

Re: HB 2893

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Guest Viewpoint: Speech bill will protect Oregonians

By Garret Epps

In a time of homeland security, secret wiretaps and the USA Patriot Act, citizens are sometimes afraid to challenge the government. But the right to "peaceably assemble for redress of grievances" is a key part of democratic self-government. And when citizens and lawmakers - in a coalition including progressive Rep. Phil Barnhart, D-Eugene, and conservative Sen. John Minnis, R-Wood Village - come together to reaffirm this core principle, it's cause for celebration.

Gov. Ted Kulongoski this week has a chance to complete a small but heartening victory for free speech. The governor should sign House Bill 2893, passed last week by the Legislature, which reforms the licensing authority of the Oregon State Board of Geologist Examiners to make clear that "a person does not publicly practice or offer to publicly practice geology solely because the person testifies or prepares to testify in a public proceeding."

It seems like an abstruse issue, but in reality it affects any citizen who wants to speak to local boards of county commissioners without fear of censorship, fine or even imprisonment.

Geological questions are central to almost every land use decision government makes. Developers and business interests seeking permission to build projects, of course, have the resources to hire licensed geologists to support their claims. These paid professionals file extensive reports with land use boards and county commissions.

But when citizens read the documents and seek to comment, a strange Catch-22 enters in. Historically, the Board of Geologist Examiners has taken the view that citizens are free to comment - as long as they know nothing about geology. But if a retired science teacher, an academically trained land use consultant or a professional licensed in another state criticizes the application, the board can threaten the critic with fines or even jail time for "unlawful practice of geology."

That's what happened to Mark Reed, a University of Oregon professor and national expert in mineral resource geology. A local business applied to quarry gravel near his home. In testimony before the Lane County commissioners, Reed pointed out mistakes in the application - and the company agreed with some of his criticisms. But it also filed a complaint with the geologists' board, which prepared to prosecute Reed unless he agreed in writing not to participate in such hearings again.

Reed isn't the only trained citizen to face the board's wrath - two other academics, both at Oregon

State University, have been silenced by board threats in the recent years. And others have surely kept silent to avoid trouble - the classic chilling effect.

Reed threatened to sue and the board agreed to back off and changed its own regulations. But the board has opposed a statutory change, sponsored by Barnhart, to make it clear that the Legislature did not intend that the board stifle public debate.

When the measure came before the Senate last week, Sen. Frank Morse, R-Corvallis, attacked Reed personally for his effrontery - just the reaction citizens fear from elected officials. Fortunately, Minnis, a leading conservative who sponsored the bill in the Senate, answered him: "It makes no difference whether you hold a Ph.D in a particular discipline, or you're a common citizen with no education at all." Article I, Section 8, the free speech clause of the Oregon Constitution, Minnis said, "applies to all."

None of the bill's supporters questions the geologists' board's importance or its core function - regulating geologists who prepare original reports for construction and mining projects. The board's members volunteer, at considerable sacrifice, to protect the public from swindlers and incompetents whose errors might undermine public safety. Licensure is still required for any formal geological surveys or reports filed in connection with a land use application.

But there's an old saying: To a man with a hammer, everything looks like a nail. Too often, bureaucracies see a problem and conclude that the best solution is more power for them and less for the ordinary person. That's why the framers of our state and federal constitutions forbade government to tell citizens what they may or may not say to their elected representatives.

Kulongoski has a chance to reaffirm the framers' vision with his pen this week. And if he does so, he will reaffirm something else: that even after Sept. 11, citizens in this state need not fear their government. Whatever may be happening elsewhere, in Oregon the people rule.

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