

OUR VIEW

Debating
COVID-19
restrictions

Bend city councilors got into a prolonged debate Wednesday night over Gov. Kate Brown’s COVID-19 restrictions on religious organizations.

It wasn’t an insurrection. It didn’t get ugly. But there was some figurative pushing and shoving over what the city should do.

Councilors Bill Moseley and Justin Livingston backed a motion that: “The City of Bend shall not use city monies, equipment, or personnel for the purpose of enforcing pandemic health policies, which single out and discriminate against faith-based organizations or members thereof.”

The motion died. Don’t be surprised, though, if there are more such debates across the state. As serious as the pandemic is, the pandemic restrictions have serious consequences for businesses, religion and day-to-day life. Did the right argument win in Bend? Maybe. But there should be debates like this.

The U.S. Supreme Court ruled last week to block New York state from enforcing attendance limits at places of worship while the issue continues to be argued in court. The court said New York’s limits did not appear to be applied equally and singled “out houses of worship for especially harsh treatment.”

Moseley pointed out Gov. Brown’s restrictions also treat religious gatherings differently than other parts of society. For instance, he said his church has a 100-person cap under the governor’s restrictions. If it were a different type of entity other than a church, it could have more than 600 people.

There are at least two questions raised by Moseley’s and Livingston’s concern. Is Brown’s order constitutional or even fair to religious organizations? And is it right for the Bend City Council to pick and choose which laws or pandemic regulations to enforce?

We can’t answer if Brown’s order is constitutional. That’s a matter for the courts. Yes there are some similarities with the Supreme Court’s ruling for New York. Gov. Brown’s order is not neutral. It does differentiate between different types of gatherings. And it does cause harm to people who will not be able to attend their chosen worship service in their chosen way.

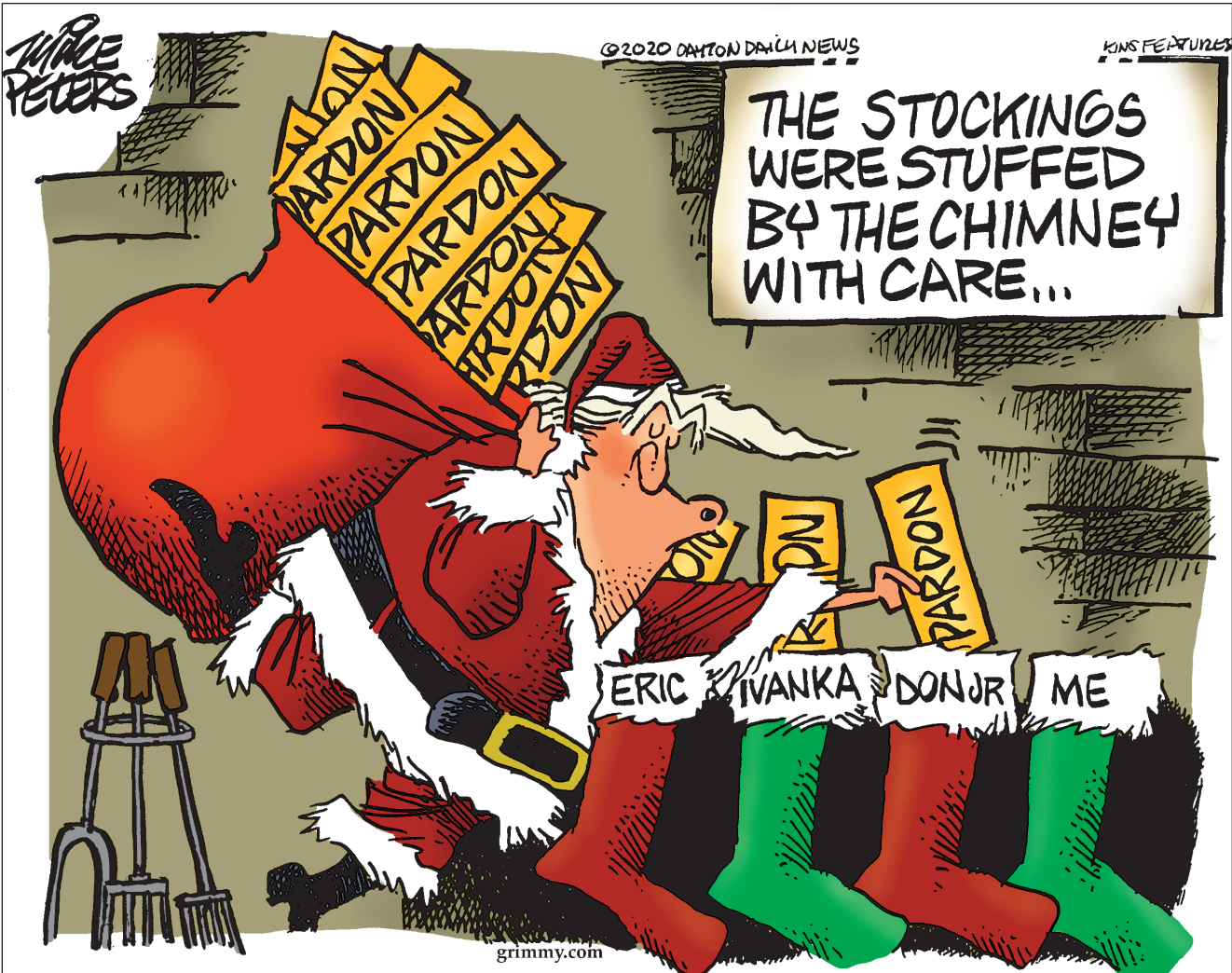
Those things could make Brown’s order subject to greater scrutiny by the courts. Is the decision to have more stringent policies for places of worship backed up by evidence of outbreaks or studies that show outbreaks are more likely? City Manager Eric King said Brown’s office told him it believes there is a legitimate difference. When people worship, they generally spend more time in close proximity to other people, than they do in say a retail store.

The focus of much of the council’s discussion was actually on the second question — how appropriate is it for the council to direct which laws are enforced. City Attorney Mary Winters said the right place to take up the concerns about Brown’s order is with a court challenge. The council does make decisions all the time that indirectly change how state laws or regulations will be enforced. Adding more police or code inspectors generally means more enforcement. Reducing funding would mean less. But the council does not typically do things like block the police from enforcing the state’s laws for certain crimes by barring spending on them or directives not to enforce them.

Mayor Sally Russell and all the other councilors voted against the motion by Moseley and Livingston.

Local government is not supposed to be a rubber stamp of everything that the governor wants — even in a pandemic. Bend’s city government has a long history of pushing back on state policies it doesn’t like or lobbying to shape the direction of proposed policies. Debates like this are the most basic parts of democracy. This was a civil, responsible discussion. You could argue it didn’t fit neatly into how vintage council resolutions are brought forward in Bend. But it was a healthy debate about public health.

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Elected officials and hypocrisy
during the coronavirus pandemic

By Mariel Garza

On Tuesday, Dec. 1, three more high-ranking California elected officials joined Gov. Gavin Newsom in the What Were They Thinking? club.

Newsom, you may recall, attended a dinner at the ritzy French Laundry in Napa Valley in early November to celebrate the birthday of a lobbyist friend in a group larger than the state recommends is safe. Was it technically allowable? Perhaps, but it was still incredibly bad optics for the person leading the state’s COVID-19 pandemic response to be spotted partying at one of the most exclusive and expensive restaurants in the country just as new cases were surging in his home state and new restrictions were looming.

You’d think that the drubbing Newsom received in the press, and is still receiving weeks later, would have served as an effective cautionary tale for other elected officials. You’d be wrong.

Even as the French Laundry story was breaking, California legislators from both sides of the aisle jetted off to Hawaii to hang out with lobbyists and lawmakers from other states for an annual junket — despite the fact that the state they served was asking everyone else not to travel if they could help it.

And now the club ranks have swelled again with the addition of three leaders in the state who were caught ignoring the same pandemic guidance they are preaching to the masses:

- Los Angeles County Supervisor Sheila Kuehl, who was spotted eating al fresco at a Santa Monica restaurant last week just hours after she cast a vote supporting a temporary closure of outdoor dining in the county. Her justification? Outdoor dining poses too much of a health risk.
- San Jose Mayor Sam Liccardo, who spent Thanksgiving at a family dinner that included eight people from

five households. State public health orders limit gatherings to no more than three households. He knew that.

- And San Francisco Mayor London Breed, who attended a birthday dinner at the French Laundry, the night after the governor’s dinner in a group of eight. Her city prohibits restaurants from serving groups larger than six.

Really, what were they thinking?

Maybe it’s unfair to expect elected officials not to trip up when it seems everyone else is doing the same. They are human and, really, how many among us haven’t done something risky in the last 10 months that would look bad if it were splashed all over Twitter? But things aren’t fair for anyone right now. So, too bad. Elected officials have always been held to a higher standard because of the power they wield, and this crisis has set the bar even higher.

Mariel Garza is an editorial writer for the Los Angeles Times.

OTHER VIEWS

Nonunanimous verdicts are unfair

Editorial from The Los Angeles Times:

In April, the Supreme Court ruled that the Constitution requires that a jury must be unanimous in convicting a defendant of a serious crime. A lot of Americans — including those who have seen the classic film “12 Angry Men,” in which a lone holdout convinces other jurors to acquit a defendant — probably thought that was already the rule everywhere. But two states, Louisiana and Oregon, had allowed convictions by a non-unanimous jury, as had the territory of Puerto Rico.

That changed when the court ruled in favor of Evangelisto Ramos, who had been convicted by a 10-2 vote of a state jury of murdering a woman in Louisiana. On Wednesday, a lawyer for another Louisiana man convicted by a nonunanimous jury asked the court to make the Ramos decision retroactive. It must do so if it doesn’t want to tarnish its own legacy.

The Ramos decision was a landmark case, displacing a fractured 1972 decision in which the court had seemed to suggest that the Constitution required conviction by a unanimous jury in federal trials but not state trials.

Writing for the court in April, Justice Neil M. Gorsuch explained that as a matter of history the right to a jury trial guaranteed by the 6th Amendment was understood to require a unanimous vote for conviction. That makes sense: It’s easier for a jury to ignore the requirement for guilt beyond a reasonable doubt if a majority of the panel can ignore objections by one or two members.

Gorsuch also noted that when Louisiana adopted a provision for nonunanimous juries in 1898, one objective was to make it possible for Black jurors to be outvoted. That history is sadly relevant to the case that was argued Wednesday. Thedrick Edwards, a Black man, was convicted of armed robbery, kidnapping and rape by a jury that contained only one Black juror — who voted for acquittal on all of the charges.

You would think that Edwards would be automatically entitled to a new trial after the court’s decision in April. But under the court’s precedents, decisions establishing new rules — even those rooted in the Constitution — aren’t generally retroactive in cases like this one.

However, the court has said that decisions involving new procedural rules can be applied retroactively if they involve “the fundamental fairness and accuracy of the criminal proceeding.” Andre R. Belanger, the lawyer for Edwards, told the justices that they could decide that the Ramos decision involved just such a “watershed rule.”

Alternatively, Belanger said, the court could decide that the Ramos decision didn’t announce a new rule but restored the “full measure” of the 6th Amendment. Either way, he said, the Ramos decision should apply retroactively.

Belanger also made the case for his client in simpler terms. He asked: “Why should the 6th Amendment mean something less to Mr. Edwards” than to other defendants?

Some justices wondered about the number of new trials that might be necessary if Ramos were applied retroactively. (Edwards’ lawyer said that the maximum number in Louisiana would be 1,600 and that the criminal justice system could handle the burden.) But justice shouldn’t be a numbers game.

As Justice Elena Kagan noted, the court in the Ramos case concluded that “if you haven’t been convicted by a unanimous jury, you really haven’t been convicted at all.” But defendants such as Edwards stand convicted despite that decision. That is fundamentally unfair.

Letters to the editor

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- The Baker City Herald will not knowingly print false or misleading claims. However, we cannot verify the accuracy of all statements in letters to the editor.
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- The writer must sign the letter and include an address and phone number (for verification only). Letters that do not include this information cannot be published.
- Letters will be edited for brevity, grammar, taste and legal reasons.

Mail: To the Editor, Baker City Herald, P.O. Box 807, Baker City, OR 97814

Email: news@bakercityherald.com