

# EAST OREGONIAN

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## OUR VIEW



## Supreme Court to decide strong-arm case

The problem with the American regulatory state is that the regulators have established rules designed to force the compliance of the regulated and to deprive them of due process in an impartial court.

A case heard last month by the U.S. Supreme Court hopefully will build on earlier decisions that make it easier for property owners to challenge agency decisions in federal court.

In *Hawkes Co. Inc. v. Corps of Engineers*, the question of judicial review rests on whether a determination by the U.S. Army Corps of Engineers that it has jurisdiction over property under the Clean Water Act is a final agency action subject to challenge, or merely an opinion a property owner can consider and disregard, albeit at future peril.

Hawkes Co. planned to mine peat moss on wetland property it owned in Minnesota. After numerous meetings with the company and visits to the site, the Corps concluded that there was a significant nexus between the site and the Red River of the North, waters of the U.S. as defined by the Clean Water Act, some 120 miles away.

It made a jurisdictional determination that a permit would be required before the company could move forward.

According to the Corps, this left Hawkes with only three options. It could abandon the project. It could perform the necessary environmental impact studies, which take several years and cost hundreds of thousands of dollars, and apply for a permit. It could ignore the determination and proceed with the project and defend itself if prosecuted.

What it could not do is contest the determination in court because,

according to the Corps, its jurisdictional determination was not a final government action under the Administrative Procedures Act because it neither compelled Hawkes to do anything, nor restricted its actions. In short, the company had “adequate remedies” available that preclude litigation.

The Corps is twisting the language to force compliance without judicial review. It knows that with such a determination any reasonable property owner will either give up entirely or go through the time and expense of the permitting process. It would be extremely foolish to go forward without a permit and risk criminal prosecution and the ruinous financial penalties attached to a possible guilty verdict.

It's a cheap bit of extortion, not unlike how the Chicago mob sells protection.

The 8th U.S. Circuit Court of Appeals agreed, in only slightly less inflammatory tones.

“The Corps’ assertion that the Revised J.D. is merely advisory and has no more effect than an environmental consultant’s opinion ignores reality,” it wrote.

By not allowing immediate judicial review, it wrote, the Corps achieves the result it desires without testing its assertion of jurisdiction.

In unanimously deciding a similar case, the Supreme Court was more direct.

“[T]here is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into ‘voluntary compliance’ without the opportunity for judicial review....”

We think the court will side with plaintiffs. The Corps’ assertion is clearly a distinction without a difference.

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Unsigned editorials are the opinion of the East Oregonian editorial board of Publisher Kathryn Brown, Managing Editor Daniel Wattenburger, and Opinion Page Editor Tim Trainor. Other columns, letters and cartoons on this page express the opinions of the authors and not necessarily that of the East Oregonian.



## OTHER VIEWS

## For Donald Trump, two outrage-free weeks

Have you noticed something different about the Trump campaign? It's been more than two weeks since the last really outrageous thing the Republican front-runner has said or done. In the old days — say, a month ago — Trump would have set off multiple hair-burning controversies in the same period. But now — nothing.

It's not an accident. When it comes to outrageousness, Donald Trump has dialed it back, on purpose. And indications from Trump world are that the new pattern will continue. (An obvious warning: It might not; by the time this article appears, it's always possible Trump could do or say something so shocking that the campaign is rocked for days.)

Why the change? Ask people knowledgeable about the campaign, and they'll say the addition of new staff has had a quick effect. Pushed by his children, Trump has expanded his super-tight circle of advisers with the addition of Paul Manafort, and now others, too. The sense is that Trump actually can listen, both to advice on what to say and not to say. The message has evolved; he is a better candidate than the man who messed up right and left just a few weeks ago.

With his latest crusade against “voterless victory,” Trump is scoring points again, not so much against Ted Cruz directly, but against the Republican establishment — always Trump's most comfortable target. For Trump, Cruz's vulnerability is not that he is part of the establishment, but that he has gotten in bed with the establishment as the only way to win. So the belief is that Trump's fight against the Republican National Committee and insider campaign rules pays off everywhere — especially if Trump is not making critical unforced errors at the same time.

To see the changes in the Trump campaign, look at the four-week period between March 22, when Trump began to blow up his own campaign, and now. On the night of March 22, Trump saw a low-budget, anti-Trump Super PAC ad featuring a photo of his wife. He went straight to Twitter. “Lyn’ Ted Cruz just used a picture of Melania from a G.Q. shoot in his ad,” Trump tweeted. “Be careful, Lyn’ Ted, or I will spill the beans on your wife!”

Not content to stop there, Trump made things infinitely worse the next night, March 23, when he retweeted a meme from one of his followers that featured a glamour shot of Mrs. Trump next to an unflattering photo of Mrs. Cruz.

It's a simple rule of politics that you don't attack your opponent's wife — or husband, for that matter, unless his name is Bill Clinton. Trump had trampled all over the rule, and the



**BYRON YORK**  
Comment

blowback was intense. In the days before the April 5 Wisconsin primary, Trump's rivals — not just the Cruz campaign but Wisconsin's formidable conservative talk-radio lineup — used it over and over against Trump.

But Trump was about to make things even worse. During a March 30 interview with MSNBC's Chris Matthews, Trump said that, were abortion to be banned, there should be “some form of punishment” for women who have abortions. Angering both pro-lifers and pro-choicers, Trump then issued multiple clarifications of his position. The controversy dragged on for days.

Add to that Trump's attack on Gov. Scott Walker, and the Trump campaign was done in Wisconsin; Cruz beat Trump 48 percent to 35 percent. The newly energized #NeverTrump forces saw the state as a turning point that gave them a real shot at keeping Trump short of the 1,237 delegates he needs to win the GOP nomination.

And then something changed. On March 29, as things were falling apart in Wisconsin, Trump announced the hiring of Manafort, the veteran Republican operative. Manafort ostensibly joined to serve as Trump's convention manager, but his role quickly expanded, in part at the expense of campaign manager Corey Lewandowski, who at the time was facing possible criminal prosecution for a March 8 incident in which he grabbed a female reporter's arm after a press conference in Florida. (Authorities in Florida announced on Thursday that the matter would be dropped.)

It took Manafort a few days to get up to speed. But since his arrival, Trump has been remarkably outrage-free. He's still giving the same basic performance in his rallies, but he has been a little more discriminating in his press appearances — two straight weeks without appearing on a Sunday chat show — and has stayed away from doing obviously dumb things, like attacking his opponent's wife. The campaign hopes the bad period is over.

Now the question is whether Trump has the discipline to stay on a relatively error-free course. He had some very good luck when the GOP primary schedule took him from his disastrous performance in Wisconsin to his best state of all, New York, and then to other friendly northeastern states.

But Trump will need more than luck to suppress the impulses that have gotten him into trouble in the past. He'll need to be a better candidate.

Byron York is chief political correspondent for *The Washington Examiner*.

**Changes have come to Trump's campaign since the addition of a new campaign manager.**

## YOUR VIEWS

### Scott Fairley the choice in Pendleton's Ward 2

We are very fortunate to have Scott Fairley run for city council, Ward 2. He is a native of Pendleton and understands well the issues facing our community. He also has the right experience for the position. He has demonstrated he has sound judgment in all matters. He will be excellent in representing all of us.

I urge you to support and vote for Scott Fairley for City Council, Ward 2.

**Bob Reese**  
Pendleton

### Lack of transparency costs city of Pendleton

This letter is in response to the headline “City council debates on how to communicate.”

Following their standard operating procedure, the city council hired a consultant to tell them that the members of the city council, the city manager, and the mayor will no longer be

able to respond to inquiries about issues or write editorials to the *East Oregonian* defending their performance.

Councilor Tom Young thinks that it's inappropriate to contact an elected official to talk to them about an issue that he or she may be concerned about. He believes that elected officials should have a buffer like Josh Earnest, who simply disseminates information as Obama's press secretary.

Communication is a two-way process involving the electorate and the voters' elected representatives. In many cases, there is a chasm between the two when the elected representatives pursue their own personal interests rather than the will of the people.

Evan McKenzie was, and Chuck Wood is, of the opinion that the parking of bicycles is the city's top priority. There are several pages dedicated to requirements for bicycle parking for businesses in the city's 110-page universal plan.

Another area of contention is the city giving away the farm in order to encourage outside

developers to build unaffordable housing when there are local developers who hire locally and know what the market can bear for rental housing.

I'm certain that I could find a quote in the *EO* from one of the politicians stating that 2016 is going to be the year of transparency. When transparency is used to describe a political situation, it means holding public officials accountable.

It is obvious that the city council wants autonomy and disdains accountability.

The transparency of the local government will now become opaque.

**Jerry Cronin**  
Florence

### Milton-Freewater schools levy support

My wife and I would like to express our strong support for the upcoming Milton-Freewater Schools bond proposal and to urge all residents to vote yes on May 17. Over the course of each

of our careers, we have been blessed to meet extraordinary families and witness thousands of students grow into impressive and successful young adults. It is our hope that these same young people will choose to return to Milton-Freewater to raise their own children when the time comes, as we did as lifelong residents and Mac-Hi graduates.

When we got married and decided to start a family, we chose this community as our home without hesitation. We have owned four homes in Milton-Freewater as well as our farm over the years, and each time we have benefited from increased property values leading us to the home we love today.

Do we like to pay higher taxes? No one does. However, we had two children and they were raised in the Milton-Freewater district from kindergarten through graduation from Mac-Hi. They all received a wonderful education and they are very productive citizens today.

When they were little kids in school, I am sure that a lot of

senior citizens voted to support our children's education by taxing themselves, when they probably could not afford it either. Well, now it's our turn... and we will surely support this bond by voting “yes.” Let's leave a legacy just as our parents did.

For new families to choose our great community over neighboring cities, it is imperative that we pass this bond. Not only are our school buildings in need of updates to stay current with surrounding districts, but a failed attempt has the potential to negatively define this great community.

The district is working diligently to continue a rich history of educating outstanding young people.

Prospective families, like the families that bought our three previous homes, need to know that the school system has our support in this endeavor. Vote yes for the bond proposal to better our schools and assure our community a bright future.

**Lewis Key**  
Mayor, Milton-Freewater