

EDITORIAL

Vaping warnings wise, but ban is excessive

Several hundred people have damaged their lungs by vaping, and around 20 have died in the United States recently, including two in Oregon.

The trend is troubling. And given the popularity of vaping as a safer alternative to smoking tobacco, government health officials had an obligation to issue warnings and even, as many have, to urge people to stop vaping altogether until more evidence is available about which products pose the greater risk.

But Oregon Gov. Kate Brown’s decision last week to ban for six months the sale of flavored vaping products in Oregon, despite the absence of definitive proof that those products are hurting people, is excessive.

Elected officials should not ban the sale of legal products when the link between those products and illness is less than conclusive. There’s evidence, although again it’s not absolute, that the biggest danger might lie with black-market products rather than the legal ones affected by Oregon’s temporary ban.

The analogy is not perfect, to be sure, but food recalls, most of which are initiated voluntarily by a manufacturer rather than imposed by the government, are limited to a well-documented, lab test-confirmed risk, usually contamination of a specific list of items.

In any case, it’s not as if Oregon’s temporary ban is the only way to significantly reduce the number of people who use flavored vaping products.

It’s beyond question that the vast majority of people who vape are aware of the situation, and of the potential risk. Some retailers acted quickly to pull products until they could confirm whether they contained an additive that has been linked to the illnesses. And it’s reasonable to believe that when the governor says “Until we know more about what is causing this illness, please, do not vape,” she will have an influence.

California officials issued a similar statement urging residents to avoid vaping.

But unlike Brown, California Gov. Gavin Newsom didn’t temporarily ban any products. Newsom instead directed health officials to start a public awareness campaign to emphasize the potential health risks of vaping.

As is typically the case when the government seeks to deprive citizens of a product based on its potential hazards, Brown’s ban on flavored vaping items likely will have negative effects that partially offset its intended benefits.

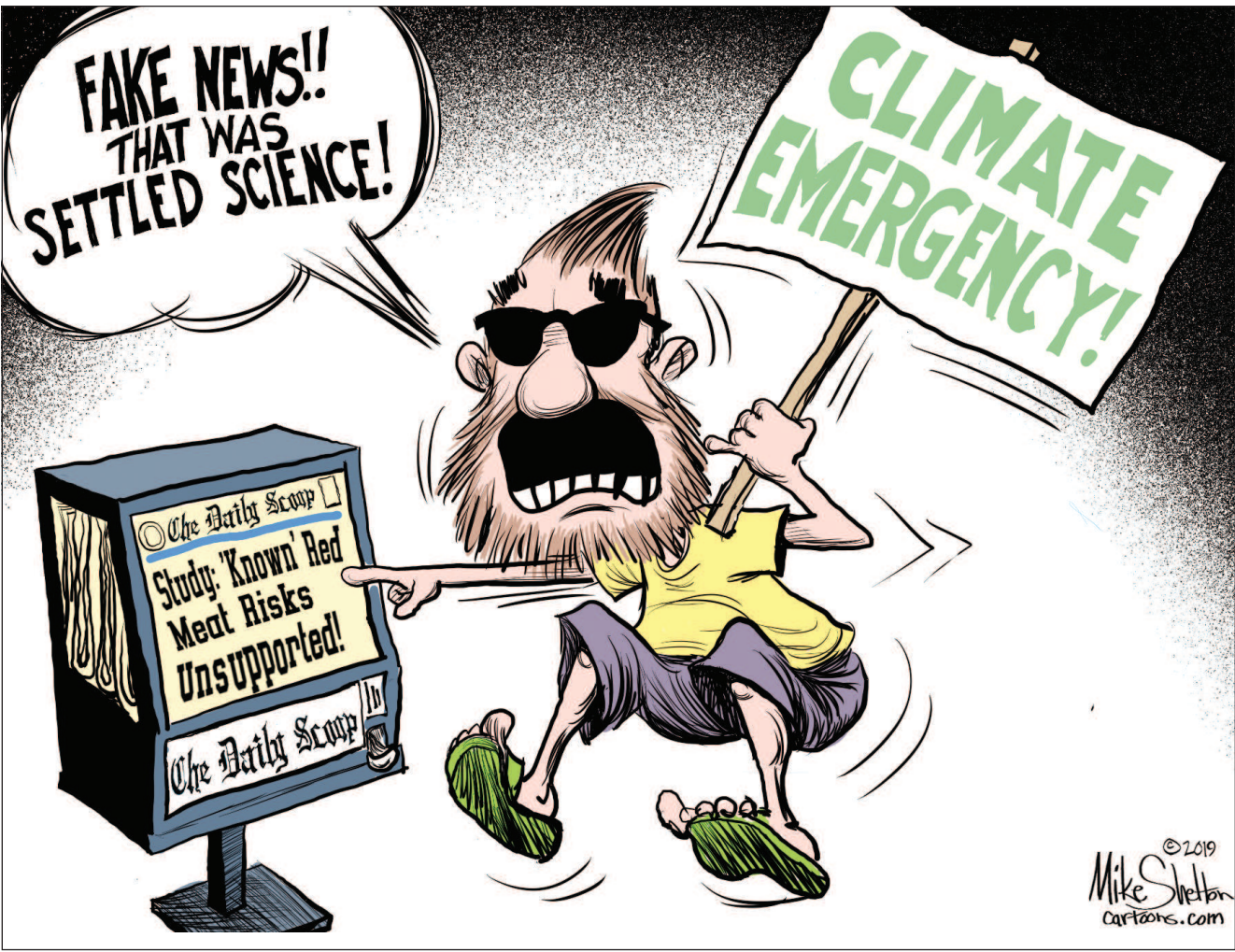
Because vaping is an alternative to smoking, it’s likely that some vapers, denied access to the product, will revert to smoking tobacco. And there’s nothing uncertain about the health risks associated with that.

Brown’s decision to temporarily ban products that might not prove to be implicated in the recent spate of illnesses isn’t the only problematic part of her executive order, though. The document shows that Brown’s motivation isn’t limited to the recent illnesses.

The order also cites surveys showing that more teens are using flavored nicotine vaping products, which can’t be legally sold to anyone younger than 21 in Oregon. Brown’s order blames this trend on advertisements for the flavored products.

It’s perfectly reasonable for the governor to worry about minors using products which are supposed to be available only to adults. But that problem, it hardly needs to be said, is not limited to flavored vaping products. Teenagers smoke cigarettes and drink alcohol as well. Gov. Brown has not taken any action to temporarily ban either of those products. Nor did she ban all vaping liquids; only the flavored ones.

— Jayson Jacoby, Baker City Herald



Convictions must be unanimous

In 1983, a jury convicted Archie Williams for the 1982 rape and stabbing of a woman in her home in Baton Rouge, Louisiana. No physical evidence tied Williams to the crime, but 11 of the jurors were persuaded that Williams was the assailant based on the victim’s testimony. A lone juror disagreed.

At the time, the 11-1 vote would have resulted in a hung jury in 48 states — Louisiana and Oregon being the only exceptions — and Williams would have been entitled to a retrial. Louisiana’s law, however, permitted non-unanimous jury convictions in any case where prosecutors were not seeking the death penalty. Williams was eventually exonerated and released in 2019, after fingerprints found at the crime scene decades earlier were matched to another person, a convicted serial rapist.

Last year, Louisiana’s voters abolished the non-unanimous jury practice after a spirited campaign about the system’s grievous failures. But the changed law applies only to felonies committed starting this year. It doesn’t help the hundreds of people in prison who were convicted by non-unanimous juries prior to Jan. 1, 2019.

Monday, the Supreme Court was to consider a challenge to the constitutionality of the old law in the case of Evangelisto Ramos, who was convicted of a 2014 murder. Only 10 of 12 jurors voted to convict Ramos, the minimum needed for a conviction in Louisiana. A judge sentenced him to life in prison without possibility of parole.

The Louisiana statute that permitted the non-unanimous jury conviction

has an appalling history, as does Oregon’s similar statute.

After the Civil War, African Americans started to serve on juries in significant numbers for the first time. But the backlash that followed Reconstruction essentially dismantled all rights guaranteed by the 13th, 14th and 15th Amendments to the Constitution.

In 1895, a white Louisiana judge alleged that when African Americans were included on juries, “there was no possibility of just verdicts.” Three years later, the state held a constitutional convention whose stated purpose, according to a Democratic Party advertisement, was to eliminate “the vast mass of ignorant, illiterate and venal Negroes from the privileges of the elective franchise.”

The new state Constitution imposed restrictions on voting, created a poll tax and eliminated Louisiana’s longstanding jury-unanimity requirement and permitted convictions for any non-capital felony with just nine of 12 jurors. Louisiana amended the law in 1973, requiring a 10-2 vote for conviction.

Oregon enacted its non-unanimous jury law in 1934. It was passed after a media storm developed over the failure of a jury to convict a Jewish man named Jacob Silverman for murder; the jury found him guilty of manslaughter.

The media coverage included an editorial in the Morning Oregonian that proclaimed “the vast immigration into America from southern and eastern

Europe, of people untrained in the jury system,” had the made “the jury of twelve increasingly unwieldy and unsatisfactory.”

In 1972, a deeply divided Supreme Court upheld these laws in *Apodaca vs. Oregon*. The court ruled that even though unanimous juries were required in federal criminal trials under the Sixth Amendment, the Constitution did not impose that requirement on state trials. Since 1972, civil rights organizations have tried to persuade the Supreme Court to overturn the laws in Louisiana and Oregon but have failed.

Today’s argument could well produce a new result. Prominent legal scholars, including Eugene Volokh, a constitutional law professor at UCLA, say that recent Supreme Court decisions applying the Bill of Rights to the states have increased the likelihood that the court will reverse field.

Volokh predicted that the court will rule that the Sixth Amendment’s guarantee of an impartial jury must also apply to the states because of the 14th Amendment’s guarantee of due process of law.

While the Constitution does not specifically mention unanimous verdicts in criminal cases, they have been a common requirement in Anglo American jurisprudence for hundreds of years. It’s long past time for the Supreme Court to correct this anomaly in the criminal justice system.

Henry Weinstein is a professor at UC Irvine School of Law. He was a Los Angeles Times staff writer from 1978 to 2008.

Your views

Warner should either retire or keep working — not both

With regard to re-hiring Fred Warner, I think it is ridiculous. To be re-hired tells me that Mr. Warner wants to keep working. So why did he retire, or is he about to retire? How many people out there on Social Security, and not PERS like Mr. Warner is on, can work a job

after retirement and make as much money as Mr. Warner will be making, without being penalized for it? If he wants to retire, then I wish him the best, but that should be the end to it. I’m a retired city of Portland firefighter. I retired in 1998. I worked 27 years and don’t have enough credits to draw the bare minimum from Social Security. I

wish the city of Portland had made me an offer to retire, draw my pension and still keep on working at full pay. This is ridiculous in my opinion. He should retire or keep working, not both. His retirement would also give someone else an opportunity for employment.

James Scott
Baker City

OUR VIEW

Oregon seeks to protect children

Reading through the state Department of Human Services’ public reports on the deaths of children in DHS-involved families is not for the faint of heart. In the past few years, at least a couple of kids were killed in car wrecks when a parent drove intoxicated. One apparently committed suicide, and some died of neglect. A shocking number, 14 of 18 investigations in 2018, died as a result of what the department calls unsafe sleep, generally infants sharing a bed, couch or chair with a sleeping parent.

If a bill approved by the 2019 Legislature works as it’s supposed to, that could change. The measure, Senate Bill

832, was sponsored by Sen. Sara Gelser, D-Corvallis, perhaps the most outspoken critic of the way DHS handles the state’s most vulnerable children. New, tighter rules governing investigations into child deaths were to have been fully in use by Tuesday.

The new law requires that Critical Incident Review Teams be formed within about a week whenever there’s a reasonable belief that neglect or abuse was responsible for a child’s death. It also beefs up public reporting requirements, in part by requiring information about each CIRT review to be published on the DHS website within 10 days after the report is

received.

The reports will allow DHS to draw lessons, if there are any, from specific incidents, increase accountability to the public and allow the agency to make improvements to the system more quickly.

The state’s CIRTs from 2017 to today are tough to read. In a perfect world, the reports make it clear that most if not all those children would have been alive today under different circumstances.

Their deaths cannot be undone, but if all the goals are met, they should help make children living in difficult circumstances safer, and that’s no small thing.