

Opinion

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GUEST EDITORIAL

Don't let Salem keep secrets

Editorial from The (Bend) Bulletin:

Former Sen. Jeff Kruse, R-Roseburg, gave the Legislature a black eye in 2017 when Sen. Sara Gelser, D-Corvallis, publicly accused him of groping her. The black eye only got worse in the months following.

Brad Avakian, then head of the Bureau of Labor and Industries, began an investigation into charges that Senate President Peter Courtney, D-Salem, and Speaker of the House Tina Kotek, D-Portland, had covered up a “generally hostile environment based upon sex” in the capitol. He sought records from the pair and had to go to court to get them. At the time, the two argued that they wanted to keep the records secret in an effort to protect people who had complained about unwanted attention.

That's the same argument that's being used to support House Bill 2859. The measure gives lawmakers something not available to any other entity in Oregon. If the measure were to pass as initially written, complaints against lawmakers could be kept secret. Those doing the complaining generally would remain anonymous, as would those against whom complaints were made. The Harvey Weinstains of the world couldn't have done a better job keeping their behavior secret.

The bill itself was submitted as a committee bill — the work of the Legislature's Joint Committee on Capitol Culture. No legislator apparently wants to claim credit for giving the Legislature a special legal privilege to conceal harassment complaints. What a surprise.

Nor does the public. That public has a right to know if their elected officials understand the basic tenets of acceptable behavior (or are the moral equivalent of slugs).

The public also has the right to expect that laws that apply to non-members of the Legislature also apply to lawmakers. This bill should be defeated.

GUEST EDITORIAL

Editorial from The Los Angeles Times:

The Supreme Court last week struck a blow against one of the most insidious practices of the American criminal justice system: the unfair confiscation of property from people convicted — or even merely suspected — of committing a crime. So-called civil asset forfeiture has been a cash cow for police departments even as it has disproportionately impoverished poor people and people of color.

The court unanimously held that seizures by state governments of property used in the commission of a crime are covered by the 8th Amendment's ban on “excessive fines” for criminal conduct. It is just the latest of many protections in the Bill of Rights that the court has held to be applicable not just to the federal government but to the states as well because they are “incorporated” by the 14th Amendment.

In this week's case, the court sided with Tyson Timbs, an Indiana man whose \$42,000 Land Rover SUV was seized in a civil forfeiture action after he pleaded guilty to selling \$225 worth of heroin to undercover police officers. The state had argued that the vehicle was used to transport heroin. Timbs will now be able to argue in state court that the seizure of his vehicle was “grossly disproportionate” to the offense for which he was convicted.

In her majority opinion Wednesday, Justice Ruth Bader Ginsburg explained why it was important that the ban on excessive fines applied to the states. She noted that “the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties.”

Wednesday's decision, however, is a limited one. It leaves open the question of whether and under what circumstances a forfeiture of assets sought by state officials is sufficiently “punitive” to trigger the ban on excessive fines.

State and federal law enforcement agencies can seize assets even when no criminal charge has been filed against their owner. The legal fiction is that the forfeiture is aimed not at the owner but at the property being used in the commission of a crime.

Ideally, this week's decision will lead to more judicial oversight of civil asset forfeiture. But reform is also possible at the legislative level. In 2016, California enacted a law that required a criminal conviction for the state to benefit from the seizure of property valued at up to \$40,000 as the result of a joint state-federal operation.

If property is to be seized by the government, it should be from individuals who have been convicted of a crime — and even then the punishment must be proportional. The goal must be justice, not a windfall for police coffers.



There is a border emergency

As the pile-up of lawsuits proves, many believe that President Donald Trump exceeded his authority by declaring a national emergency at the U.S.-Mexico border. The facts and the law show otherwise. He acted only after Congress refused to fulfill its duty to protect the country and provide the resources necessary to secure the border.

Anyone who believes this isn't a genuine crisis is ignoring reality. It approaches what many consider an unchecked invasion: thousands of illegal aliens, dangerous criminals, drug smugglers and sex traffickers crossing the border every day.

The number of apprehensions at the border is down from a peak of more than 1 million annually throughout most of the 1980s, 1990s and 2000s, but it's rising again. 2018 saw the largest number of apprehensions at the border since 2012 — almost 467,000, according to a Pew Research Center analysis of the most recent data from U.S. Customs and Border Protection. That included 54,000 unaccompanied children and 163,000 family members — three times as many as in 2017.

The sex traffickers are the modern equivalent of the horrible sea captains of the past who kidnapped Africans and brought them to the U.S. under brutal, murderous conditions that we can't even imagine today. Doctors Without Borders estimates that one of every three women caught in these smuggling rings are sexually assaulted before many are forced into prostitution and slavery here.

The same Mexican cartels that DHS spokesperson Katie Waldman says earn \$2.5 billion annually from human smuggling are also responsible for an epidemic of drug abuse and overdoses in our country. They are bringing methamphetamine, heroin, cocaine and

HANS A. VON SPAKOVSKY

fantanyl across the border, according to DHS.

Most drug interceptions occur at ports of entry, but of course, that's where law enforcement is concentrated. How much more is getting through the largely unprotected, unsecured parts of the border?

As for the applicable law, the president has inherent constitutional authority as the chief executive and the commander-in-chief to secure our borders. But he specifically acted under the statutory authority of the National Emergency Act of 1976.

National emergencies are not exactly an uncommon occurrence. Almost 60 have been declared by prior presidents, without any outcry that they were somehow acting illegally. In fact, in passing the NEA, Congress gave itself the ability to end any such declaration by passing a concurrent resolution.

The NEA requires the president to cite the other federal laws under which he is acting. In his proclamation, Trump has cited a federal law on military construction funds that are part of the budget of the Department of Defense. Congress has already appropriated those funds in the amount of \$3.6 billion. That statute specifically provides that the president can redirect the use of those funds when he believes it is necessary for the support of the armed forces.

And the president is given broad discretion to make that determination. Here, he has determined that the armed forces are required to assist the Department of Homeland Security and those funds are necessary to build the barriers that will secure the border.

President George W. Bush and President Barack Obama also directed the military to assist the Border Patrol during their administrations. According to the White House, they also both used this same military construction fund 18 different times for projects from 2001 to 2014. None of the states and politicians complaining about this now ever complained before about this.

Moreover, the White House has identified \$601 million from the Treasury Department's Forfeiture Fund that it intends to use for border security. Those funds are supposed to be used to help law enforcement. No one can credibly argue that using these funds to help secure the border is not assisting law enforcement.

There is also another \$2.5 billion in Defense Department funds that pursuant to another federal statute can specifically be used for “counterdrug activities.” Again, no one can rationally argue that securing the border is not a counterdrug activity.

Congress should have acted, but didn't. It gave the president only enough money in the latest government funding bill to build 55 miles of fencing (with many restrictions) along a border that is 2,000 miles long and completely open in many areas.

The president's actions in reaction to that — and to the crisis at the border — are certainly not the ideal way this should be dealt with in our constitutional republic. But they are fully within his constitutional authority and the statutory authority provided to him by Congress.

Hans A. von Spakovsky is a senior legal fellow at The Heritage Foundation. He is the co-author of “Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk” and “Obama's Enforcer: Eric Holder's Justice Department.”

Letters to the editor

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- Letters will be edited for brevity, grammar, taste and legal reasons.
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