



Oregon

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Oregon Commission on Hispanic Affairs

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STATEMENT
OF
COMMISSIONER GILBERT PAUL CARRASCO, VICE-CHAIR,
OREGON COMMISSION ON HISPANIC AFFAIRS

BEFORE THE
COMMITTEE ON BUSINESS AND TRANSPORTATION,
OF THE SENATE OF THE STATE OF OREGON ON
S.B. 833 ON
APRIL 11, 2013

OR Commission on Hispanic Affairs

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Chair Beyer and distinguished Members of the Committee on Business and Transportation: On behalf of the Oregon Commission on Hispanic Affairs, I want to thank you for the opportunity to present our views on S.B 833, a bill to protect Oregon drivers and enhance public safety.

The Oregon Commission on Hispanic Affairs is a statutorily created body comprised of members appointed by the Governor and confirmed by the Oregon Senate. The mission of the Commission is to work toward economic, social, political, and legal equality for Oregon's Hispanic population. Pursuant to Oregon Revised Statute § 185.310, the Commission is authorized to monitor existing programs and legislation designed to meet the needs of Oregon's Hispanic population; to identify and research problem areas and issues affecting the Hispanic community; and to recommend actions to the Governor and to the Legislative Assembly. For more than two years I and Andrea Cano, the Chair of the Oregon Commission on Hispanic Affairs, have been working with a task force convened by the Governor and comprised of representatives from law enforcement, the Department of Motor Vehicles, the faith community, business, labor, and civil rights to reach consensus on a solution to the problem that brings us all here today.

In addition to my appointment to the Commission by Governor Kitzhaber, I was also appointed by former Governor Kulongoski and continue to serve on the statutorily created Law Enforcement Contacts Policy and Data Review Committee. I am also a Professor of Law at Willamette University College of Law, where I teach Constitutional Law and Civil Rights Litigation, among other subjects. I appear today, however, in

support of S.B. 833 solely in my capacity as the representative of the Oregon Commission on Hispanic Affairs.

I. Introduction

The Commission on Hispanic Affairs supports the enactment of S.B. 833. It is imperative to return Oregon to its duty of protecting its roads and residents through a driver license issuance policy that allows access to a valid driver's license for the maximum potential number of safe drivers.

II. Background

Since their inception, driver licenses have always been the duty of the States.¹ Since the first State driver license law was passed in Rhode Island in 1908, safety concerns have been the driving force behind the implementation of licensing laws in all U.S. States and territories.² Originally States sought to encourage all drivers, despite legal status, to obtain a license with the goal of ensuring that all drivers were tested, and eventually insured.³ Testing standards have traditionally included a minimum age requirement, physical ability requirements, practical driving competency requirements, and knowledge of traffic laws.⁴

Outside of federal regulations regarding commercial driver licenses, the federal government has largely left driver licenses to the States.⁵ The enactment of the Real ID Act of 2005 (Real ID) marked a radical transition from the use of a driver license as a public safety tool to its use as a virtual national identification card. With regard to driver

¹ Alexander L. Mounts, A Safer Nation?: How Driver's License Restrictions Hurt Immigrants & Noncitizens, Not Terrorists, 37 Ind. L. Rev. 247, 249 (2003).

² Id. at 250.

³ Kevin R. Johnson, *SYMPOSIUM: PURSUING EQUAL JUSTICE IN THE WEST: Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 Nev. L.J. 213, 220-221 (2004).

⁴ Id. at 221.

⁵ Mounts, 37 Ind. L. Rev. at 249.

licenses, the most remarkable change under the federal statute is that States were asked to verify that each applicant is either a U.S. citizen or legally present in the U.S.⁶

Additionally, the federal law provides that applicants show proof of a social security number (SSN) or verification that the person is ineligible for an SSN⁷. If Real ID were to take full effect, no federal agency would accept a driver license or identification card that is not Real ID compliant for a variety of federal purposes.⁸

Real ID does not mandate that States confirm that all drivers are legally present in the United States.⁹ Congress specifically provided that States may continue to issue non-Real ID conforming licenses as long as they use a unique design or color and clearly state on their face that they may not be used as federal identification.¹⁰

The Oregon Legislature's response to the Real ID Act has evolved. In the 2008 special session, the 74th Oregon Legislative Assembly passed S.B. 1080, which required Oregon DMV to verify SSN's and confirm that the applicant is either a U.S. citizen or legally present in the U.S.¹¹ In the 2009 special session, amidst concerns about funding and privacy, the 75th Oregon Legislative Assembly passed S.B. 536, directing State agencies not to comply with the Real ID Act's mandates until those concerns are addressed.¹²

⁶ Real ID Act of 2005, H.R. 418, 109th Cong. § 202(d)(11) (2205), reprinted in NCSL *REAL ID ACT OF 2005 DRIVER'S LICENSE TITLE SUMMARY*, 2005, available at: <http://www.dmv.state.ri.us/realid/realidsummary05.pdf> (last visited December 5, 2009).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Senate Bill 1080, available at <http://www.leg.state.or.us/08ss1/measpdf/sb1000.dir/sb1080.a.pdf> (last viewed Dec. 5, 2009)

¹² Senate Bill 536, available at <http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0536.intro.pdf> (last viewed Dec. 5, 2009)

Although S.B. 536 limited compliance with the Real ID Act, the effect of S.B. 1080 remains a reality: prospective drivers who cannot prove legal presence are barred from obtaining a valid driver's license, as S.B. 1080 was passed without the inclusion of a second tier, non-Real ID conforming driver's license. This change from an Oregon licensing scheme that ensures all prospective drivers are tested and insured, to one with a threshold requirement of legal presence in the U.S., is a dramatic departure from Oregon's primary duty to protect the safety, health, and welfare of its citizens. Congress gave States options to comply with federal law, providing that they could protect their residents by continuing to grant driver licenses that do not comply with the Real ID Act as long as certain requirements were met. The Legislature's decision heretofore not to take steps to provide all residents the opportunity to acquire licenses and insurance puts all Oregon drivers in jeopardy and renders Oregon's roads less safe than they should be.

III. Current Law and Its Rationale

The present scheme for driver license applications was adopted in the form of the ill-advised Senate Bill 1080 in 2008. The origins of the rationale for the change in the law reflected by S.B. 1080 can be traced back to discussions between then-Governor Kulongoski and the Department of Homeland Security on the subject of terrorism.

Senate Bill 1080 was urged further on the basis of the Real ID Act. The Real ID Act of 2005 was signed into law by President George W. Bush as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief. Pub. Law No. 109-113, 119 Stat. 231 (2005). Essentially, that federal law is an unfunded mandate that urged the States to adopt driver license schemes similar to that adopted by Oregon in the form of S.B. 1080.

Ironically, S.B. 1080 has had an adverse effect on tracking terrorists. Because of the requirements of current law, those who cannot meet its requirements are simply not in government data bases. This actually makes it more difficult to identify and locate terrorists. Moreover, Oregon has followed the lead of many other States by enacting S.B. 536 in 2009,¹³ which expressly prohibits the State from expending funds to comply with the Real ID Act, not only because it costs money that the federal government has not provided, but also because it has features that threaten privacy and predictably would lead to additional problems of identity theft. Thus, the underlying rationales behind the enactment of S.B. 1080 do not support its retention as law in its current form.

IV. Senate Bill 833: A Return to Reason

Senate Bill 833 is a return of the driver license to the public safety tool it was meant to be — a certification, available to all drivers who meet the minimum age and aptitude requirements, that the driver meets State standards for safety, including obtaining liability insurance. A driver license was never meant to be an immigration document, and the federal government's attempt to commandeer the administrative mechanisms of the State for such purposes is contrary to principles of federalism.¹⁴ Limiting access to those persons who can prove legal presence not only affects many residents who cannot do so for a variety of reasons, but it also endangers other drivers

¹³ When Oregon adopted S.B. 536, it became the 25th State to foreclose Real ID Act compliance unless there are adequate safeguards for privacy and changes are made to address a host of other concerns (changes that have not yet been adopted). National Conference of State Legislatures, *Real ID State Legislation Database*, available at: <http://www.ncsl.org/?tabid=1357>(last visited October 5, 2009). Now, 27 States have taken the position that they do not intend to comply with the unfunded mandate of the Real ID Act.

¹⁴ *Printz v. United States*, 521 U.S. 898 (1997).

throughout the State. The Legislature cannot ignore its responsibility to keep Oregon's roads safe through reasoned policies, proper in scope.

It is important to understand what Senate Bill 833 does and does not do. It retains the current procedure as an option, thus permitting those who desire a driver license that can be used for purposes other than driving, such as entering federal buildings, to obtain such a license.

As an alternative, it provides that others who do not want to undertake the onerous process of documentation under current law, that those who cannot readily access such documentation, and that those who do not have such documentation, can obtain a driver license for the sole purpose of driving lawfully. It does not allow the alternative driver license to be used for purposes of purchasing firearms or to obtain commercial driving privileges. It does permit the license to be used for the purpose of identifying the licensee as a veteran, emancipated minor, or anatomical donor; for the purpose of identifying a missing person; and for the purpose of establishing paternity or for requiring child support payments

V. Public Safety Depends on S.B. 833

Senate Bill 1080 created two public safety issues: an increased pool of untested, uninsured drivers on Oregon's roads, and the frustration of law enforcement and national security efforts by forcing non-citizens who live in Oregon into the shadows. In a January 2009 report by the Insurance Research Council, data show that nearly one in six drivers across the United States is uninsured.¹⁵ It is simply irresponsible to exacerbate this

¹⁵ Insurance Research Council, *Economic Downturn May Push Percentage of Uninsured Motorists to All-Time High*, Jan. 2009, available at http://www.ircweb.org/News/IRCEconomicDownturn_042809.pdf (last viewed Dec. 5, 2009).

problem by denying driver licenses to applicants who cannot prove legal presence. Immigration control is the job of the federal government, not that of the States.¹⁶ Until Congress reforms the immigration system, non-citizens who are here illegally will remain here, and drive here as needed to get to church, for work, to transport their children to the doctor.¹⁷ In a news release in 2006, the State estimated that there are between 63,000-83,000 unauthorized immigrants working in Oregon.¹⁸ This is a reality Oregon must consider in its driver license policy.

Two of the States that have laws similar to SB 833 have documented a positive change in the rates of uninsured drivers as a result of expanding eligibility for driver licenses.¹⁹ Both Utah and New Mexico changed their policies to allow applicants who cannot prove legal presence access to a driver license. Utah changed its policy in 1999 and saw a drop in uninsured drivers from 10% in 1998 to 5.1% in 2007. New Mexico changed its policy in 2003 and saw its uninsured rate drop from 33% in 2002 to 10.6% in 2007. Similarly, although the law was never implemented, studies leading up to New York's consideration of changing its legal presence requirement found that premium

¹⁶ *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941); *Arizona v. United States*, 567 U.S. --, 2012 U.S. LEXIS 4872 (U.S. June 25, 2012).

¹⁷ National Immigration Law Center, *Why Denying Driver's Licenses to Undocumented Immigrants Harms Public Safety and Makes Our Communities Less Secure*, June 2008, available at http://www.nilc.org/immspbs/DLs/FactSheet_DLs_2008-01-16.pdf (last viewed Dec. 5, 2009).

¹⁸ *Latest News Release: Unauthorized Immigrants working in Oregon*, available at http://www.oregon.gov/EMPLOY/COMM/news/illegal_immigrant_workers.shtml (last viewed Dec. 5, 2009).

¹⁹ The States of Washington and, as of January 28, 2013, Illinois do not require legal presence in the United States as a predicate for a driver license. Similar legislation is pending in Maryland, where it has already passed in the Maryland Senate.

costs associated with uninsured motorist coverage would be reduced by 34%, thereby saving drivers nearly \$120 million per year.²⁰

More than 14% of all accidents are caused by uninsured drivers, who cause more than \$4.1 billion in insurance losses per year, creating higher costs for licensed, insured drivers. Moreover, the AAA Foundation for Traffic Safety has found that unlicensed drivers are five times more likely to be in a fatal crash than validly licensed drivers. These numbers are undeniable. Limiting access to driver licenses to those who can prove legal presence in the United States has a significant negative impact on collective cost and the safety of all drivers.²¹

The second public safety issue is the effect of S.B. 1080 on both national security and on State law enforcement. With regard to national security, denying driver licenses to those who cannot prove legal presence increases the suspect pool of unidentified persons with whom law enforcement must contend in a variety of contexts. There are an estimated 13 million undocumented immigrants currently living in the United States. The State driver license databases as a whole are the largest law enforcement database in the country, and an effective way of tracking down criminals, child support delinquents, and threats to national security. Additionally, creating fear of contact with law enforcement through policy that alienates certain groups from society creates an environment where people are unwilling to report crimes, remain at the scene of an accident, or assist law enforcement with police activities.²²

²⁰ National Immigration Law Center, *Why Denying Driver's Licenses to Undocumented Immigrants Harms Public Safety and Makes Our Communities Less Secure*, June 2008, available at http://www.nilc.org/immspbs/DLs/FactSheet_DLs_2008-01-16.pdf (last viewed Dec. 5, 2009).

²¹ *Id.*

²² *Id.*

Senate Bill 833 recognizes these concerns and creates a system of inclusion based on objective consideration of the issue and on Oregon's duty to protect the safety, health, and welfare of its residents with prudent policy. That duty is neglected when the driver license issue becomes a tool for immigration enforcement. Moreover, Oregon law restricts State and local law enforcement agencies from "detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws."²³

VI. Current law Has a Negative Effect on Hispanics

Finally, it can't be ignored that much of the concern over immigrants is directed at Hispanics. Fear about illegal immigration has had negative consequences on Hispanics throughout the United States. A 2007 survey found that 8% of native-born and 10% of foreign-born Hispanics were stopped by police in the previous year and questioned about their immigration status. Similarly, 63% and 71% of Hispanics, respectively, said that they had trouble finding jobs and housing due to their ethnicity.²⁴

State-based policies that continue adversely to affect Hispanic residents are counter-productive in a society that prides itself on equal protection for people of color and those of diverse ethnic backgrounds. There are approximately 456,000 Hispanics in Oregon, according to the 2010 U.S. census, This number has continued to grow. Hispanics are the largest ethnic minority in the United States, with 16.1 million currently eligible to vote. Supporting policies that increase stigmatization of this growing

²³ ORS § 181.850.

²⁴ Pew Hispanic Center, *2008 National Survey of Latinos: Hispanics See Their Situation in U.S. Deteriorating; Oppose Key Immigration Enforcement Measures*, Sep. 2008, available at <http://pewhispanic.org/reports/report.php?ReportID=93> (last viewed Dec. 5, 2009).

population and that have no rational relation to any legitimate State interest, is unwarranted and politically unwise.²⁵

VII. Conclusion

This is not an immigration issue. This is a public safety issue. Based on the aforementioned concerns, the Commission on Hispanic Affairs urges the Legislature to enact Senate Bill 833 to return Oregon to a sensible policy based on the protection of its residents. It would be well for the Members of this Committee and of this Legislature to be mindful that the Fourteenth Amendment of the Constitution of the United States provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws,” and the U.S. Supreme Court has repeatedly made it clear that the term “persons” within a State includes the undocumented.²⁶ Until S.B. 833 is enacted, for many who are not now able to obtain a driver license, that protection is not being equally provided. I would like to thank you again for this opportunity to express our views and concerns to the Committee.

²⁵Ediberto Roman, *The Alien Invasion?*, 45 Hous. L. Rev. 841, 895-896 (2008).

²⁶*Plyler v. Doe*, 457 U.S. 202, 210 (1982) (holding that Texas could not deny undocumented children public education). Furthermore, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.” *Arizona v. United States*, 567 U.S. --, 2012 LEXIS 4872 (U.S. June 25, 2012).