Opinion

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OUR VIEW

Release records

When school officials in Malheur County denied requests to release documents relating to complaints against school board members, they encouraged the public to reach their own damaging verdicts.

What is the school board hiding? The appearance may be much worse than the reality.

Not releasing the documents can undermine public trust in public schools. It can endanger support for future school bonds.

And that's just what is happening with the Ontario School Board. The Malheur Enterprise requested the records regarding complaints against school board members and the resulting investigations. There were allegations of harassment. One school board member resigned. Another was censured by the school board.

Doesn't the public have a right to know what happened? Yes. Definitely, yes.

The school board denied one records request saying it referred to internal communications. Another request was rejected to protect personal privacy and because the school board's lawyer was involved — attorney client privilege.

The exceptions to Oregon's laws for government transparency and openness aren't there to allow government bodies to cover up what happened. But that's how the school board is trying to use them in Malheur County. The records should be released.

Unsigned editorials are the opinion of the Baker City Herald. Columns, letters and cartoons on this page express the opinions of the authors and not necessarily that of the Baker City Herald.

OTHER VIEWS

Editorial from The Dallas Morning News:

When Pennsylvania student Brandi Levy failed to make her high school's varsity cheerleading team in 2017, she reacted with typical teenage melodrama. She cursed school, she cursed cheer, and she raised her middle finger for good measure.

She did this on a Saturday at a convenience store, and she posted the rant to Snapchat, where her friends would see it for a fleeting moment before the post disappeared.

Except her post didn't go away. The middle finger, the words and even the emoji made it all the way to the Supreme Court, immortalized in a ruling that wisely sided with the cheerleader in a case with ramifications for public schools across America. The high court said last week that Levy's school violated her First Amendment rights by booting her from the junior varsity cheerleading team over the Snapchat post.

There is nothing to admire about Levy's profane diatribe. Her speech is far from the dignified political expression of students in 1965 who wore black armbands to school in protest of the Vietnam War and were suspended — punishment that the Supreme Court ruled unconstitutional in the landmark Tinker vs. Des Moines case.

Still, Levy did not name the school or coaches. Her rant did not spiral into personal attacks or threats that could seriously harm other people at her school. Anyone who parents a teen — heck, anyone who's had a bad day — knows that frustration can overpower good manners. While schools must regulate profanity on campus to avoid disruption, it's unreasonable for school officials to police kids' vulgar complaints about school life 24/7. As the Supreme Court noted: "Geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility."

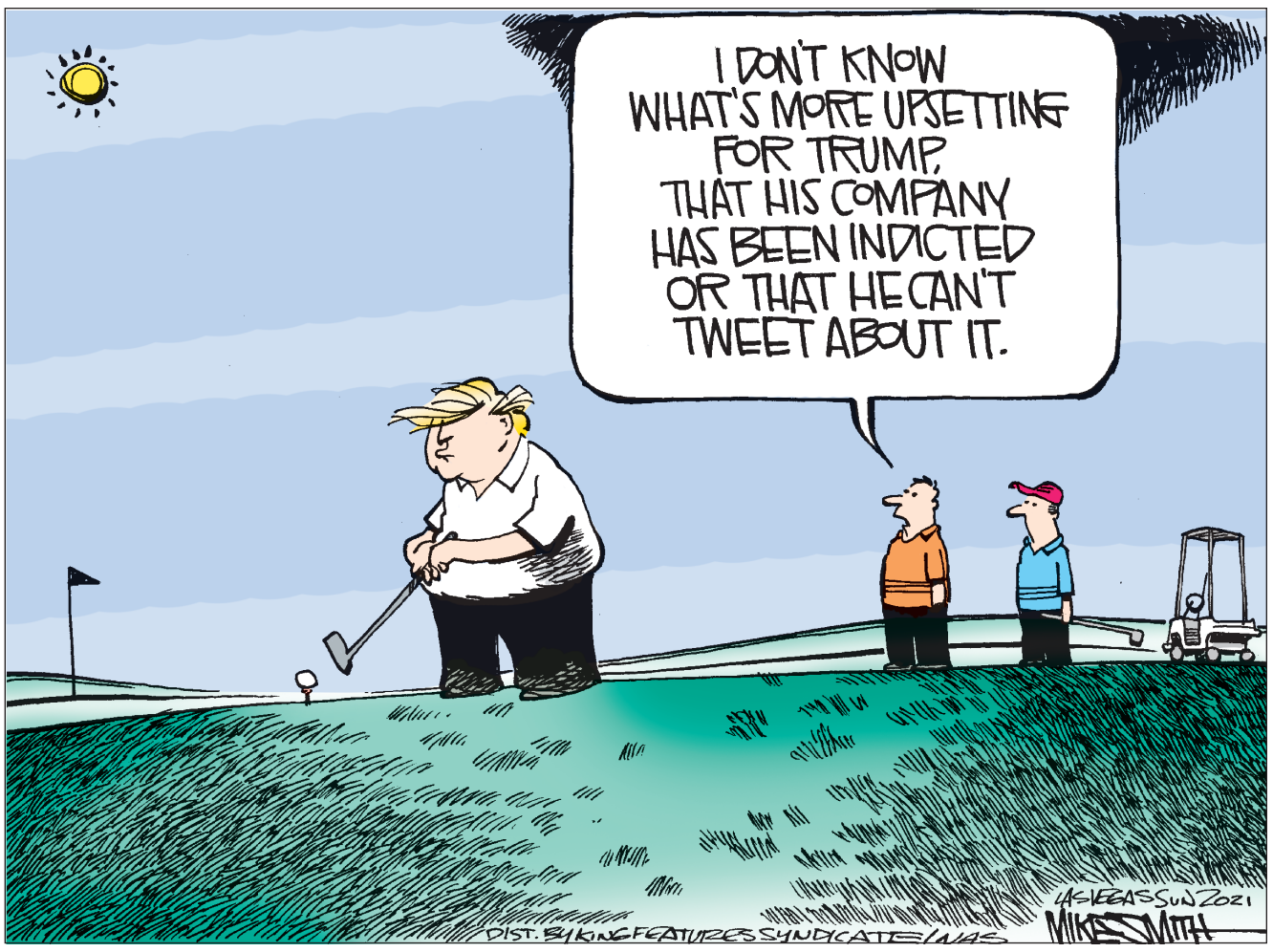
We appreciate the Supreme Court's restraint. While it found that the Mahanoy Area High School District erred in removing Levy from her team, the justices recognized that schools have "significant" interests in regulating some off-campus behavior, such as severe bullying and harassment, threats and the writing of papers.

Unfortunately, the Supreme Court declined to specify what all counts as "off-campus speech" and how the First Amendment would apply, but at the very least it walked back the extreme ruling of the Third Circuit Court of Appeals. Although that court also sided with the cheerleader, it dangerously declared that the standard set in the Tinker case — that schools can suppress speech if it materially or substantially interferes with school operations — does not apply to off-campus speech. Appeals courts don't set national legal precedent, but their decisions can influence other courts weighing similar cases.

Beyond Tinker, the Supreme Court has given schools permission to regulate certain student expression: indecent or lewd speech on school grounds, speech at school events that promotes illegal drug use and speech in school-sponsored newspapers. However, social media remains a minefield for schools sorting out how much authority they have over student expression.

We wish the Supreme Court had offered more clarity, but we're grateful for the sensible logic that it applied to Levy's circumstances. We hope it'll make schools think twice about censoring student criticism.

Yes, in some cases, even the foul utterances of a teen deserve the sacred protection of our First Amendment. We borrow the words of Justice Stephen Breyer: "...sometimes it is necessary to protect the superfluous in order to preserve the necessary."



Your views

Juneteenth is fine, but don't need another federal day off

I'm OK with celebrating Juneteenth. But as someone who enjoys history, particularly the Civil War period, it seems like there are better days to celebrate the end of slavery. As one example, why not the date of passing the 13th Amendment that provided freedom for all slaves, not just slaves in the Confederacy? The Emancipation Proclamation, although a vital piece of American history, has always seemed ironic to me in that it intended to free slaves in the southern states where Abraham Lincoln had essentially no political power but didn't address slavery in the states where he was president.

My gripe about Juneteenth has nothing to do with history. My gripe is about the present and future, that it gives us federal employees another paid holiday that we don't need. We already had 10 paid holidays and that is extremely generous as anyone in the workforce knows. Agriculture is the biggest factor of Baker County's economy but how many paid holidays do farmers and ranchers enjoy? If the politicians think Juneteenth is worthy of holiday status, why not trade it for one of the existing holidays such as Columbus Day which has become increasingly unpopular? They should leave the number of paid holidays at 10, that's plenty!

When I found out about the 11th paid holiday, I immediately emailed Senators Wyden and Merkley, and Representative Bentz to complain and suggest the Columbus Day trade. I have had no response from any of them to date. (The opinions expressed are strictly my own. I am not a spokesperson for the federal government.)

Jim Carnahan
Baker City

Donors should be anonymous

By Stephen L. Carter

The Supreme Court's decision to strike down California's law requiring disclosure of large donors to registered charities is bound to be controversial but seems to me, on balance, correct. Part of the reason is libertarian: It's no business of mine where my neighbors choose to give money, and it's no business of theirs where I do. The rest of the reason … well, I'll get to that.

In Americans for Prosperity Foundation v. Bonta — popularly known as AFP — two conservative-leaning groups challenged the California requirement as violating their rights under the First Amendment. In a 6-3 opinion by Chief Justice John Roberts, the court largely agreed. The disclosure rule, according to the majority, burdens the right to free association, which is closely tied to the right to associate privately. To justify the burden, there must be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest" — and, in addition, the disclosure must "be narrowly tailored to the interest it promotes." A generalized interest in preventing wrongdoing does not justify so broad a demand.

The source case for this analysis is the 1958 decision in NAACP v. Alabama ex rel Patterson, where the court on similar grounds struck down an Alabama law requiring disclosure of the NAACP's membership list. The justices were rightly worried that, in the heart of Jim Crow country, members of the organization would face intimidation or worse. Thus keeping their names private was crucial to the ability to associate.

Justice Sonia Sotomayor's powerful dissent in AFP mocks the majority's notion that NAACP v. Alabama is a controlling case, pointing out that the court there was concerned about the "reprisals and violence" against civil rights activists that were all too common in the 1950s. Here, she writes, there's no serious prospect that well-shod donors to conservative activist groups will face "threats, harassment, or reprisals."

Sotomayor is largely correct — and probably as tired as I am of seeing important civil rights victories hijacked by the right. Yet the majority also has a point. NAACP v. Alabama did arise in the unique circumstance of the civil rights movement, but the justices rested the opinion on the First Amendment's right of free association. The language was categorical: "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." The court added that intimidation resulted from "private community pressures" rather than state action.

This sort of holding is hard to write around.

Things might be different if this were a world in which people were sufficiently reasonable to accept that the other side often has a case. But it isn't. For a long time, the American right made a specialty of tearing people down because of the causes they gave to. Nowadays a lot of the tearing down is done by the left. Whoever's doing it, our democracy isn't terribly good at helping us respect each other across our deep differences.

Which brings me to my second reason for agreeing, reluctantly, with the majority. NAACP v. Alabama arose under special circumstances, but the problem is more general. This is not a world in which civil rights protesters are routinely fired from jobs, have their houses torched, and dragged into the woods and murdered. It is in a world in which people try to punish each other for espousing controversial views. Not just criticize — punish. That the punishments are far smaller than those that led to NAACP v. Alabama doesn't mean they're not punishments.

In this sense, the close link between the right of public association and the right to associate privately may be viewed as a prophylactic approach to protecting constitutional rights. If the names of donors must be disclosed, there are people who won't give. If this weren't true, there would be no reason for the plaintiffs to litigate the case.

What about downstream effects? At oral argument, Justice Stephen Breyer worried that a ruling for the plaintiffs might eviscerate campaign finance laws, which rest centrally on disclosure of contributions. But this needn't be so. For one thing, as my colleagues Bruce Ackerman and Ian Ayres have persuasively shown, it's possible to protect against corruption without disclosure, through the device of a "secret donation booth" — a mandate that all campaign contributions remain secret, even from the candidate. For another, campaign giving can be distinguished from other forms of associational activity, and the majority is careful to do just that.

Perhaps the decision in AFP is as dangerous as its critics will say. If so, I hope they will join me in resisting efforts to condemn others for the causes they give to. Otherwise, the majority will turn out to be right.

Stephen L. Carter is a Bloomberg Opinion columnist. He is a professor of law at Yale University and was a clerk to U.S. Supreme Court Justice Thurgood Marshall. His novels include "The Emperor of Ocean Park," and his latest nonfiction book is "Invisible: The Forgotten Story of the Black Woman Lawyer Who Took Down America's Most Powerful Mobster."

Letters to the editor

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

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