlier than

other states on immigration legislation (1993 and 2007, respectively) (Ingram 1993, Tanyos 2013). In spite of their similarities, their recent attempts to change driver license legislation to include undocumented persons have had dissimilar outcomes. The Oregon Legislature passed a bill on Driver Cards, overturned in a referendum led by anti-immigrant groups. California passed AB 60 with little action from opposition groups. Using these cases, I show the influence of issue activists working within an open political opportunity structure on state driver license policy. To examine the relationship between issue activists and state immigration legislation, I undertook fieldwork in Sacramento and Salem with permissive and restrictive advocacy groups, legal foundations, and legislative staff involved the policy process. I spent two weeks in each capitol city to interview relevant actors with additional trips to Portland and Los Angeles, and triangulated these interviews with archival research. These interviews and archival research provide the data to process trace the influence of issue activists and institutional rules on the state immigration law. After discussing these two cases, I discuss the within-case comparison of Oregon over the 2013 legislative session.

### **Oregon Senate Bill 833, Measure 88**

Even though Oregonians for Immigration Reform had a low level of political sophistication when they started their effort, they were able to overturn the driver license bill. OFIR's ability to overturn the SB 833 was a result of a) an open political opportunity structure with no emergency clause written into SB 833 b) the assistance of politically sophisticated allies which increased OFIRs resources in Oregon and c) divisions between pro immigrant rights groups in Oregon.

During his gubernatorial campaign, Governor John Kitzhaber and State Democrats promised the Latino and immigrant communities a series of equitable reforms in return for

support in the last election (Jones 2011). His party and administration committed to passing legislation on tuition equity, cultural competency, increased demographic information on communities of color, pre and post-natal coverage, and reinstatement of driving privileges for Oregonians who could or would not prove legal residence (Lopez 2015). In December 2007, former Governor Ted Kulongoski signed an executive order requiring new driver license applicants show proof of legal presence. The Oregon Legislature passed this Executive Order in to law in February of 2008.

Three years into Kitzhaber's term, he created a bipartisan group to reinstate driver licenses for undocumented people, including law enforcement, Labor Unions, Faith-Based and Immigrant Rights Groups, the Oregon DMV, Oregon Winegrowers, Dairy, and Restaurant Associations (Leslie 2015, Ramirez 2015, Perry 2015). The working group excluded OFIR citing their opposition was clear after they supported Kulongoski's 2007 Executive Order and 2008's SB 1080 (Garcia 2015).

In another set of exchanges, certain pro-immigrant groups negotiated with Senate Republicans to change the initial eight-year Driver License to a four-year Driver Card to broaden legislative support for Senate Bill 833, alienating other immigrant rights groups who were not privy to the negotiations (Ramirez 2015, Lopez 2015, Sosa 2015, ACLU 2015). The DMV asked for time to prepare the Department for the changes and the swift increase in applicants, so SB 833 did not include an emergency clause (Lopez 2015, Perry 2015). Omitting the emergency clause did not concern immigrant rights groups. At the time, they doubted the opposition could mount a referendum if given the opportunity (Ramirez 2015). This would have been the case if restrictivist groups in Washington State had not explained the opportunity to the President of OFIR (Kendoll 2015). SB 833 passed in April 2013 with bipartisan legislative support and the

next day, Governor Kitzhaber signed the bill on the capitol building steps (Lopez 2015, Perry 2015). At the signing, OFIR circulated a press release stating they would seek a referendum on the driver license law in the next election (Kendoll 2015). Pro-immigrant leadership ignored OFIR's referendum announcement, assuming OFIR had little funding and would be unable to gather enough signatures.

OFIR received resources and knowledge from out-of-state issue activists to collect enough signatures to introduce a referendum. First, former California Assemblyman Timothy Donnelly gave OFIR campaign advice, specifically the idea to have drive-through petition signing events (Donnelly 2015, Kendoll 2015). Secondly, during the weeks leading up to the deadline, an Oregon native living in Nevada donated enough money to hire professional signature gathers (Zheng 2013b, Kendoll 2015). By the end of October, OFIR had collected just enough valid signatures to have a referendum on SB 833 on the November ballot (Ludwick 2015, Ramirez 2015, Huang 2015). The next challenge was naming Measure 88, eventually going to the State Legislature and the Oregon Supreme Court (Kendoll 2015, Lleras Van Der Haeghen 2015, Lopez 2015).

The Attorney General considered titles submitted by OFIR and the newly formed "Yes on 88," selecting "Provides Oregon resident driver card without requiring proof of legal presence in the United States" (Zheng 2014a). This title was politically beneficial for OFIR. Pro-immigrant actors went through the legislature and courts to try to remove "legal presence" from the ballot title, with no success (Lopez 2015). On February 27, 2014, the Oregon House passed a bill to change the title, but HB 4054 died in the Senate a week later (Zheng 2014b).

Pro-immigrant groups appealed the ballot title to the Oregon Supreme Court but lost. With the referendum set, the ballot title decided, and the election a few months away, supporters

of Measure 88 were somewhat certain they would lose (Lopez 2015, Huang 2015). The referendum results were disappointing for “Yes on 88,” sixty percent of voters voted against driver cards undocumented people. Oregonians for Immigration Reform, a group that began with low political sophistication, leveraged a political opportunity: a missing emergency clause and organized around new knowledge and resources (increasing their political sophistication) overturned SB 833.

### **California Assembly Bill 60**

In 1993, Democrats in the California state legislature revoked driving privileges for undocumented immigrants at the threat of worse actions against immigrants by State Republicans (Associated Press 1993, Carmona 2015, Reyes 2015). Since 1996, State Assembly member Gil Cedillo attempted to restore driving privileges to undocumented people but Governor Schwarzenegger repealed one *and* vetoed two enrolled driver license bills during his tenure (Ingram 2002, Salladay and Delson 2005).

During the 2013 legislative session, legislators and immigrant rights actors were encouraged by two signals from the Governor’s office. The first was a promise Governor Jerry Brown made to Cedillo in 2012 that he would sign a driver license bill if it passed the legislature (Reyes 2015). Second, the Governor’s office entertained meetings with legislators on AB 60 to rewrite amendments that would increase the likelihood of the Governor signing the bill (Elliot 2015, Blackney 2015). California anti-immigrant groups were absent from this process. They were not sophisticated enough to influence legislation and the political opportunity structure was effectively closed to them.

Assemblyman Luis Alejo continued Cedillo’s work by introducing AB 60 in 2013 with support from Senators Kevin De León (Pro Temp), and Ricardo Lara. Mainstream immigrant

advocacy groups in California had received the directive from their members to support driver privileges, whether it was a card or a license and with little disagreement, at first, to its markings (Carmona 2015, Villela 2015, Coleman 2015). High profile groups, like the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), the California Immigrant Policy Center (CIPC), and the National Immigrant Law Center (NILC) supported the renewed attempt to pass driver licenses in 2013. Legislators introduced the bill in January of 2013. AB 60 passed in the Assembly and was read in the Senate on the same day. It would stall in the Senate from internal disagreements between pro immigrant issue activists, not from influence of restrictionist groups (Legiscan 2015).

The California anti-immigrant movement worked in 2012 to bring the California Dream Act to a state referendum, falling 60,000 signatures short of the required 504,000 signatures (Sanders 2012). When the State Assembly read AB 60 for the first time in January of 2013, California anti-immigrant groups were still recovering from their Dream Act defeat (Donnelly 2015). Restrictive immigration groups in California left AB 60 unopposed, engaging the legislature once by testifying against the bill in a committee hearing and sending a letter to the Governor's office (California Assembly Committee on Transportation 2013, Elliot 2015, Donnelly 2015, Rosenberg 2013).

In September of 2013, pro-immigrant groups threatened to withdraw support if two amendments were included in the bill. One amendment required an affidavit of identification. The second amendment referenced the REAL ID markings on the license. A driver card without a legal presence requirement still needed to be REAL ID compliant, and compliance meant a mark on the license that the card was not to be used for federal identification. Advocacy groups argued the markings suggested by the amendment could increase persecution of undocumented

immigrants. CIPC and CHIRLA said their stakeholders were “very concerned” with the markings and the signing of the affidavit (Coleman 2015, Villela 2015).

On September 10, 2013, Assemblyman Alejo’s office announced that the discord between pro-immigrant groups about the markings was serious enough to hold the bill until the next legislative session (Megerian 2013, Blackney 2015). However, for immigrant advocacy groups, the decision to hold the bill until 2014 was less desirable than markings (Villela 2015, Elliot 2015). In response to the news, groups like Presente.org organized call-in campaigns targeting the Sacramento offices of Senator De León and Assemblyman Alejo to continue with the bill. To add to this pressure, after a meeting with Senator De León, the Governor was informed of the bill postponement and told the legislator “Send me that bill” (Elliot 2015). Senator Lara’s office “jumped into high gear on the language” of the bill nearing the last days of the 2013 legislative session after this clear signal of gubernatorial support (Elliot 2015). Senators De Leon and Lara worked with the Governor’s office to revise the bill’s language to ensure the Governor’s signature (Elliot 2015). By the next day, Alejo’s office decided to continue with AB 60 and the bill passed on the last day of the legislative session, with bipartisan support (Megerian 2013). Anti-immigrant groups protested the passage of the bill after the fact but did little to stop its passage. Pro-immigrant groups, initially dissatisfied with the markings, still supported the passage of the license as an important step.

## **Analysis**

### *Political Opportunity Structures*

The political opportunity structures available to anti-immigrant groups were similar in Oregon and California for the driver license laws. The institutional rules allowed groups in both states to introduce initiatives. The bar was further lowered with the absence of the

emergency/urgency clause, which allowed restrictionists in both states to introduce referendums. Even though California has a larger population and therefore, requires a larger number of signatures that must be gathered to place a referendum on the ballot, it is important to highlight a few notes to mitigate the questions this raises. The first is that while these populations are different, the systems of direct democracy (the main variable in this investigation) are essentially the same. Both states allow for initiatives and referendums, both states require a similar percentage of signatures from the previous elections' gubernatorial votes within a set time. Secondly, this means the knowledge and resource requirements for restrictive and permissive groups to participate, the basis of comparison for the political sophistication variable, are also the same for each group in their respective states. Further, the basis of comparison for sophistication is *permissive groups in each state*. The table below shows the variation of the political opportunity structure based on the categorical variables: open or closed. The second dimension is the political sophistication of state restrictionists *relative to state permissive groups*. As the results of this table are over determined, I add more cases using a within case comparison of Oregon.

Table 2: Variation of Political Opportunity Structure and Relative In-State Group Sophistication in California and Oregon (Overdetermined)

	Oregon	California
<b>Institutional Rules</b>	<i>Open</i>	<i>Open</i>
<b>Relative Political Sophistication (Anti to Pro)</b>	<i>High</i>	<i>Low</i>
<b>Passage of Driver License Legislation</b>	<i>Failed</i>	<i>Passed</i>

*How Did Actors Matter?*

This case comparison shows state actors are integral to the passage of state immigration legislation. Issue activists played different roles in Oregon, and their presence affected the outcome. These anti-immigrant activists are responsible for blocking driver licenses for undocumented people, but it was thanks to their network that they were able to increase their political sophistication enough to make a difference. The president of OFIR “didn’t know what a referendum was” until it was explained to her by out of state actors (Kendoll 2015). A restrictionist group from Washington shared this knowledge about a citizen’s referendum with OFIR. Second, Oregon restrictionists were able to exploit the knowledge of California restrictionists on how to gain signatures for the referendum. Oregon restrictionists sought advice from California restrictionist groups who had experience using direct democracy mechanisms in the past, but did not have the resources to mobilize against driver licenses in their state, at the same time (Donnelly 2015). Third, in the last months of the petition drive, it seemed that OFIR would not meet the signature quota. An Oregonian living in Nevada donated tens of thousands of dollars to hire signature gatherers, helping OFIR meet the threshold in time (Kendoll 2015).

Table 3: Variation in Relative Organization of Oregonians for Immigration Reform

		<b>Driver Licenses (pre-contact)</b>	<b>Driver Licenses (post-contact)</b>
<b>Political Structural Opportunity</b>	<i>Institutional Rules</i>	<i>Open</i>	<i>Open</i>
<b>Actor Sophistication (Anti to Pro)</b>	<i>Knowledge</i>	<i>Low</i>	<i>High</i>
	<i>Resources</i>	<i>Low</i>	<i>High</i>
<b>Outcome</b>	<i>Repeal of legislation</i>	<i>No</i>	<i>Yes</i>
		(Counterfactual)	

The Oregon “Yes on 88” group faced internal disagreements and weak coalitions with Democratic legislators during an already uphill battle. The concessions made by group leaders to

gain legislative support alienated other community groups. Specifically, the political bargaining to change the driver license to a driver card upset members in the pro-immigrant camp (Lopez 2015). Second, the unwillingness of Democratic Senators to pass HB 4054 to rename Measure 88 in the face of GOP attacks was a defeat from which pro-immigrant groups could not recover (Lleras Van Der Haeghen 2015, Lopez 2015). In the end, the Democratic legislators attacked about SB 833 were re-elected, leading immigrant rights groups to question this legislative inaction (Lleras Van Der Haeghen 2015).

Activists also affected the passage of AB 60 in California. First, California's restrictionist movement, previously a national vanguard, was largely silent during the legislative process. These groups could not mobilize members after the defeat of a 2012 effort to introduce a referendum about California Dream Act (Donnelly 2015). Further, pro-immigrant groups were supportive during the legislative process for AB 60, waiting for this opportunity since the 1990s. While AB 60 moved through the legislature, issue actors increased visibility of the bill by writing press releases, holding community meetings, and keeping the public abreast of AB 60's progress. These groups also threatened to withdraw support if amendments requiring an affidavit or heavy markings were included in the law. These concerns weighed so heavily with state legislators that they almost pulled AB 60, primarily to win back the support of these pro-immigrant groups. Lastly, when legislators decided to hold the bill, constituents, organized by state actors, inundated legislative offices with phone calls to pressure legislators to move forward with AB 60. Legislators took this call-in campaign as a directive from their constituents. The mobilization of pro-immigrant groups during the end of the legislative session was critical for the passage of AB 60.

### **Within Case Comparison**

It would seem plausible to attribute the victory of restrictionists in Oregon and their loss in California to the difference in the number of immigrants in the electorate California. California boasts an immigrant population almost three times the size of Oregon's (26.8% to 9.9% in 2013, respectively) (U.S. Census Bureau 2016). However, comparing only driver licenses in these two states is an incomplete picture. Further, if this were true, the unpopularity of immigrants in Oregon should have allowed restrictionists to stop the passage of three inclusive immigration laws that same year.

The Oregon undocumented immigrant driver license bill was one in a series of permissive state immigration bills allowing for a within case comparison. This within case comparison controls for alternative explanations and show how institutional rules are integral to understanding the passage and failure of Driver License in California and Oregon. The Oregon driver license bill was one of four immigration bills introduced in 2013. During these months, we can assume state partisanship, and the size of the Latino electorate was constant (see Ramakrishnan and Wong 2007 and Chavez and Provine 2009). In April of 2013, Governor Kitzhaber signed a tuition equity bill for undocumented students. The bill granted in-state tuition to anyone in the United States for at least five years, had studied and graduated from an Oregon high school, and intended to apply for citizenship or permanent residency (Zheng 2013a). In May of 2013, the Oregon legislature passed a cultural competency law for health professionals. The law allowed state health professional boards to require training for cultural competency to obtain a license (The Oregonian 2013). In October of that year, the legislature passed legislation allowing undocumented pregnant women access to pre and post-natal care (Castillo 2013). These three bills passed and avoided referendums thanks to the absence of an emergency clause raising the level of political sophistication necessary to reverse this law. The institutional rules that

blocked these actions were the inclusion of emergency clauses, immediately enacting these bills with the Governor’s signature. OFIR knew bills that took immediate effect would be impossible to challenge. The repeal of these laws would require the enactment of another law, a task OFIR claims they “would have to let go” (Kendoll 2015). The absence of an emergency clause in the driver license bill gave OFIR the opportunity to introduce a referendum and continue the fight against driver licenses for undocumented immigrants.

Cultural competency, Tuition equity, and pre post-natal care incur large upfront costs and are complicated to enact, which means something more salient than demographics was influencing restrictionists ability to make change. Repealing a driver license law *with an emergency clause* via the legislature was practically impossible for OFIR, but bringing a law without an emergency clause to a citizen’s referendum was not. The institutional rules varied among tuition equity, pre and post-natal care, cultural competency laws and the driver license bill. The absence of the emergency clause opened the political opportunity structure even further for Oregon restrictionists enough to make their resources and knowledge sufficient to attempt a repeal of the Driver License law. Beyond the unpopularity from demographics, excluding the emergency clause changed the institutional rules, creating an opportunity Oregon restrictionists could take advantage of if they were politically sophisticated.

Table 4: In Case Comparison of Oregon State Immigration Laws Passed in 2014

	<b>Tuition Equity</b>	<b>Cultural Competency</b>	<b>Pre and Postnatal Care</b>	<b>Driver License</b>
<b>Institutional Rules</b>	Closed	Closed	Closed	Open
<b>Relative Organizational Sophistication</b> <i>(Anti to Pro)</i>	Low	Low	Low	High
<b>Repeal of legislation</b>	Referendum Not Possible	Referendum Not Possible	Referendum Not Possible	Referendum Possible

## Conclusion

I show here that institutional rules structure political opportunities available to policy actors and significantly influence the content and passage of state immigration legislation. California and Oregon both have open political opportunity structures: both states have direct democracy mechanisms and were opened even further with the lack of an emergency clause on both driver license bills. This open political opportunity structure in both states allowed for restrictionists to mount a campaign and repeal driver licenses, if they had the political sophistication to do so. Politically sophisticated actors in Oregon were able to exploit these opportunities, while actors in California could not.

Having an open opportunity structure, like one that allows citizens to bypass legislators, increases the possibility of policy change. The presence of direct democracy mechanisms, and the rules they engender (i.e. emergency clauses) are critical in calculating the ability of groups to enact their policy preferences. This is in line with literature on social movements that understands an understanding of the political context is integral for social movement success (McAdam 1982). Further, as the presence of structures in and of themselves are not enough to make change, state actors matter. However, much like structures, the presence of state actors, in and of themselves is not enough to make change either. As rules structure the opportunities, actors must be skilled enough to work within them.

Actors must have policy knowledge and resources to participate in a political arena. Policy change requires actors that (1) have the political knowledge to recognize an opening, and (2) collect the necessary resources to take advantage of a presented opportunity. This is exemplified by the counterfactual that if OFIR had not gained the knowledge that a referendum was possible, they would not have known a referendum was possible. In addition, they would not

have had the resources to put SB833 to a referendum, had they not received the in-kind donation of signature gathers.

The decision to pursue or not to pursue a citizen’s referendum in Oregon and California highlights the importance of actors in this policy process. Issue activists working within political opportunities help explain why “even groups with mild grievances and few internal resources may appear in movement, while those with deep grievances and dense resources— but lacking opportunities—may not” (Tarrow 1994). Tarrow explains why OFIR, with a small number of official members and little direct financing could influence state immigrant legislation. Further, groups like those unable to prove legal presence with “deep grievances” (e.g. having their driving privileges revoked less than ten years ago) were unable to succeed in that same state. Tarrow’s conclusion also explains why anti-immigrant groups in California, who introduced and passed an anti-immigrant initiative in 1994, could not influence immigration legislation twenty-five years later.

Table 5: Across Case Comparison

		<b>California</b>	<b>Oregon</b>
<b>Institutional Rules</b>	Presence of Direct Democracy Mechanisms	Open	Open
<b>Relative Political Sophistication</b> <i>(Anti to Pro in each state)</i>	Knowledge	<b>High</b>	<b>High</b>
	Resources	<b>Low</b>	<b>High</b>
<b>Passage of Driver License Legislation</b>		Passed	Failed

Actors must be present and have the political sophistication to exploit these institutional rules. To show this, I process traced how two similar states attempted to pass driver licenses for undocumented people, with very different results.

Table 6: Theory Table with State Immigration Cases

	<b>High Actor Sophistication</b>	<b>Low Actor Sophistication</b>
<b>Open Political Opportunity</b>	High likelihood of influencing the policy process <i>(OR Licenses post contact)</i>	Likely to influence the policy process <i>(CA Driver License)</i>
<b>Closed Political Opportunity</b>	Unlikely to influence the policy process	Highly unlikely to influence the policy process

A change in the political opportunity structure offered Oregon anti-immigrant groups the chance to overturn an Oregon bill to reinstate driver cards for undocumented residents. Neither Oregon’s SB 833 nor California’s AB 60 included an emergency or urgency clause. In Oregon, anti-immigrant groups took advantage of this institutional rule while groups in California did not have the resources to do the same.

The change in institutional rules was the absence of an emergency clause in the driver license bill, the low number of signatures required to introduce a citizen’s referendum and the conservative swing of the previous midterm elections. Additionally, actors against Oregon’s driver license bill increased their political sophistication with knowledge and money from issue activists in other states. Further, supporters of the Oregon driver license bill could not build a stable coalition with other groups and sympathetic legislators. Meanwhile, anti-immigrant groups in California had no significant input on the driver license bill because they had faced a closed political opportunity structure for years. Pro-immigrant groups inside the political opportunity structure legitimately threatened the passage of AB 60 and were integral to its passage. The next obvious step is a comparison of the interaction between political sophistication and a relatively closed political opportunity structure, namely two states without direct democracy mechanisms. I expect to find that restrictionist groups, despite the level of political sophistication, will have a very difficult time incorporating their policy preferences into state immigration legislation.

Lastly, I hope this project engenders some discussion about the content of state immigration laws passed via direct democracy mechanisms. First, this project lends support to Dahl's (1956) argument that minorities rule the political sphere. Direct democracy mechanisms allow ideologically extreme groups to introduce legislation that exploits less knowledgeable voters. Secondly, these theories and conclusions of this investigation can be applied to other context (i.e. other states with direct democracy mechanisms and politically sophisticated actors). In states like Minnesota and Wisconsin, my preliminary work shows that the absence of a direct democracy mechanism fundamentally shaped the tactics of restrictionist and permissive immigration groups with respect to in-state tuitions for undocumented students. Advocacy groups were more likely to interact with the state legislature: meeting with legislators, protesting at capital buildings, and attending public forums. One could infer from this comparison that states without direct democracy mechanisms produce less radical legislative and policy outcomes like California's Proposition 187 (1995) and Arizona's Proposition 200 (2004). A small group of citizens authored these ideologically extreme and poorly written laws, with little bill-writing knowledge, and little incentive to make concessions (Madison 1787, Bishin 2009). As recently as July of 2018, OFIR used the initiative process to introduce legislation to invalidate Oregon's thirty-year-old sanctuary state law (Radnovich 2018). In California, restrictionist groups are also attempting to garner support to repeal three pieces of legislation via the initiative process (Luna 2018). More generally, this highlights the impact of Direct Democracy on immigration and race policy as a contemporary tool of restrictionist groups, not a relic of the 1990s. The use of direct democracy mechanisms is still a fundamental tool of civil groups to eschew deliberation and legislative compromise for more extreme immigration policy.

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