

Opinion

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OUR VIEW

Continue patient safety program

Jessica Barnett died when she was 17. She had started fainting when she was 12. It looked like a seizure. Her lips would go blue. She was put on epilepsy medication. The fainting didn't stop.

Her grandmother read an article about Long QT syndrome. The Mayo Clinic defines it as "a heart rhythm condition that can potentially cause fast, chaotic heartbeats. These rapid heartbeats might trigger you to suddenly faint. Some people with the condition have seizures. In some severe cases, LQTS can cause sudden death." The family thought that's what Jessica could have. It is treatable.

They had her tested. One test was positive. Some at a different clinic were ruled negative. Her doctors didn't believe that was what she had.

Jessica fainted again one day. It was a bad episode. Paramedics couldn't revive her and she died.

Genetic testing after Jessica was dead confirmed she had Long QT syndrome. Her parents wanted answers. They called the CEO of the hospital to try an arrange a meeting with her doctors. They were denied, so they decided to sue.

Her parents gathered up her medical records. Jessica's mother discovered the cardiologist never even looked at one of the tests. It was only sent to her general practitioner because that was the hospital's practice. Other tests were apparently misread. The family was tested. Her father had it as well, though showed no symptoms.

A lawsuit was settled out of court. Another 18 months after the lawsuit was settled and five years after Jessica's death, the parents finally got to meet with her doctors. They didn't know the family had requested to meet with them. They had not been told.

"The physicians jaws dropped open. They were thinking: 'If we'd actually spoken to this family we may not have had to go through litigation,'" Jessica's mother said. "They were right. All we ever wanted was to have our questions answered and know they were making changes so this wouldn't happen again."

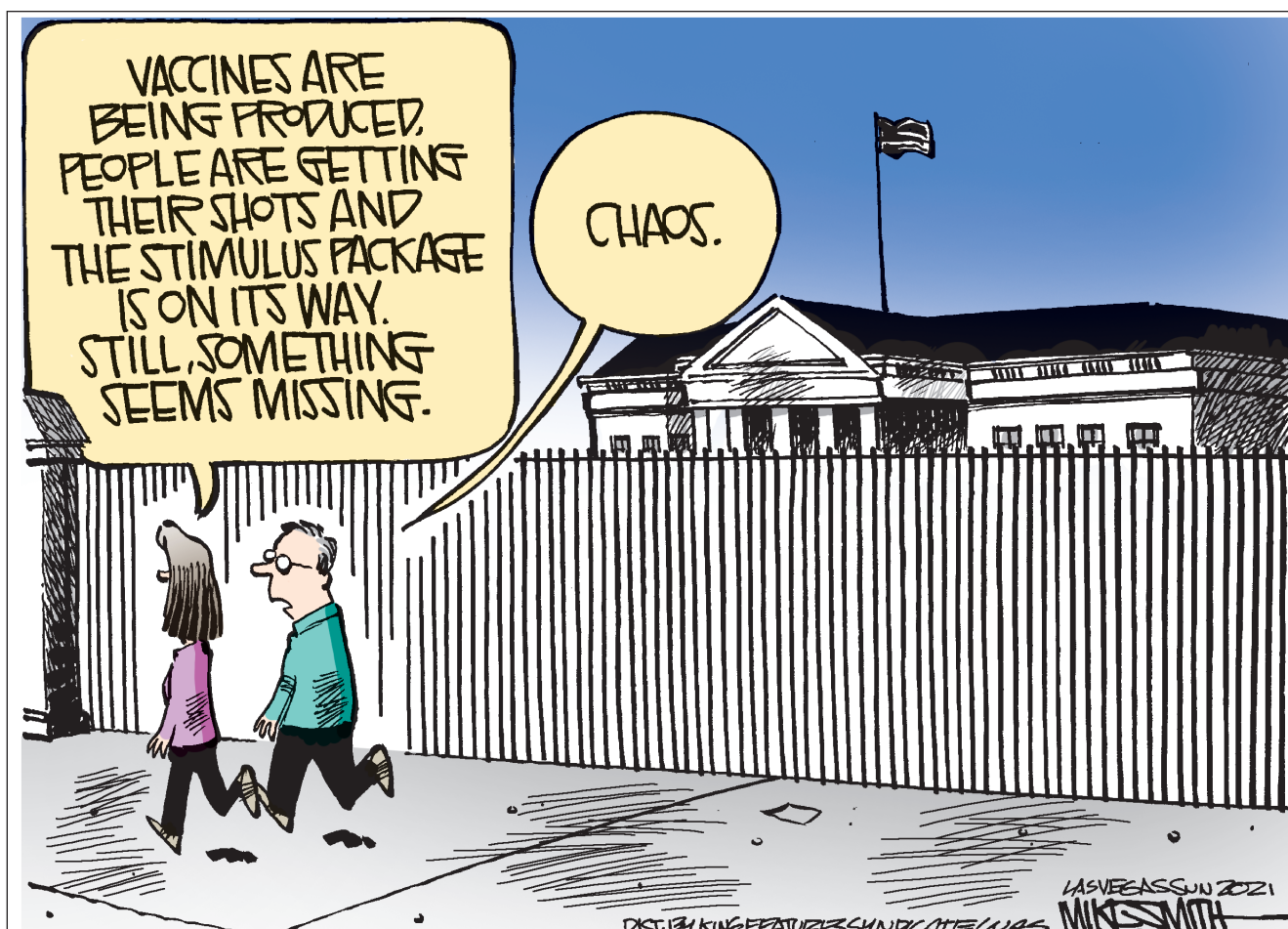
The Oregon Patient Safety Commission discussed this case and cases like it. This case was from Canada. All those details we provided are courtesy of the efforts of the Canadian Patient Safety Institute and Jessica's family. Where it happened, though, does not matter so much as what can be learned from it.

Medical errors and mistakes where patients are harmed are going to happen. Oregon actually has a model that allows families to get answers when medical errors occur — outside of a courtroom.

Passed in 2013 by the Oregon Legislature, the early discussion and resolution system allows for an open conversation between patients, families and medical providers when serious harm occurs. It creates confidentiality protections. Participants can speak candidly and reconciliation can be found without an adversarial lawsuit. That can encourage that improvements are made in patient safety. It can lower costs in the medical system. And families can get answers. Analysis of the program's performance is convincing. You can find more about it at the Oregon Patient Safety Commission's website.

But the program will go away without action by the Legislature. It is scheduled to sunset on Dec. 23, 2023. Senate Bill 110 introduced at the request of Gov. Kate Brown and the Oregon Patient Safety Commission would get rid of the sunset provision. It was state Sen. Tim Knopp, R-Bend, who moved the bill be sent to the Senate floor for a vote with a recommendation that it pass. It should.

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What is post-COVID 'normal?'

By Doug Badger

Can the federal government ban evictions? Seems like a pretty straightforward question. But the answer touches on a deeper one, as yet unsettled: Will life after COVID-19 be normal?

Consider what a federal judge said recently when he struck down a Centers for Disease Control ban on evictions, which the Trump administration instituted last year and the Biden administration extended: "Although the COVID-19 pandemic persists, so does the Constitution."

The court's ruling in *Terkel v. Centers for Disease Control and Prevention* reminds us that a public health emergency declaration does not grant the government unlimited authority to regulate private behavior. Whether or not banning evictions is good policy, the government can't exercise power without constitutional warrant, something many public officials appear to have forgotten since the pandemic struck.

Last March, Congress enacted a 120-day ban on evictions of "covered persons" (couples with incomes of less than \$198,000) living in "covered properties," defined as those participating in specified federal programs or financed through federally backed loans.

Landlords who violate the order are subject to penalties of up to one year of imprisonment and fines of up to \$250,000.

The ban expired in July, but under a directive from then-President Donald J. Trump, the CDC revived it in September and extended it through the end of 2020. Congress then moved the expiration date to Jan. 31. Among President Joe Biden's first official acts was to direct CDC to extend it through March 31.

Lauren Terkel, a Texas property owner, challenged the order's constitutionality. Government attorneys argued that the eviction ban is authorized by the Constitution's Commerce Clause, which grants the federal government

power to regulate interstate commerce. That clause, they claimed, gave CDC sweeping powers to "suspend residential evictions for any reason, including an agency's views on 'fairness.'"

Judge J. Campbell Barker disagreed. "Real estate is inherently local," he wrote in response to the government's Commerce Clause argument. "Residential buildings do not move across state lines."

Barker also noted that the order had only a tenuous connection to the pandemic. Unlike a quarantine order, the eviction ban is at best tangentially related to stemming the spread of infectious disease.

"Even though quarantining an infected person from new contacts would keep the person from traveling interstate," he wrote, "the CDC order is not such a quarantine. The order applies without regard to a tenant's infection with, prior exposure or vaccination against COVID-19. It applies without regard to whether an evicted tenant would move to a new city, much less a new state."

Indeed, the government's contention would mean that such orders did not have to rest on public health grounds at all, Barker observed.

"The government's argument," he wrote, "would thus allow a nationwide eviction moratorium long after the COVID-19 pandemic ends."

And that is precisely the danger. While it is unclear whether Barker's ruling will be the last word on this case, especially given past Supreme Court precedents granting Congress broad power under the Commerce Clause, one thing is clear: The COVID-19 pandemic has affected the U.S. and the Western world in myriad ways, altering many of our cultural sensibilities.

Nowhere has this been more apparent in the inversion of the constitutional order. Before the pandemic, we presumed that we had the right to run our businesses, worship in our churches and move freely about our

neighborhoods. We understood the government's protection of health and safety as a prerequisite of liberty, not a reason to restrict it.

We are acclimating to the idea that liberty is contingent on government officials' assessments of the latest COVID-19 metrics. Are new cases rising or falling? Are hospitals getting crowded? Have enough people been vaccinated?

Some restrictions are sensible and necessary. Others are misguided and counterproductive. But the most crucial question is this: Has the pandemic permanently altered our understanding of the prerogatives of government?

Before COVID-19, few would have conceived the CDC had the power to ban evictions. Now, we almost reflexively assume it can. Government lawyers argue — unsuccessfully before this judge — that a federal health agency's power during a pandemic is virtually boundless.

That mindset endures among many federal, state and local officials even as new cases decline and immunizations accelerate. It will likely persist beyond the pandemic. Our understanding of government power and of liberty are at risk of permanent distortion.

At some point, we will return to churches and schools, shops and offices, theaters and stadiums because even the most overbearing governments will grant us leave to do so. Things will, in that sense at least, be normal again.

But in another sense, they may never be.

Normal isn't government permitting us to exercise our liberty. Normal means that we needn't seek the government's permission to exercise our liberty.

Recovering that foundational truth may prove more challenging than recovering from the pandemic.

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OTHER VIEWS

Editorial from Los Angeles Times:

President Joe Biden is facing a critical test as a surge of migrants, emboldened by the end of the Trump era, is arriving at the U.S.-Mexico border in hopes of forging better lives here in the U.S. One challenge in particular is the sharp increase in unaccompanied minors.

Federal agents encountered 5,871 unaccompanied minors at the border in January, up from 3,076 in January 2020. How Biden handles this surge could become a defining moment in his administration.

We've been here before. In fact, the federal government has been wrestling with this deeply complex problem for years. During the Obama administration an influx of unaccompanied minors, who under law (and basic humanity) require different handling than work-seeking adults, overwhelmed the system, leading the government to hold children in border stations and detention centers as officials struggled to find places for them to live while their cases proceeded

through the immigration courts. There's a library of studies by child psychologists about how damaging such detentions are to children.

Then came the Trump administration, whose answers included claiming a health emergency and directing border agents to turn children and adults around rather than letting them pursue their legal right to seek permission to enter and stay.

Biden has pledged a more compassionate approach, but he has also warned that undoing the harsh Trump policies will take more than a few strokes of a pen. The administration reportedly is turning a newly reopened children's detention center in Texas into a processing center to help border agents meet their legal obligation to turn over unaccompanied minors within 72 hours to the Department of Health and Human Services, which then has 20 days to place them in safe and secure homes while their cases are processed — deadlines the government routinely misses.

We welcome Biden's more humane approach, but wonder whether it will succeed in the face of the rising tide of juveniles arriving without parents or guardians. Once again the nation is watching its government strain to meet obligations Congress imposed to treat unaccompanied minors with the delicacy they deserve. Once again we see a growing crisis spotlight the broad inadequacies of the government's immigration enforcement system to deal compassionately with human migration.

The solutions require broad vision and actions, including efforts to reduce the instability in Central American countries that send so many people fleeing in the first place. Such efforts, of course, run into a headwind of deep-rooted corruption in some of those countries.

But the longer the government leaves those broad solutions unfulfilled, the more it will be forced to deal with waves of migration, one crisis following another. We need a better way of doing this.