

EAST OREGONIAN
Founded October 16, 1875

KATHRYN B. BROWN Publisher
DANIEL WATTENBURGER Managing Editor
TIM TRAINOR Opinion Page Editor
MARISSA WILLIAMS Regional Advertising Director
MARCY ROSENBERG Circulation Manager
JANNA HEIMGARTNER Business Office Manager
MIKE JENSEN Production Manager

OUR VIEW

Federal regulations in need of review

President-elect Donald Trump, affirmed Monday by the Electoral College, in his deluge of campaign promises said he would work to reduce costly regulations.

The Heritage Foundation, a conservative think tank, earlier this month provided a review of federal regulations that carry criminal penalties. The list would be a good place to start, and its point is well taken.

In civics class we learned that the legislative branch makes law, both civil and criminal, and the executive branch enforces those laws. Congress, for example, passes a law making bank robbery a federal crime, defines the elements of the crime and establishes a penalty.

Simple. But, as is often the case in Washington, things are rarely ever simple.

In 1911, the Supreme Court held in *United States v. Grimwaud* that Congress had the power to pass the broad strokes of law and delegate to the executive the details of the rules and regulations to implement the law. The case revolved around the secretary of agriculture's authority to make regulations concerning the use of Forest Service lands for grazing and other purposes, and to attach criminal and civil penalties provided by Congress for violations of those regulations.

The ruling was a boon to Congress, a busy institution without time, expertise or often particular interest in the arcane details. More time on details means less time for law-making. How might that look

to the voters back home?

So, to pack in more law-making Congress has left it to federal agencies to make the rules, and to decide which violations will carry civil penalties and which will be federal crimes that carry jail time.

Bank robbery is a pretty straightforward crime, and one needs no more than an understanding of the Commandment "Thou shalt not steal" to know it's wrong. But the violation of many regulations that carry criminal penalties is no where near as obvious. Without any criminal intent, an unsuspecting violator can face jail time and criminal fines for even the most innocuous action.

Equally alarming is that the number of potential criminal violations grows annually as agencies make more regulations. No one really knows, but critics say violations of as many as 300,000 regulations carry criminal penalties.

"With little to no input from or accountability to voters, bureaucrats have run amok with the power to create new crimes," the foundation says.

If regulations are to be enforced, there must be penalties. However, for all but the most egregious violations, the threat of civil fines should be adequate to force compliance. Congress should reserve for itself the power to define federal crimes. Citizens should demand that accountability.

In the meantime, we agree that the next president should curtail the creation of new federal crimes by bureaucratic fiat.

"With little to no input from or accountability to voters, bureaucrats have run amok with the power to create new crimes."

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

Lawmakers should heed local government concerns

The (Albany) Democrat-Herald, Dec. 14

Attorneys for the state of Oregon are pondering whether to appeal a judge's ruling that the state's law requiring paid sick leave for employees represents an unfunded mandate to local governments and therefore is unconstitutional.

Our guess is that they probably will choose to appeal the case, even though such a decision comes with a certain risk: As matters stand now, the ruling from Linn County Circuit Court Daniel Murphy applies to just the nine Oregon counties — including Morrow — that are plaintiffs in the case. An appeal potentially could run the risk of spreading Murphy's ruling statewide, although you can be sure that every local government in Oregon has heard about Murphy's ruling and that some are actively considering their options.

In the meantime, the ruling should be raising eyebrows among state legislators and other officials, who might earlier have been tempted to write off the lawsuit as the brainchild of cranky county gadflies. Before Murphy's ruling, state officials might have dismissed the suit as a shot across the bow, the legal equivalent of seniors on a porch telling those legislative kids to get off the lawn.

But now, at least as far this ruling goes, this particular shot has landed right on target.

The lawsuit in question, filed by Linn County and eight other counties, argued that the state's mandatory sick leave law was unconstitutional as it applied to local governments because it didn't come with the funding to cover the additional costs. (The state's constitution bars such unfunded mandates.)

The state's attorneys argued that the constitutional prohibition didn't apply in this case because the sick-leave law didn't qualify as a "program." If this sounds like a technicality, well, it is, but it was a legitimate argument, and Murphy, although he sided with the counties, noted

in his ruling that "(T)his is not a case where the answer is crystal clear."

What is clear, however, is that at least some of Oregon's cash-strapped counties feel as if their concerns have been given short shrift by legislators and other state officials. (That very same sense is driving the somewhat similar timber lawsuit that's been filed against the state by Linn County; that lawsuit is pending in Murphy's court.)

In some ways, Oregon's businesses might be feeling the same way. Murphy's ruling, of course, doesn't apply to most state businesses (the constitution does exempt private businesses that in some way compete with local governments).

As other editorial writers have noted, it's unfair to ask Oregon businesses to comply with a rule that local governments don't have to follow. That would suggest that the 2017 Legislature should consider repealing the mandatory sick-leave law.

But let's be honest: That's not going to happen. In fact, if anything, the 2017 session seems likely to take an even deeper dive into the inner workings of businesses through a barrage of so-called "predictive scheduling" regulations: Rules requiring businesses to post employees' schedules at least two weeks ahead of time. In addition, these rules often include penalties for businesses that have to make last-second schedule adjustments.

To be fair, smart businesses already have adopted their own versions of predictive scheduling, because they know that stable schedules make for happier, healthier and more productive employees. But we remain unconvinced that the Legislature needs to be inserting itself into the day-to-day workings of business.

And we hope that legislators and other officials take Murphy's ruling as a sign that they need to pay more than mere lip service to the legitimate concerns of Oregon's local governments. When those governments feel that the only place their voices are heard is in a courtroom, something is broken.



OTHER VIEWS

How republics end

Many people are reacting to rise of Trumpism and nativist movements in Europe by reading history — specifically, the history of the 1930s. And they are right to do so. It takes willful blindness not to see the parallels between the rise of fascism and our current political nightmare.

But the '30s isn't the only era with lessons to teach us. Lately I've been reading a lot about the ancient world. Initially, I have to admit, I was doing it for entertainment and as a refuge from news that gets worse with each passing day. But I couldn't help noticing the contemporary resonances of some Roman history — specifically, the tale of how the Roman Republic fell.

Here's what I learned: Republican institutions don't protect against tyranny when powerful people start defying political norms. And tyranny, when it comes, can flourish even while maintaining a republican facade.

On the first point: Roman politics involved fierce competition among ambitious men. But for centuries that competition was constrained by some seemingly unbreakable rules. Here's what Adrian Goldsworthy's "In the Name of Rome" says: "However important it was for an individual to win fame and add to his and his family's reputation, this should always be subordinated to the good of the Republic ... no disappointed Roman politician sought the aid of a foreign power."

The United States used to be like that, with prominent senators declaring that we must stop "partisan politics at the water's edge." But now we have a president-elect who openly asked Russia to help smear his opponent, and all indications are that the bulk of his party was and is just fine with that. (A new poll shows that Republican approval of Vladimir Putin has surged even though — or, more likely, precisely because — it has become clear that Russian intervention played an important role in the U.S. election.) Winning domestic political struggles is all that matters, the good of the republic be damned.

And what happens to the republic as a result? Famously, on paper the transformation of Rome from Republic to Empire never happened. Officially, imperial Rome was still ruled by a Senate that just happened to defer to the emperor, whose title originally just meant "commander," on everything that mattered. We may not go down exactly the same route — although are we even sure of that? — but the process of destroying democratic substance while



PAUL KRUGMAN
Comment

preserving forms is already underway.

Consider what just happened in North Carolina. The voters made a clear choice, electing a Democratic governor. The Republican legislature didn't openly overturn the result — not this time, anyway — but it effectively stripped the governor's office of power, ensuring that the will of the voters wouldn't actually matter.

Combine this sort of thing with continuing efforts to disenfranchise or at least discourage voting by minority groups, and you have the potential making of a de facto one-party state: one that maintains the fiction of democracy, but has rigged the game so that the other side can never win.

Why is this happening? I'm not asking why white working-class voters support politicians whose policies will hurt them — I'll be coming back to that issue in future columns. My question, instead, is why one party's politicians and officials no longer seem to care about what we used to think were essential U.S. values. And let's be clear: This is a Republican story, not a case of "both sides do it."

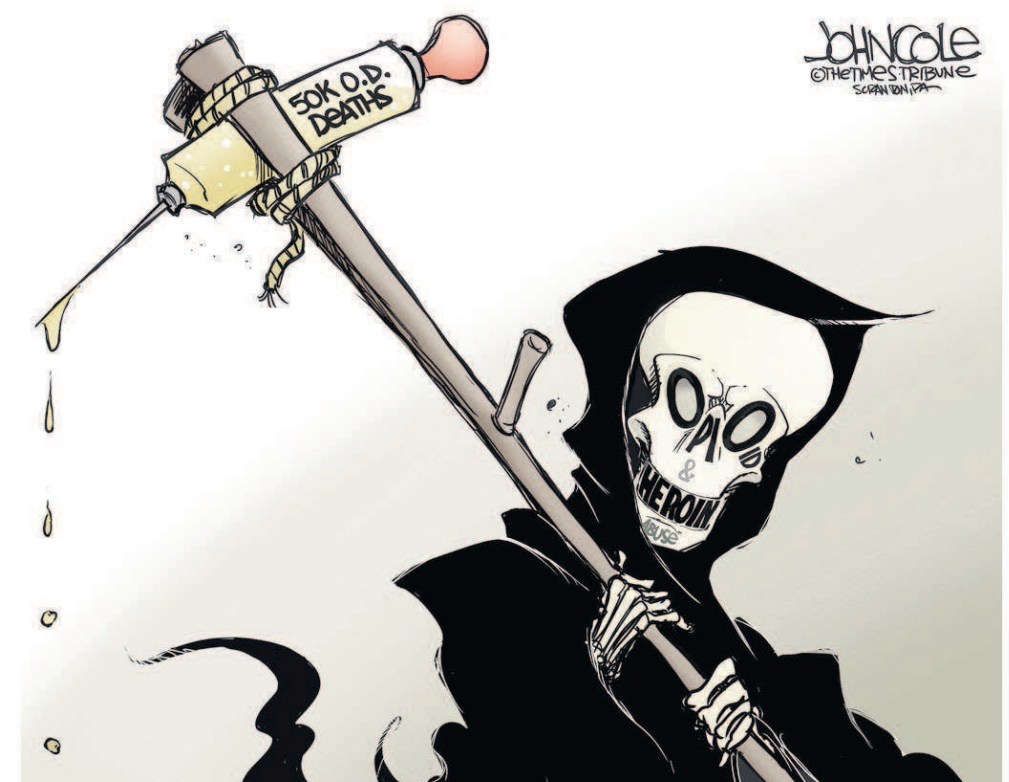
So what's driving this story? I don't think it's truly ideological. Supposedly free-market politicians are already discovering that crony capitalism is fine as long as it involves the right cronies. It does have to do with class warfare — redistribution from the poor and the middle class to the wealthy is a consistent theme of all modern Republican policies. But what directly drives the attack on democracy, I'd argue, is simple careerism on the part of people who are apparatchiks within a system insulated from outside pressures by gerrymandered districts, unshakable partisan loyalty, and lots and lots of plutocratic financial support.

For such people, toeing the party line and defending the party's rule are all that matters. And if they sometimes seem consumed with rage at anyone who challenges their actions, well, that's how hacks always respond when called on their hackery.

One thing all of this makes clear is that the sickness of U.S. politics didn't begin with Donald Trump, any more than the sickness of the Roman Republic began with Caesar. The erosion of democratic foundations has been underway for decades, and there's no guarantee that we will ever be able to recover.

But if there is any hope of redemption, it will have to begin with a clear recognition of how bad things are. U.S. democracy is very much on the edge.

Paul Krugman joined The New York Times in 1999 as an Op-Ed columnist.



LETTERS POLICY

The East Oregonian welcomes original letters of 400 words or less on public issues and public policies for publication in the newspaper and on our website. The newspaper reserves the right to withhold letters that address concerns about individual services and products or letters that infringe on the rights of private citizens. Submitted letters must be signed by the author and include the city of residence and a daytime phone number. The phone number will not be published. Unsigned letters will not be published. Send letters to managing editor Daniel Wattenburger, 211 S.E. Byers Ave. Pendleton, OR 97801 or email editor@eastoregonian.com.