

O EAST OREGONIAN PINION

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OUR VIEW

Judging a judge

An unqualified federal judge is a serious problem.

In the most rudimentary civics class you'll learn that a strong and fair judicial branch is critical to our democracy, creating a check that limits the powers of the federal government. To fulfill this role, the judiciary must be filled with fair-minded, learned and honorable men and women.

There are many federal judgeships — 890 — that fill specific roles in that democratic duty, as prescribed in Article III of the U.S. Constitution. The Supreme Court is the highest in the land, but circuit and district courts are also accountable for proper reading and rendering of the law.

No decision falls on a single judge. There is room for our sometimes clunky democracy to play out across several venues, and no single interpretation of the law can stand above the broad understanding held by the majority of these judges.

But any time an unqualified judge is seated, the integrity of the entire system becomes weaker. These judges are appointed for life, and outside of impeachment by the Congress they serve until they retire or die. Unqualified candidates also lower the bar, so to speak, making room for more partisan politics to play into future appointments and real concerns of character and conduct to be overlooked.

It's unfortunate to see Ryan Bounds' nomination to the 9th Circuit Court of Appeals take on an unfair tarnish.

We understand what's at stake. We know that politics will always play a part in appointments. President Donald Trump claims the appointment of conservative Supreme Court Judge Neil Gorsuch as one of the great accomplishments of his first year in office, and many conservative voters listed that appointment as their top reason for voting for Trump. We also know that four of the other judicial nominees selected by the Trump administration have been graded by the American Bar Association as "not qualified."

With all that in mind, it's unfortunate to see Ryan Bounds' nomination to the 9th Circuit Court of Appeals take on an unfair tarnish due to a few lines in a few opinion pieces he wrote when he was at Stanford University more than 20 years ago.

There is writing, done at any stage of life, that would be disqualifying. This would include arguments for white supremacy or against free speech, or statements that display an implicit bias against certain people or groups.

Bounds' statements that have come to light so far — in the form of op-eds from the mid-1990s in the *Stanford Review* — do not nearly meet that standard. While he has admitted they were both tone-deaf and insensitive, we struggle to find anything more nefarious. As a college student he



An ACLU attorney argues his case in front of judges of the 9th U.S. Circuit Court of Appeals in a San Francisco courtroom on Sept. 22, 2003. AP Photo/Paul Sakuma

took a little too much glee, it seems, in painting a sarcastic picture of race-based organizations — not the races, but some campus groups — and his musings on punishment for sexual assault allegations presented a lack of respect for victims.

We'd hope that college is a time of sharpening one's mind and viewpoints, and that opinions formed and expressed during that time are not intractably held for the rest of one's life. By that token, we should be very interested in allowing students to express their ideas and arguments without fear of reprisal at some future date.

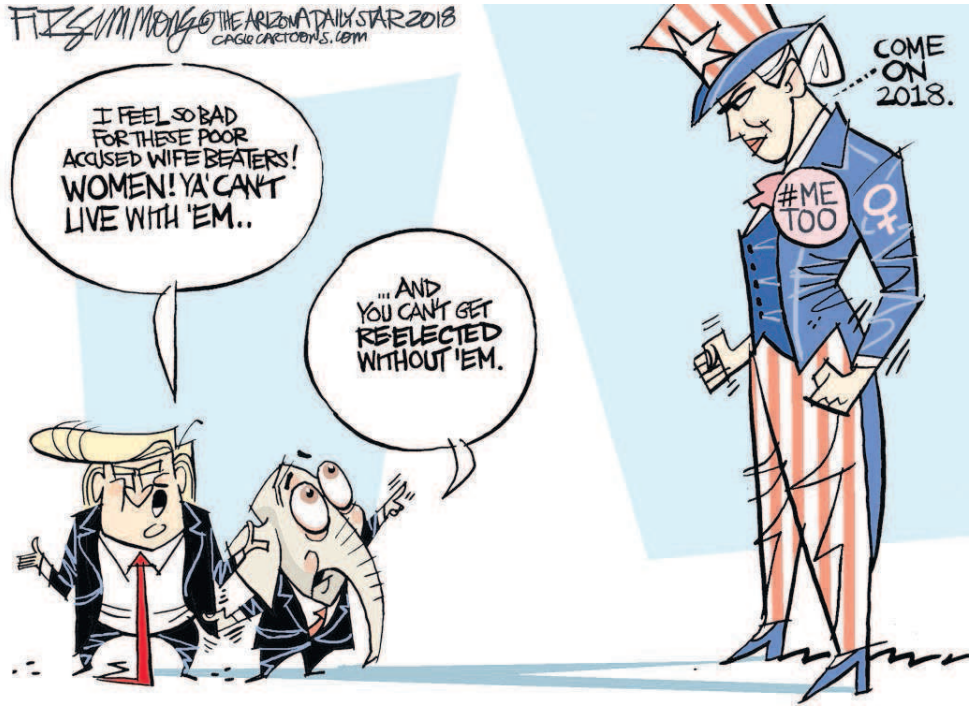
Bounds said he has matured, and there's ample evidence of that. His professional career in the decades since show him to be a respectable attorney and judge, and a bi-partisan committee that reviewed his nomination found him to be more than capable of the job

based on that record.

Sens. Jeff Merkley and Ron Wyden, however, are questioning his qualifications based solely on the writing. Rep. Greg Walden has continued to support Bounds.

It's no secret where the motives lie. The Democratic senators would rather not see a young, conservative judge added this court, and the Republican representative would. It's worth noting that Bounds has a connection to Walden's office — his sister, Lorissa Bounds, is Walden's chief of staff — but neither the appointee committee nor the *East Oregonian* find that conflict to be disqualifying, either.

What we hope for is a judicial selection process that stays away from partisan politics as much as possible, allowing the best and fairest legal minds to hold important seats that keep our democracy in check.



YOUR VIEWS

Gun bill stomps on owners' due process

A comment on House Bill 4145 (*East Oregonian*, Feb. 9, 2018), which would expand prohibitions on domestic abusers having guns to include dating partners and stalkers, adding them to spouses, former spouses and couples who are co-habiting:

So basically, anyone from your past who harbors a grudge against you could strip you of your right to own firearms and cause your property to be confiscated?

The legislators proposing this law seem eager to don hobnailed jackboots and give "due process" a right royal stomping.

John Kaufman
Pendleton

OTHER VIEWS

End of the two-party system



DAVID BROOKS
Comment

In the first half of the 1990s, I worked in Europe for *The Wall Street Journal*. I covered nothing but good news: the reunification of Germany, the liberation of Central Europe, the fall of the Soviet Union, the end of apartheid in South Africa, the Oslo peace process in the Middle East. Then, toward the end of my stay, there was one seemingly anomalous episode — the breakup of Yugoslavia.

In retrospect, the civil war in the Balkans was the most important event of that period. It prefigured what has come since: the return of ethnic separatism, the rise of authoritarian populism, the retreat of liberal democracy, the elevation of a warrior ethos that reduces politics to friend/enemy, zero-sum conflicts.

In those intervening years there's been an utter transformation in the unconscious mindset within which people hold their beliefs.

Back in the 1990s, there was an unconscious abundance mindset. Democratic capitalism provides the bounty. Prejudice gradually fades away. Growth and dynamism are our friends. The abundance mindset is confident in the future, welcoming toward others. It sees win-win situations everywhere.

Today, after the financial crisis, the shrinking of the middle class, the partisan warfare, a scarcity mindset is dominant: Resources are limited. The world is dangerous. Group conflict is inevitable. It's us versus them. If they win, we're ruined, therefore, let's stick with our tribe. The ends justify the means.

The shift in mentalities seems like a shift in philosophy. But it's really a shift from a philosophy to an anti-philosophy. The scarcity mindset is an acid that destroys every belief system it touches.

For example, in the years after Ronald Reagan, the Republican Party was defined by its abundance mindset. The key Republican narratives were capitalist narratives about dynamic entrepreneurs and America's heroic missions. *The Wall Street Journal* editorial page was the most important organ of conservative opinion. The party's views on other issues, like immigration, were downstream from confidence in the abundant marketplace and the power of the American idea.

Now, Donald Trump leads the Republican Party, the personification of the scarcity mindset. Fox News, with its daily gospel of resentments, is the most important

organ of conservative opinion. Restricting immigration has become the core Republican issue. Today's Republicans are happy to trade away their fiscal principles if they can get their way on immigration, which is what they did in last week's budget deal.

The Trump era has produced a renaissance in conservative writing. *National Review* is a more interesting magazine now than at any time in its history. But the style of politics that Trump's scarcity mindset demands has been a disaster for conservative governance. He insists on perpetual warfare — against all comers. Stuck fighting his wars with him, Republican politicians have had to say goodbye to most of the pillars of conservatism: rule of law, fiscal discipline, global engagement, moral decency, the idea that people should be judged by the content of their character and not the color of their skin.

In theory, the GOP restrictionist position on immigration is perfectly legitimate. But Trump has fatally entwined it with his constant race baiting. Republican politicians could have denounced the race baiting but remained silent. They allowed themselves to become fellow travelers to bigotry, and spoiled their own cause.

The fact is that the scarcity mentality and the perpetual warrior style it demands are incompatible with any civilized political creed. At first the warriors seem to be fighting for the creed but eventually they transform it.

Under the influence of this mentality, evangelicalism turns from a faith into a siege-mentality interest group that reveres a pagan immoralist. Under the influence of this mentality, liberalism goes from a creed that values individual rights and deliberation to one that values group separatism and intellectual intolerance.

All of this would be survivable if the mentality was going away in a few years. But it is not going away. The underlying conditions of scarcity are only going to get worse. Moreover, the warrior mentality builds on itself. As the right pulverizes the left, the left feels the need to pulverize back, and on and on. This is a generational challenge. Trump will be succeeded by some other warrior.

Eventually, conservatives will realize: If we want to preserve conservatism, we can't be in the same party as the clan warriors. Liberals will realize: If we want to preserve liberalism, we can't be in the same party as the clan warriors.

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