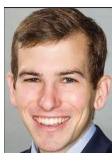


Other Views

Constitutional debates only make the process better

One of the best parts of law school is reading opinions, dissents and concurrences penned by the Supreme Court. They concisely and, often-times, creatively express some of the biggest questions facing our democracy. One that's come up repeatedly in my Administrative Law class: Did the Constitution create an effective, efficient and energetic government

or did it set out a formula for ensuring accountability, adherence to bright-line rules and clear jobs



KEVIN FRAZIER
LAW STUDENT

for each branch of government?

You may be inclined to say the Constitution meant to do both. And you may be right. But the questions that reach the Supreme Court often don't allow for that kind of answer.

For example, in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, the Supreme Court did not have the luxury of finding the middle ground: Either the Public Company Accounting Oversight Board within the Securities and Exchange Commission was unconstitutionally removed from presidential oversight or it wasn't.

Though that question may sound drier than the Alvord Desert, its answer boiled down to whether the justices thought the Constitution should be read to allow Congress to create agencies tailored to address modern issues, or if its bright lines were never meant to be crossed, regardless of how the times had changed since 1789.

Supreme Court Justice Steven Breyer came out on the side of an action-oriented Constitution. He's known for his creative metaphors, imaginative hypotheticals and, above all, his functionalism. In Breyer's dissent, joined by three of his colleagues, he quoted Chief Justice Marshall in *McCulloch v. Maryland* (1819) and argued: "Immutable rules would deprive the Government of the needed flexibility to respond to future exigencies which, if foreseen at all, must have been seen dimly."

According to Justice Breyer, he and Chief Justice Marshall correctly realized the Framers aimed to create a Constitution that would "endure for ages to come," which requires granting Congress the ability to respond to the "various crises of human affairs."

On the other side, writing for the majority, Chief Justice Roberts channeled a formalist interpretation and made the case for a Constitution designed to frustrate speedy responses, if necessary to maintain bright lines between the branches. Citing Supreme Court precedent, Roberts asserted: "The fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution, for convenience and efficiency are not the primary objectives — or the hallmarks — of democratic government."

The fun (and frustrating) part about law school is that these justices are all persuasive, articulate and steeped in Supreme Court precedent. They rarely make bad arguments and they force even the most fierce functionalists to see some merit in a more formalist interpretation, and vice versa.

With a majority of the Supreme Court adopting a formalist interpretation, though, those who share Breyer's view of democracy have a tough battle ahead. Count me among those who think our government ought to be guided by outcomes.

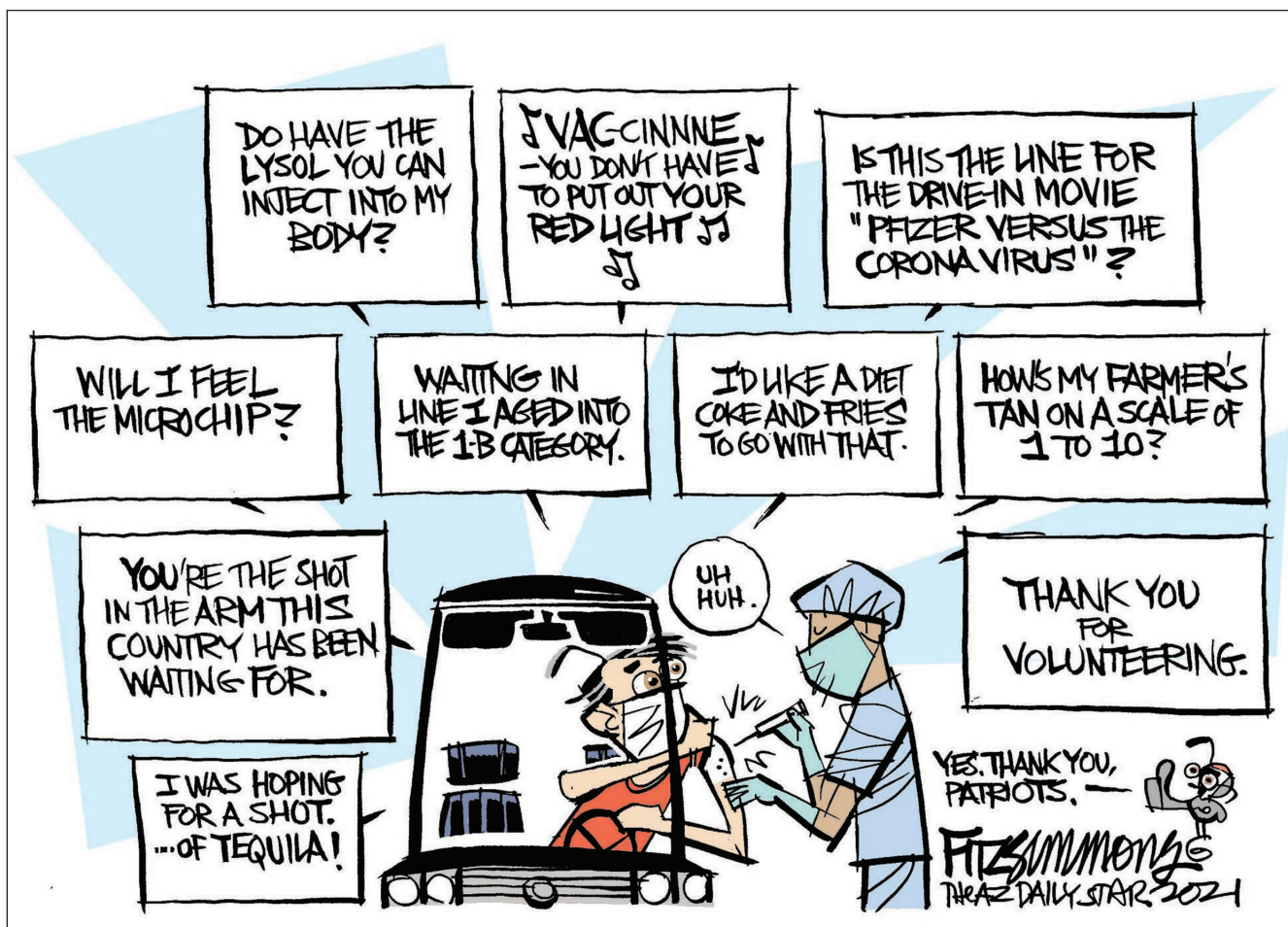
The wonderful part about our democracy is the people are the sovereigns. Functionalists and formalists alike agree all power exercised by the president, Congress and the Supreme Court is derived from the people. That means We the People — you and me — have the obligation and opportunity to make sure our power is used toward whatever objectives we view as the hallmarks of our democracy.

Outcomes-oriented governance is not easily accomplished. If some people advocate more persuasively or more persistently, their outcome might win the day. Which is why we ought to do all we can to bring more voices into the delegation of our collective power to our delegates.

Oregon has long championed finding ways to bring the people into the process of power sharing. From the initiative to automatic voter registration, the state has found ways to give people the chance to divvy out their share of power. Those innovations have paved the way for a lot of participation, but there are still some people who find it easier than others to distribute their power.

We can achieve an outcomes-oriented democracy if we can bring everyone into the fold. That's why we need to lower barriers to folks simply looking to fulfill their role as sovereigns.

Kevin Frazier was raised in Washington County. He is pursuing a law degree at the University of California, Berkeley School of Law.



Other Views

President Biden's problematic polling



JOE GUZZARDI
IMMIGRATION ANALYST

Presidential honeymoons have remarkably different lengths. President Barack Obama's honeymoon, at least with the press, began the day he announced his candidacy, Feb. 10, 2007, and the blissful union continues today.

On the complete opposite end of the honeymoon spectrum is President Donald Trump, an impeachment target from before his inauguration in 2017 until February 2021, a month after he left office.

Surprisingly, the polls show that President Joe Biden is, after only four weeks in the White House, having a rough go of it with the very Democrats who helped elect him. The Morning Consult poll, a partnership with the left-leaning journalism company Politico, found that several of Biden's Executive Orders — especially those immigration-related — are among the most unpopular with voters.

Of the voters polled, only 45% support including illegal immigrants in the census, and only 46% approve halting the Trump administration's Remain in Mexico policy, which the Biden administration has undone. Effective Feb. 19, the first of an even-

tual 25,000 immigrants will begin entry into the United States. Others entered earlier and illegally were, despite the COVID-19 pandemic, caught and released with orders to appear in immigration court at a later date.

Biden's lenient immigration policies have encouraged large migrant caravans to come north. As one of thousands of border-bound Hondurans told CNN, Biden is "going to help all of us" to become legal residents. When asked how the administration could refute the widely held perception that the 100% surge increases meant migrants interpreted the borders were open, an opinion Mexican President Andres Manuel Lopez Obrador shares, White House press secretary Jen Psaki avoided giving a straightforward answer.

The least popular among Biden's executive orders is his goal to expand refugee admission to 125,000 from President Trump's 15,000, a greater than 800% increase. Among those polled, 48% of voters somewhat or strongly oppose the president's plan to increase refugee resettlement in the upcoming fiscal year, while 39% support it.

Summing up the Feb. 5-7 survey among 1,986 registered voters, and accounting for a 2% error margin, Morning Consult's senior editor Cameron Easley wrote, "Orders pertaining to immigration and immigrant rights constitute five of his seven

least popular actions among voters, and are particularly animating for Republicans."

As a result, Easley concluded, "immigration will be tricky political territory for the president."

Americans are puzzled at what the thought process may be behind Biden's urgency to liberalize immigration laws when there's no link to how his actions help the millions of economically distressed, employment-anxious citizens and lawfully present residents. Biden's immigration actions will expand the labor pool — the Bureau of Labor Statistics employment-population ratio that measures the number of people employed against the total working-age population is a dismal 57.5%.

Biden is urging Congress to pass amnesty that would legalize and provide lifelong valid work permission to millions of aliens, a big gamble for the new president. With only a five-seat margin in the House of Representatives, the Senate tied at 50-50, and with history showing that the midterm elections cost the majority party about 25 seats, Biden could be, as the Morning Consult poll editor warned, plunging into cold and murky water.

Joe Guzzardi is a Progressives for Immigration Reform analyst who has written about immigration for more than 30 years. Contact him at jguzzardi@pifirdc.org.

Letters

Inclusion, fairness are more than a trend

I'm the person who started the Black Lives Matter protests in La Grande. I'm in seventh grade at La Grande Middle School. As I told The Observer, I woke up one morning, saw the news and saw that there were protests all over the country. I thought there was no reason we shouldn't have a rally here.

I have always thought that everyone should be treated equally regardless of things they can't control (gender, race, sexual orientation, class, etc.). I learned this behavior at a very young age from my parents and just seeing it everywhere; I lived in New York until I was 9 and it was always very apparent to me there. So I try to live that behavior all that I can by organizing events like our Black Lives Matter rally.

La Grande doesn't have as much diversity as some other places so it makes me think about — and we all should think about — how hard it is to be in a minority here. I believe we all need to treat people who are out of the mainstream equally and fairly.

I am planning to pursue social equity issues in my free time, in school and after I graduate. I'm also invested in creating events for our community. Like, some of my friends and I would like to organize a pride parade in the future.

I hope that our community can come together to support inclusion and fairness for everyone, even when it is not a trending hashtag.

Miri Koltuv
La Grande

WRITE TO US

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