

**EDITORIAL**

## OHA mask decision is sensible

It appears that we have more to look forward to this spring than buttercups brightening the forests and sagelands, and the first day when it's comfortable to stroll outdoors in short sleeves.

The Oregon Health Authority (OHA) announced on Monday, Feb. 7, that the state's indoor mask mandate for public places will end no later than March 31. The mask requirement for schools will end on that day. And although the mask mandate for public transportation, including school buses, is determined by the federal government, the current requirement extends only through March 18.

The OHA timeline strikes a sensible balance.

The data clearly show that the record-setting surge in COVID-19 cases resulting from the omicron variant has peaked. Statewide, new cases dropped by about 40% over the past week, and by about 30% in Baker County. The number of people being treated in hospitals for COVID-19, once forecast to eclipse by a large margin the record set during the delta variant surge in early September 2021, has stayed below that level and is also declining, albeit at a slower rate than case totals.

The indoor mask mandate, not including schools, could end before March 31 if the number of hospitalized COVID-19 patients dips to around 400 (the number was 1,072 on Monday, Feb. 7).

Extending the mask requirement for schools through March 31, rather than ending it immediately and leaving each school district to decide its policy, is reasonable. Masks, and in particular cloth types, offer limited protection, to be sure. But it strains credulity to think that strong compliance with the mask requirement, along with frequent sanitation and other precautions, hasn't contributed to most districts, including Baker, being able to maintain in-person classes throughout the omicron surge. Baker Superintendent Mark Witty has credited masks with helping schools stay open. A premature end to the mask requirement would hardly be welcome if it resulted in a spike in infections that closed schools or led to cancellations of sports and other extracurricular activities. Our students, who have borne a greater burden than many adults during the pandemic, and done so without resorting to hysteria or hyperbole, deserve better.

Conversely, there seems to be no legitimate reason to continue the mask mandate once the omicron surge is not only waning but effectively over, as appears likely by the end of March, if not sooner.

The OHA's announcement is a refreshing example of state officials recognizing how significantly the situation has changed, and for the better, during the pandemic.

The combination of vaccinations and protection through natural infection denies the virus the ready supply of susceptible people it had before. To ignore that even unvaccinated residents who have contracted COVID-19 have a significant level of immunity is to ignore science, and would serve only to inflame the unfortunate animosity that has marked the past two years. Although omicron is more likely than previous variants to, in effect, evade the protection afforded by vaccination, the vaccines continue to greatly reduce the chances that you'll get seriously ill or die. Critics who cite the rate of breakthrough cases as proof that vaccines "don't work" are engaging in unscientific hyperbole. A majority of people who contract omicron, and who end up in the hospital or the morgue as a result, are unvaccinated.

When it comes to masks in schools, we know that COVID-19 poses a dramatically lower risk of causing serious illness in children. And although they can of course contract and spread the virus, the much higher vaccination rates among older, more vulnerable people, both statewide and in Baker County, create a formidable level of protection for them. Maintaining that barrier for that group will likely become the focus for public health efforts in the future as we adjust to COVID-19 as being something less than a crisis.

The OHA announcement doesn't mean masks will disappear starting April 1. Businesses and other venues could decide to continue to require masks. We should respect business owners who choose to do so.

— Jayson Jacoby, Baker City Herald editor



"WELL, THERE GOES HER SHOT AT THE SUPREME COURT."

**YOUR VIEWS**

### The real train danger is having school next to tracks

I would like to comment on a couple of recent events concerning the train whistle. On Feb. 1, 2022, the Baker City Herald published an editorial about the "Quiet Zone assessment." In that article, it was stated that "the Federal Railroad Administration has approved more than 900 quiet zones in the past 15 years or so." It goes on to say "the reason quiet zones are so common is simple ..." I have fact checked that statement and found out that there are approximately 128,000 public railroad crossings across America. Quiet zones are not common.

My other comment is on the recent 5-car train derailment on Jan. 28, 2022, just outside of town. Thank goodness it was minor and did not happen in town. But someday it could happen next to the South Baker Intermediate School, then people might wake up to the real danger to the little kids. The safety hazard to the children is not the train whistle, it is the school being located next to the railroad tracks. The Baker School Board had the opportunity to close that school several years ago, but chose not to do so at that time.

Roger LeMaster  
Baker City

*Editor's note: Many quiet zones encompass multiple individual railroad crossings.*

**CONTACT YOUR PUBLIC OFFICIALS**

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**Baker City Hall:** 1655 First Street, P.O. Box 650, Baker City, OR 97814; 541-523-6541; fax 541-524-2049. City Council meets the second and fourth Tuesdays at 7 p.m. in Council Chambers. Councilors Jason Spriet, Kerry McQuisten, Shane Alderson, Joanna Dixon, Heather Sells, Johnny Waggoner Sr. and Dean Guyer.

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**Baker County Commission:** Baker County Courthouse 1995 3rd St., Baker City, OR 97814; 541-523-8200. Meets the first and third Wednesdays at 9 a.m.; Bill Harvey (chair), Mark Bennett, Bruce Nichols.

**Baker County departments:** 541-523-8200. Travis Ash, sheriff; Noodle Perkins, roadmaster; Greg Baxter, district attorney; Alice Durlinger, county treasurer; Stefanie Kirby, county clerk; Kerry Savage, county assessor.

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- Letters will be edited for brevity, grammar, taste and legal reasons.

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**COLUMN**

## Every Supreme Court nominee deserves firm opposition

BY RAMESH PONNURU

In the days since Justice Stephen Breyer's plan to retire went public, some Republicans have been putting out the word that they do not plan a big fight over his replacement. But it's a mistake for them to stand down, especially before President Joe Biden has even announced a nominee.

Their impulse is understandable. Battles over Supreme Court nominations can be bitter and ugly. And this is one Republicans will probably lose. Democrats can probably maintain enough unity to confirm a nominee. Sens. Joe Manchin and Kyrsten Sinema may have angered their party over spending bills and the filibuster, but they have voted for Biden's judges without any fuss.

Also, peace-minded Republicans reason, the stakes are low. Breyer's replacement won't change the balance of the court. Some Republicans, notably Lindsey Graham, hew to the old-fashioned view that presidents deserve deference on their judicial nominees so long as they demonstrate that they are competent, even-tempered and mainstream. He voted for both of President Barack Obama's nominees to the Supreme Court.

He shouldn't have. The norm of deference, which is nowhere in the Constitution, has inevitably and justifiably eroded as judges have assumed a greater and greater policymaking role and the parties have come to disagree sharply about that role.

That's why past Republican efforts to sue for peace in the judicial wars have come to naught. After bruising fights over Republican nominees to the Supreme Court from 1987 to 1991, Senate Republicans largely voted to confirm Democratic nominees Ruth Bader Gins-

burg and Breyer himself. But the next time Republicans had the White House, Democrats launched a series of filibusters against many of their judicial nominees. Each party blames the other for its role in a cycle of escalation and retaliation. But that cycle could hardly be averted once judges became such powerful forces in our politics.

Biden has said that any justice he appoints would satisfy a "litmus test" (he endorsed the phrase) on *Roe v. Wade*. They have to give him some sign, that is, that they will block legislatures' attempts to regulate abortion — even though nothing in the text, original understanding or structure of the Constitution denies them that power, and even though constitutional scholars of varying views on abortion have scoffed at *Roe*'s reasoning.

The Constitution gives Biden the power to nominate anyone he wants to the high court. But it also gives senators the power not to be complicit in his decisions. Republicans who believe that judges should rule in a way that brings us closer to the actual Constitution, as nearly all of them say they believe, should have no qualms about exercising that power.

*Roe* itself may be overruled later this year. But the broader debate about judicial power will continue and evolve. It would be shortsighted for senators who like the current balance of the court to be complacent. The justices have life tenure, and they can spend years in the minority before casting a string of decisive votes.

And while it's likely that anyone Biden nominates will get confirmed, it's not guaranteed. Biden might misjudge the tolerance of Manchin and Sinema for a left-wing nominee, or the nominee might turn out to have unexpected vulnerabilities. The Democrats' majority is so small that con-

trol of the Senate could conceivably flip any week.

Opposing confirmation should not mean searching for character flaws or scandals in the nominee's past, or inventing them. It ought, however, to include making the case that a judge's job, when interpreting and applying the law, is fundamentally a matter of obedience rather than invention. For example: When the people, acting through Congress, have decided to forbid universities that take public money from discriminating among applicants based on race, it is not a judge's job to second-guess that decision.

This view of judging is sufficiently compelling to the public that even past Democratic nominees have felt obliged to voice it. During her own confirmation hearings in 2009, Justice Sonia Sotomayor insisted that judges should not "make law" — leading to widespread grumbling among progressives. Republicans ought to use this year's hearings to further discredit any more grandiose conception of the judicial role.

Republicans should be eager to extend this debate, especially if the alternative is for the Democratic Congress to have extra time to pass lavish spending bills. It's not as though Senate Republicans have something better to do with their own time than to engage on the core questions of self-government that Supreme Court nominations now raise.

Republican voters can't reasonably ask Mitch McConnell and his Senate colleagues to defeat Biden's nominee. They can reasonably ask them to try.

*Ramesh Ponnuru is a Bloomberg Opinion columnist. He is the editor of National Review, a contributor to CNN and a fellow at the American Enterprise Institute.*