EDITORIALS & OPINIONS

The Bulletin
AN INDEPENDENT NEWSPAPER

Heidi Wright — Publisher
Gerry O'Brien — Editor
Richard Coe — Editorial Page Editor

Make it easier for public to participate in their government

If you wanted to, you can watch Deschutes County Commission and Bend City Council meetings from home. That was true even before the pandemic.

Spoiler alert! They tend to be low wattage. Exceptions do happen. Debates can get feisty. Public testimony can be passionate and compelling. A Bend City Council meeting did burst into song. And taxes, zoning, parking, homelessness, policing and other things that can have a major impact on your life do get discussed. Still, not many people choose to tune in.

Being able to watch government meetings from home and even participate remotely is a convenience that the pandemic has brought to Oregon. It should stay.

Being able to watch government meetings from home and even participate remotely is a convenience that the pandemic has brought to Oregon. It should stay.

Since the pandemic began, meetings such as those of the Bend La Pine School Board have been easily accessible online. The Bend Park & Recreation District has also been available. The Oregon Legislature has regularly allowed remote testimony this session.

House Bill 2560 would require many government bodies to make meetings remotely accessible, including the opportunity for people to submit testimony. Not having to be present is a tremendous step forward in accessibility for Oregon government.

Of course, actually being at the meeting may be the best way to see what is going on and provide feedback. But more people will be able to participate in their government if the Legislature makes this change. This bill should pass.

It will come with a cost.

Some of the technology has already been acquired because of the pandemic.

But when boards and commissions start meeting in their regular settings again, it will require cameras and not just finding a way to broadcast Zoom or WebEx meetings.

For instance, the Bend-La Pine Schools has been working on figuring out how much it would cost to retrofit its meeting room with cameras. It could cost the district tens of thousands of dollars.

We believe that would be money well spent.

The forced change to remote access has greatly increased the number of people who can participate in their government. If the legislators, local governments and school boards don't want that, we are in trouble.

Bill would give businesses a much-needed tax break

Giving businesses a break on their taxes is getting a bipartisan push in the Oregon Legislature. This isn't some giveaway. It's to help businesses who got hit with a big increase in payroll taxes because of the pandemic.

Oregon businesses have to pitch in to help pay unemployment insurance. It helps pay benefits to workers who lose their jobs. And the pandemic has driven the rates up for some of the businesses that were hit the hardest and let go of the most workers.

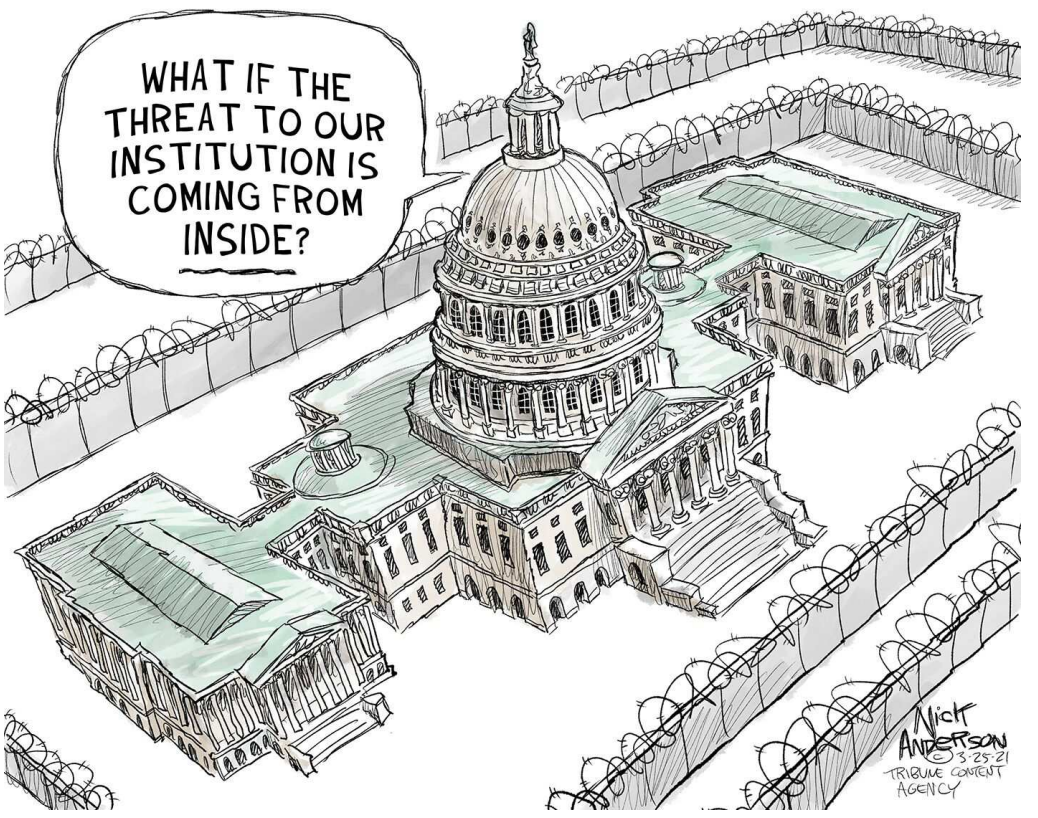
The rate employers pay is averaged over three years. Some face tripled payroll taxes, according to supporters of the bill. An Oregonian article goes into more detail.

House Bill 3389 gives businesses some relief. It basically extends the period that the state uses to calculate the state of the unemployment fund from 10 years to 20 years. It also would provide for deferral of up to one-third of 2021 unemployment insurance taxes for employers whose tax rates increased by 0.5 percentage points or more from 2020 to 2021.

There is much more to the bill than we have just summarized here. Sponsors include Rep. Daniel Bonham, R-The Dalles, who represents Madras, Sisters and other parts of Central Oregon.

Many employers — small and large — are facing increasing taxes just when they don't need it. Businesses in Oregon had no way to prepare in advance for the pandemic. They need help recovering. It's encouraging to see a bipartisan group of legislators step in to help. But will the Legislature pass it?

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.



The filibuster has fewer and fewer defenders

BY PAUL WALDMAN
The Washington Post

The filibuster's days are numbered. When it's finally reformed (and it will almost certainly be reformed, not eliminated), the Senate will not become a paradise of wise legislating and democratic accountability. But it will be a much more responsive and effective place than it is now, and the momentum to get from here to there may be unstoppable.

For some time, it was only liberal Democrats in the Senate who wanted to see it go, so that bills with majority support could actually pass. But now moderates are becoming convinced — by the power of the arguments they're hearing, the reality of Republican obstruction, and the tantalizing possibility that they might actually get to do the job they got elected for.

But each has his or her own reasons. In The Washington Post on Wednesday, Sen. Angus King of Maine — an independent who caucuses with the Democrats — explained why he has changed his mind.

When King got to the Senate, he wrote, he was persuaded by the "what goes around, comes around" argument. If Democrats eliminated the filibuster to pass their own priorities, goes this line, then Republicans would be free to do the same the next time they took power, and the result would be a lot of policymaking Democrats didn't like.

But now, King says, he is fed up:

"But this argument is sustainable only if the extraordinary power of the 60-vote threshold is used sparingly on major issues or is used in a good-faith effort to leverage concessions rather than to simply obstruct. If, however, the minority hangs together and regularly uses this power to block any and all initiatives of the majority (and their president), supporting the continuation of the rule becomes harder and harder to justify, regardless of the long-term consequences."

This is significant, because King isn't looking to get rid of the filibuster so Medicare-for-all or a universal basic income can pass. He's one of the moderates.

As it happens, I and many others disagree with the logic of the "what goes around, comes around" argument that King still finds somewhat persuasive. The terrible scenario its advocates posit — that your party gets to enact the agenda it advocates, and if the other party is elected, then it gets to enact its agenda — is also known as democracy. It's what an accountable system is supposed to look like.

It also reflects a terrible philosophy of governing, one that says I don't mind if I achieve none of the policy changes I want, so long as the other party doesn't, either. It makes gridlock the goal of the system, which inevitably makes voters disillusioned.

But if King still finds it somewhat persuasive, that's OK. What he seems to envision is a system where the minority still has the power to obstruct — but only if it uses that power with restraint.

That was the situation for decades, when the filibuster required those who wielded it to hold the floor; it was used mostly to prevent Congress from passing civil rights laws. But today, the parties' ideological sorting (there are almost no liberal Republicans or conservative Democrats left), and changes in the rules that allow the minority to create a filibuster literally by sending an email, have created every incentive for that minority to filibuster just about everything the majority wants to do. So even senators like King have lost their patience. But this debate isn't settled yet.

Former filibuster defenders, including President Joe Biden and senators such as Dianne Feinstein, D-Calif., are steadily inching their way toward reform, saying they'd be open to changes in the rule if Republicans continue to use it promiscuously. Each of them might have their own last straw in mind, the bill they will not tolerate being killed by the minority. First, filibuster reform will have to be undertaken to achieve passage of a bill that is widely popular with their constituents, even many of the Republicans. Then they can say that the substantive matter at hand is so vital that they had no choice but to retreat on the filibuster.

Second, they'll have to be the ones dictating the terms of the reform, and it will have to stop well short of simply eliminating the filibuster. Perhaps it will involve forcing the minority to talk, or adopting one of the other ideas to change it, but they'll need to say because of their efforts, the filibuster still exists to protect the minority but it will no longer grind the chamber to a halt.

That's the way this ends, and a new era where the party elected by the voters can pass the agenda those voters agreed to can begin. We're not quite there yet, but the momentum is getting stronger by the day.

■ *Paul Waldman is an opinion writer for the Plum Line blog.*

Letters policy

We welcome your letters. Letters should be limited to one issue, contain no more than 250 words and include the writer's signature, phone number and address for verification. We edit letters for brevity, grammar, taste and legal reasons. We reject poetry, personal attacks, form letters, letters submitted elsewhere and those appropriate for other sections of The Bulletin. Writers are limited to one letter or guest column every 30 days.

Guest columns

Your submissions should be between 550 and 650 words; they must be signed; and they must include the writer's phone number and address for verification. We edit submissions for brevity, grammar, taste and legal reasons. We reject those submitted elsewhere. Locally submitted columns alternate with national columnists and commentaries. Writers are limited to one letter or guest column every 30 days.

How to submit

Please address your submission to either My Nickel's Worth or Guest Column and mail, fax or email it to The Bulletin. Email submissions are preferred.

Email: letters@bendbulletin.com

Write: My Nickel's Worth/Guest Column
P.O. Box 6020
Bend, OR 97708

Fax: 541-385-5804

A federal judge's dangerous assault on the free press

BY J. MICHAEL LUTTIG
Special to The Washington Post

Federal appeals court Judge Laurence H. Silberman's dangerous dissenting opinion in Tah v. Global Witness Publishing last week has already caused a firestorm — not because he urged the Supreme Court to overrule New York Times v. Sullivan and its "actual malice" defamation standard, but because of the astonishing and disturbing reasons that he proposed for dispensing with that landmark decision.

Global Witness was — or should have been — an unexceptional case. The two judges in the majority found that two Liberian officials who sued Global Witness failed to meet the requirement that the human rights organization acted with knowing or reckless disregard for the truth in writing about them.

Silberman used his dissent as an opportunity for score-settling with the Supreme Court and the nation's media. He offered two reasons Times v. Sullivan should be overruled, both of which are shocking. Neither is correct, and neither offers a legitimate basis for dispensing with the 57-year-old precedent.

The first is that, in Silberman's view, the ruling bears "no relation to the text, history, or structure of the Constitution" and is "a policy-driven decision masquerading as constitutional law." According to him, Times v. Sullivan is "a threat to American Democracy" and "must go." Paraphrasing former Soviet Union leader Leonid Brezhnev as having said that "once a country has turned communist, it can never be allowed to go back," he accused the Supreme Court of having "committed itself" to a "constitutional Brezhnev doctrine" in its adherence to precedent.

The court's unanimous decision in Times v. Sullivan set constitutional limits on state defamation laws for the first time, striking the exceedingly difficult and admittedly imperfect balance between the right of public officials not to be defamed by false accusations and the right of a free press to report the news. In its ruling, the court reinforced the bulwark of the First Amendment and American democracy, and the delicate balance it struck remains the appropriate one today. Constitutional rights do not wax and wane with the wind.

The second, more explosive and suspect, reason the judge gave is that, in his opinion, the constitutional policy of free speech that Times v. Sullivan seeks to protect has been turned upside down by what he asserts as fact: that almost every media organization in the country is biased in its reporting against the Republican Party and in favor of the Democratic Party. Note, not against public officials and high officeholders, celebrities, the politically or financially powerful, political or social conservatives, nor even Republicans, but against the Republican Party.

In Silberman's view, "two of the three most influential papers," the New York Times and The Post, "are virtually Democratic Party broadsheets," with the Wall Street Journal's news pages leaning in that direction. Meanwhile, "nearly all television — network and cable — is a Democratic Party trumpet. Even the government-supported National Public Radio follows along."

Silberman offered little support for this astonishing indictment of the media. But having concluded that nearly the entire national media distorts the news against the Republican Party and that this "homogeneity in the media . . . risks repressing [the Republican Party's] ideas from the public consciousness," he went on to argue that the media has "abused" its rights to such an extent that it effectively has forfeited its First Amendment protections.

The judge ended his dissent with an unfounded, but no less chilling, warning to the media, the Democratic Party and the Supreme Court: "It should be borne in mind that the first step taken by any potential authoritarian or dictatorial regime is to gain control of communications, particularly the delivery of news. It is fair to conclude, therefore, that one-party control of the press and media is a threat to a viable democracy. It may even give rise to countervailing extremism. … And when the media has proven its willingness — if not eagerness — to so distort, it is a profound mistake to stand by unjustified legal rules that serve only to enhance the press' power."

It is tempting to consign the judge's opinion to the infamous dustbin, and that may be where it ends up. But there is an illuminating silver lining — even if unintended by Silberman. Now, Times v. Sullivan is all but certain to remain the law of the land, the dissent having conclusively demonstrated that the precedent's First Amendment rule is as essential to a free press as judicial immunity is to an independent judiciary and legislative immunity is to the legislature.

And if the court ever does revisit the case, it assuredly will not be because that decision is an intolerable imposition on the "Brezhnev doctrine," an illegitimate exercise of constitutional interpretation, or "a threat to American Democracy." Let alone, for that matter, because the court concludes that the American media is uniformly biased against the Republican Party in favor of the Democratic Party.

■ *J. Michael Luttig served as a judge on the U.S. Court of Appeals for the 4th Circuit from 1991 to 2006.*