

OUR VIEW

Judge right to block real estate 'love letter' law

So-called real estate "love letters" aren't exactly a major free speech issue. But it's not surprising that Oregon's unique new law partially banning these messages quickly ran into trouble on First Amendment grounds.

U.S. District Judge Marco A. Hernández last week issued a preliminary injunction blocking the law, which the Oregon Legislature passed in 2021 and Gov. Kate Brown signed. It took effect Jan. 1, 2022.

Hernández made his ruling in a lawsuit filed in November 2021 by the Pacific Legal Foundation on behalf of the Total Real Estate Group of Bend.

Oregon State Rep. Mark Meek, a Democrat from Clackamas County and a real estate agent, promoted the law. It deals with letters that hopeful buyers sometimes send to a seller, using real estate agents as intermediaries, as a way to try to entice the seller to choose the letter writer's offer.

The law doesn't prohibit prospective buyers from writing such letters, or from sending them directly to a homeowner. The law prohibits real estate agents who represent a seller from passing on such letters to the seller.

Meek and other supporters said they were concerned that such letters could include personal details about the prospective buyer, such as race, gender or sexual orientation, that might influence the seller's decision about which offer to accept.

Proponents of the law contend this situation would violate the federal Fair Housing Act, which prohibits discrimination in housing based on factors such as race and sexual orientation.

This is a legitimate concern, to be sure.

But the notion that such letters would truly lead to discrimination is difficult, if not impossible, to prove. In any case, the mere potential for a letter to contribute to discrimination is not sufficient to meet the appropriately high threshold that the First Amendment sets to ensure Americans have the right to freely express themselves, regardless of the topic or the forum.

Daniel Ortner, an attorney for the Pacific Legal Foundation, made that point in a statement about the preliminary injunction.

"Love letters communicate information that helps sellers select the best offer," Ortner said. "The state cannot ban important speech because someone might misuse it."

Hernández acknowledged in his decision that the purpose of the new law is worthwhile. The judge cited Oregon's "long and abhorrent history of racial discrimination in property ownership and housing" that in the past explicitly blocked people of color from owning property.

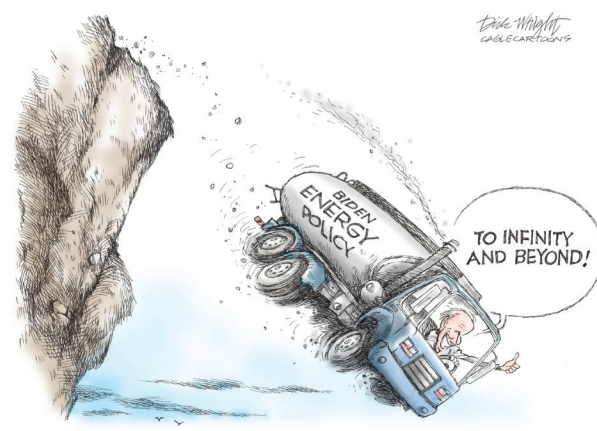
But the judge also rightly concluded that the law is too broad, prohibiting this type of letter in general rather than outlawing specific subjects. Oregon lawmakers, Hernández wrote, "could have addressed the problem of housing discrimination without infringing on protected speech to such a degree."

That's an interesting point. However, it's hard to imagine that any such restriction on this type of letter, even one with a narrower focus than the current law, would pass constitutional muster.

The preliminary injunction will remain in effect until Hernández makes a final decision on the lawsuit.

Oregon officials, including Attorney General Ellen Rosenblum and Real Estate Commissioner Steve Strode, both named as defendants in the lawsuit, should concede that the new law, however well-intentioned, is too general in its restrictions on free speech to stand.

There's no reason to spend public money defending against a lawsuit that stands on a legal foundation as formidable as the First Amendment.



Average standardized test scores should be celebrated



EVELYN SWART OTHER VIEWS

The story "Legislators push for money to train Oregon teachers in the science of reading" (lagrandeobserver.com, March 1) inspires me to comment. I suspect that there are far more adults who read very little than there are children who struggle to learn to read. Perhaps we should spend as much effort and resources to increase adult reading as we use on children learning to read.

About 25 years ago the Legislature in another state decreed that teacher training institutions must incorporate instruction of phonetic methods in their language arts curriculum. I was hired to implement phonics instruction at one of the state universities.

Prior to this assignment, I was employed in the state education department working in curriculum and instruction. My comments are based on these experiences as well as years of experience teaching in the classroom.

Regarding the science of reading, my experience tells me that children of normal intelligence should have few problems learning to decode language. The decoding process can be accomplished by most students in the first three grades.

After that, reasoning and understanding the reading content is

essential for success. Discussion, a variety of reading content and students' past experiences in and out of the classroom are meaningful for learning and doing well in school and on tests.

Legislators and journalists need to know the meaning of the term "grade level" and what standardized tests were intended to accomplish. It is my understanding that an important purpose of these tests is to improve the level at which large groups of students understand what they read.

It is expected that when they know student test scores, teachers and curriculum developers will upgrade instruction and the reading level will be raised.

During my career, I asked curriculum developers and the test developers how they come up with "grade levels." I wanted to know why grade-level textbooks seem to increase in difficulty over the years. The explanation I received was that it is done by a certain process. Large samples of students at different levels are given a standardized test, and the average performance of the students at specific age levels becomes the "grade level."

Curriculum specialists develop textbooks and instruction using the averaged levels, or "grade levels." Textbook companies revise their textbooks every few years; they are purchased by school districts and implemented in classrooms.

At the same time, classroom

teachers are taking courses to learn new effective instruction techniques for student success.

The conclusion that I draw is that when curriculum materials and classroom instruction is upgraded, learning is enhanced and "grade levels" are upgraded.

As student performance on standardized tests increase, it raises the average grade level and higher expectations of students. Thus, higher expectations result in increased student learning.

I would suggest that parents should not be unduly dismayed by standardized testing averages in their children's school district. Standardized tests are not an appropriate way to understand an individual student's progress. They are intended to gauge the average progress of large numbers of students, and to assess the progress of instruction in the state or nation.

Legislators can use the information to assess the need for resources to improve statewide learning levels, not to punish poor performing districts.

A school district that maintains average test scores over the years should be celebrating a resounding success. Districts with lower standardized testing averages can use the overall information to determine the need for resources and training.

Evelyn Swart is a retired educator who was born in 1936. Her retirement is devoted to writing and community volunteering in Joseph.

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