

To Senate President Peter Courtney, House Speaker Tina Kotek, All Members of the Oregon House of Representatives, and All Members of the Oregon Senate:

As this Special Session of the Legislature moves into its third day, I find it necessary to write to all legislators in regard to two particularly egregious pieces of legislation which have somehow continued to survive during this Legislative Session.

I refer to House Bill 4204 and House Bill 4213. These House Bills contain spectacularly unconstitutional provisions which impair the obligations of contracts. These are the provisions which essentially say that it does not matter whether or not a landlord and tenant have a contract, or whether a lender and a borrower have a contract. Instead, during the pendency of this coronavirus epidemic, Legislators believe that circumstances are special enough that Oregonians will not be able to enforce the provisions of their contracts, which call for tenants to actually pay rent or for borrowers to actually repay lenders.

These provisions have been dressed up in all kinds of language, but every version of these House Bills fails to resolve the fact that these Bills impair the obligations of contracts. This is one situation where the Oregon Constitution is absolutely clear. Article I, Section 21 of the Constitution reads, in pertinent part:

“No ex-post facto law, or law impairing the obligation of contracts shall ever be passed...”

I ask members of the Legislative Assembly to take note of the words “shall ever be passed.” This constitutional provision does not say “shall ever be passed unless the Legislature decides there is an emergency.” This provision does not say “shall ever be passed unless the Governor declares that there is an emergency.” There is no exception.

Accordingly, I note that Legislative Counsel has tried very hard to come up with reasons to circumvent this constitutional prohibition. Every version of House Bill 4204 and House Bill 4213 tries to explain, in effect, “that we have a special situation requiring that contracts be impaired, and in any event we are only doing it in a small way, for a short amount of time, even though we are going to let the Governor extend the amount of time in which we impair those contracts.” Yes, I am being sarcastic. I do not blame Legislative Counsel for doing their best to come up with some makeup to cover the unconstitutional scars in these Bills. But the makeup does not hide the fact that these Bills impair contracts.

I encourage every Member of the Legislative Assembly to take another look at Article I, Section 21, of the Oregon Constitution and ponder how they can defend any vote in favor of House Bill 4204 and House Bill 4213.

Sincerely,
Kevin L. Mannix
President
Common Sense for Oregon