

## Parking scarcity, transit scarcity not a winning approach

**B**end is out of balance. Growth has caused housing prices to soar and housing opportunities to plummet. The city is making investments to keep clean water and traffic flowing. But transportation is going to get worse.

One clear gauge: The Oregon Department of Transportation's future plans for the Bend Parkway includes the kind of bumper-to-bumper traffic many thought they had escaped by moving to Bend. The smart option for a modern city, urban planners will say, would be more transit, bikes and safe routes for pedestrians. That doesn't mean no cars and trucks. The goal is to try to give people other good options so there is much less need to use a car. In Bend, the other options aren't good. Even investments in alternatives to the car in the \$190 million transportation bond approved by voters were purposefully toned down. It was a compromise to win support for the package — both among the coalition developing the bond and from voters. Parking can seem relatively pedestrian among the issues of transportation. Feelings about parking, though, do get intense. To some free parking on a public street is virtually a birthright. To others, the car is the ruling fauna of the city

and that must change. Free parking is a scourge that must be eradicated to make a city more livable and equitable.

Bend is tilting toward the scourge camp. The city announced no more free parking in the city's parking garage. It has plans for more paid parking downtown and is creating a system of permit parking for neighborhoods.

This week, the Bend City Council is scheduled to talk about some code changes to facilitate that. The section of code about the "downtown district" would transform into "parking districts." And the temporary parking district around McKay Park and the whitewater rafting would become formalized and permanent.

Whether or not you think those changes are sensible, Bend's blunt pressure on parking and on cars is coming without substantial investment in transit, biking and walking. The city is pushing people to change to a mobility future that doesn't exist.

## Legislature needs a case of common sense

**S**lapping big, new taxes on Oregon industries during a pandemic, well, that should make you question the sobriety of our esteemed legislators.

But House Bill 3296 would raise taxes on beer, wine, cider and distilled spirits by as much as 2,800%.

Some translation: The price of a six-pack could go up by more than \$2, as Bulletin reporter Suzanne Roig wrote recently.

It would make it easier to swallow if that new revenue the bill aims to siphon off was going to a good cause.

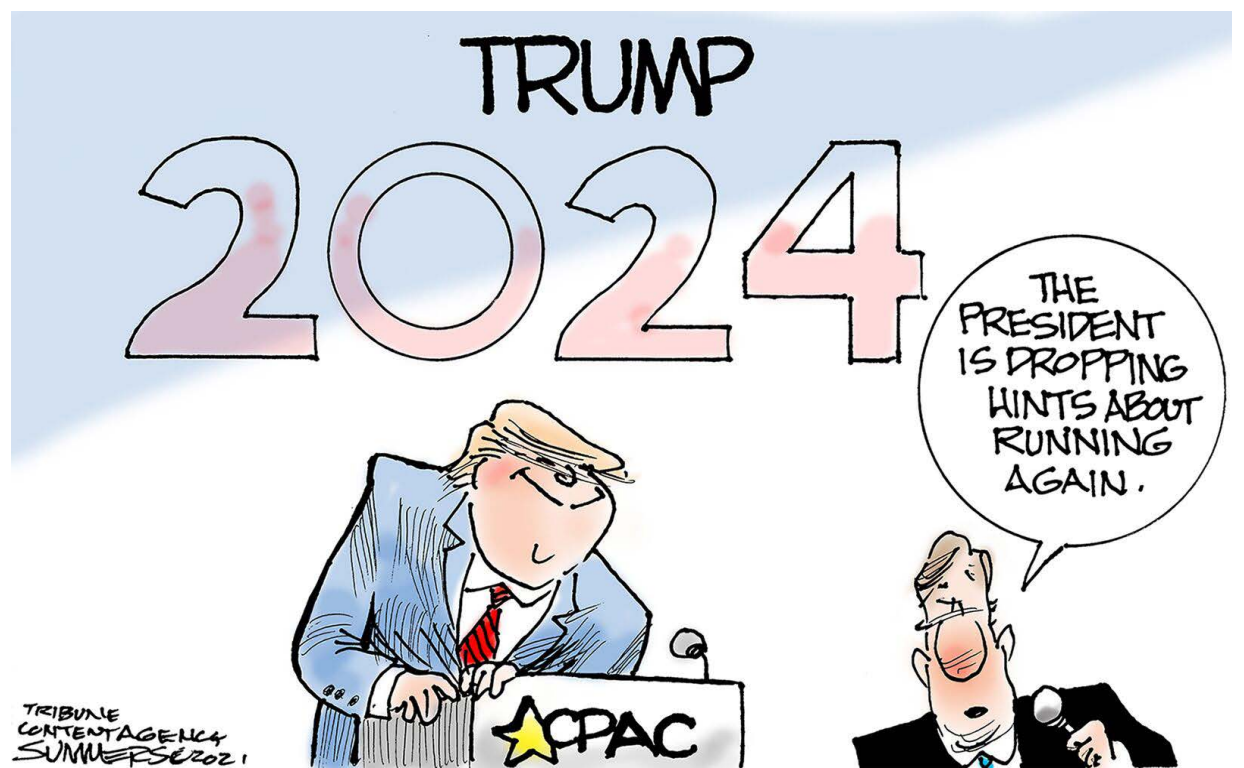
It is. The idea is it would go to

help fight addictions to alcohol and drugs. Oregon is among the worst in the nation in providing access to treatment.

When the government raises taxes on something, it can also reduce consumption, which may in turn reduce problems with alcohol.

The problem is people may just reach for cheaper alternatives, which in many cases are not the products of Oregon's craft industries.

If Oregon does need to come up with a source of revenue to fund more addiction treatment, don't slap the tax increase only on one sector of the economy.



## My Nickel's Worth

### Can't get a shot

I am 73, and I have not been able to find an appointment available for a COVID-19 vaccine. I have been trying every morning online at the St. Charles site since eligibility opened up for those 70 and over. Eligibility has opened for those 65 and over, so now the system is more overloaded than it was! I am furious at the state of Oregon for not accessing more vaccines for their seniors.

*Jim Veenker, Bend*

### What will Bentz do?

Your March 1 reporting on Oregon's online interest in militias and political violence raises an important question about how Rep. Cliff Bentz will respond. Will he support the conspiracy theories and disinformation upon which a number of his constituents apparently rely, or will he strive to tone down the rhetoric and work toward a unified government capable of passing legislation that could actually benefit them?

*—Rob Brazeau, Bend*

### Recognize the truth about COVID-19

There is a question I would ask, if given the chance to confront the myriad people who demand the rollback of COVID restrictions, demand the "right" to go maskless, demand a return to in-person instruction, demand that they be allowed to gather

in large groups in churches, etc. The question is, "How many people must die to satisfy your demands?" Is it the case that these people, at some level, just don't understand what a pandemic is? Almost half a million people have died, but they just don't get it?

Right-wing politicians don't get it. They have always pushed purported rights over lives, but the "rights" they're pushing in this regard seem very much like privileges.

Even the Supreme Court (or at least the conservative wing) don't get it. Religious rights require that more people die, just so religious people can gather together indoors and breathe on one another? Really? So, when those people go home and infect their friends and neighbors, and people die, we're supposed to say, "Oh well, it was their right"?

The news media don't seem to get it. They treat all these issues in much the same way they treat purely political issues. He said this, and she said that. But no analysis. Thousands of pages of coverage, but no one has the guts to mention the obvious truths of the matter? Just once I'd like to read, "Of course, this move would result in more COVID-19 deaths."

*—David Shoulders, Bend*

### More about Southworth

Thanks to David Jasper for writing further in curbing Congress' commerce-clause powers. In fact, if widely embraced, the logic of the opinion could destabilize a considerable swath of federal law. The Fair Housing Act, for example, prohibits discrimination in the housing market. Under the district court's theory, that statute may be unconstitutional — at least insofar as it bars discriminatory evictions. Moreover, in *Russell v. United States*, the Supreme Court upheld, on commerce clause grounds, a federal statute that

historic racial exclusion laws. But the caption for the photo of formerly enslaved Oregonian Louis Southworth (1829-1917) says Southworth settled in Jacksonville. This gives a wrong impression.

Researcher Peggy Baldwin has written about Southworth in "The Oregon Encyclopedia" and elsewhere. Born in Tennessee, Southworth was brought to Oregon country by a slaveholder in 1853. Determined to purchase his freedom, Southworth tried gold mining in Southern Oregon and California, but ultimately raised the money by teaching violin and playing for dancing schools.

Southworth farmed a claim near Monroe. Current law limited land ownership to whites, yet he took the claim because the son of a white landowner he knew had abandoned it. Later he blacksmithed and ran a livery stable in Buena Vista, Oregon.

The 1862 Homestead Act didn't restrict land ownership by race, and Southworth and his wife and stepson took up a claim in the Alsea Valley in 1879, where he farmed till he moved to Corvallis in 1910. Driving on Highway 34 between Tidewater and Waldport, you cross Southworth Creek, named in his memory.

Maybe Louis Southworth passed through Jacksonville searching for gold, but he doesn't seem to have settled there. I love the photo of Southworth with his fiddle, and I'd give my eye teeth to know the tunes he played.

*—Dorothy Leman, Bend*

Editorials reflect the views of The Bulletin's editorial board, Publisher Heidi Wright, Editor Gerry O'Brien and Editorial Page Editor Richard Coe. They are written by Richard Coe.

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## A judge says we can't ban evictions; it's an attack on all federal power

BY LEAH LITMAN

Special to The Washington Post

**A** federal judge appointed by President Donald Trump struck down the federal government's moratorium on evictions Thursday — a policy begun under the Trump administration and part of the emergency response to the coronavirus pandemic. The decision's fate is unclear: The government has announced that it will take the case to the U.S. Court of Appeals. But the Texas judge's aggressive action is a major warning of things to come, underscoring just how far Trump judges will go to thwart ambitious government action, even in the midst of national crises.

The eviction moratorium — which, as of now, will remain in place as the case proceeds — protects an estimated 40 million people from being removed from their homes. Yet in *Terkel v. Centers for Disease Control and Prevention*, Judge J. Campbell Barker held that the federal government lacked the power to regulate evictions under the Constitution. His reasoning was highly idiosyncratic. The Constitution's interstate commerce clause grants the federal government the power to regulate commerce among the states. After the New Deal, courts interpreted the clause to confer extremely broad powers on Congress. Conservative judges have tried to rein in those powers in recent decades, but the Supreme Court has continued to maintain that the federal government can regulate economic activities that "substantially affect" commerce.



Rich Pedroncelli/AP

**Demonstrators call for passage of rent forgiveness and stronger eviction protection while carrying a mock casket past the Capitol in Sacramento, California, on Jan. 25. On Jan. 29, Gov. Gavin Newsom signed a bill to use \$2.6 billion in federal stimulus money to pay off up to 80% of some tenants' unpaid rent but only if landlords agree to forgive the rest of their debt.**

Barker concluded, however, that evictions do not qualify as economic activity — full stop. He contended that evictions concern only the right to remain on a property — involving mere "possession of property" and no commercial exchange. But that argument is quite strained: Evictions are the remedy for breaches of commercial agreements between landlords and tenants. A tenant agrees to pay a landlord and in exchange, the landlord agrees not to evict the tenant. Evictions are what happens when a tenant fails to pay a landlord under a contract: They are inextricably bound up with economic transactions. Yet the judge insisted that

evictions were somehow distinct from economic activities.

If that argument sounds thin, it is. But in some ways, Barker is taking his cues from the Supreme Court, which has parsed the commerce clause in an increasingly pinched way in recent years. Consider that in the Supreme Court's opinion in *NFIB v. Sebelius*, five justices concluded that Congress lacked the authority to impose a penalty on people who failed to purchase health insurance. The court reasoned that Congress could not regulate economic "inactivity" — that is, the decision to forgo purchasing health insurance. (The court ultimately said the

penalty could be justified if it was considered to be a tax, and Congress eliminated the penalty in 2017.)

But the eviction case goes even further in curbing Congress' commerce-clause powers. In fact, if widely embraced, the logic of the opinion could destabilize a considerable swath of federal law. The Fair Housing Act, for example, prohibits discrimination in the housing market. Under the district court's theory, that statute may be unconstitutional — at least insofar as it bars discriminatory evictions. Moreover, in *Russell v. United States*, the Supreme Court upheld, on commerce clause grounds, a federal statute that

prohibited arson of a rental property. But if evictions from rental properties do not count as economic activity, then setting fire to a rental property probably doesn't, either.

The opinion's logic could reverberate well beyond the housing market. To determine the scope of the government's regulatory power, Barker focused exclusively on activities that involve payment (rent, for example), and set aside all of the activities related to that payment (including whether one can be evicted). Under the current understanding of the commerce clause, Congress can prohibit hotels and restaurants across the United States from refusing to serve customers on the basis of race. But under the district court's theory of economic activity, a refusal of service would likely not count as something that Washington has any say over (since a refusal of service, like an eviction, concerns the right to be on the premises rather than an exchange of money).

On the one hand, the decision invalidating the eviction moratorium should not create a panic, because this one decision will not resolve the matter; an appeal, naturally, is already underway. Yet on the other hand, it is far from clear how many of the judges that were nominated by Trump will embrace the kind of legal gymnastics that the district judge did in this case to move the law in the preferred direction — toward curbing federal power.

■ Leah Litman is an assistant professor of law at the University of Michigan and host of the Supreme Court podcast "Strict Scrutiny."