

EDITORIAL

Fuel tax 'vacation' no panacea, but worth a look

When you're watching the dollar figure on the gas pump display rise with dizzying speed, as it does these days, the prospect of slowing that mounting tab has a certain attraction.

This is the idea behind President Joe Biden's proposal that Congress suspend federal gasoline and diesel tax — 18 cents per gallon — for three months. The president is also urging states to enact a similar "vacation" from their state fuel taxes.

Oregon's state fuel tax is 38 cents a gallon.

These are not insignificant amounts when regular unleaded is averaging \$5.43 a gallon, as it was Friday, June 24, in Baker County, according to AAA.

Suspending fuel taxes can have negative effects.

Much of the tax revenue pays to improve highways, roads and city streets, so a temporary reprieve now could mean bumpier roads later.

But trimming 56 cents from the price per gallon — if both the federal and Oregon state taxes went away for a few months — might well result in more gas being sold, which would partially offset the loss of tax revenue.

Oregon Gov. Kate Brown's reaction to Biden's proposal was disappointing.

A statement from her office states in part that "with gas prices having jumped by several dollars per gallon over the last several months, it's unlikely that Oregonians would see significant savings at the pump under this latest proposal."

Notwithstanding the exaggerated "several dollars per gallon over the last several months" reference — in reality Oregon's average price for regular unleaded is up by about \$2.01 compared with a year ago — Brown's blithe dismissal of Biden's suggestion shows little sympathy for the plight of her constituents.

Although Oregon's fuel tax accounts for about 7% of the current price, and the combined state and federal tax is about 10%, saving 56 cents per mile amounts to about \$22 for every 1,000 miles driven at an average of 25 mpg. That's not likely to make the difference for someone struggling to pay a mortgage, to be sure. But at a time when inflation has elevated the cost for pretty much everything, including necessities such as food and fuel, Brown's skepticism suggests she doesn't appreciate the cumulative effects of inflation or the value of even modest relief on the cost of one product.

The reaction of Brown's counterpart in neighboring Washington state, Jay Inslee, was much more galling.

A spokesperson for Inslee, Jamie Smith, trotted out the tired, much-refuted claim that oil companies are to blame, saying that if Washington suspended its gas tax — which is 49 cents per gallon, third-highest among states — "the oil companies would be the ones to benefit from yet another opportunity to pocket more profit at the expense of our ability to put people to work fixing our roads and bridges."

Oil companies have been making billions in profits this year, to be sure. But to imply that this is directly related to prices we're paying at the pump betrays at best an oversimplification, and at worst an ignorance, of economics and the global petroleum market.

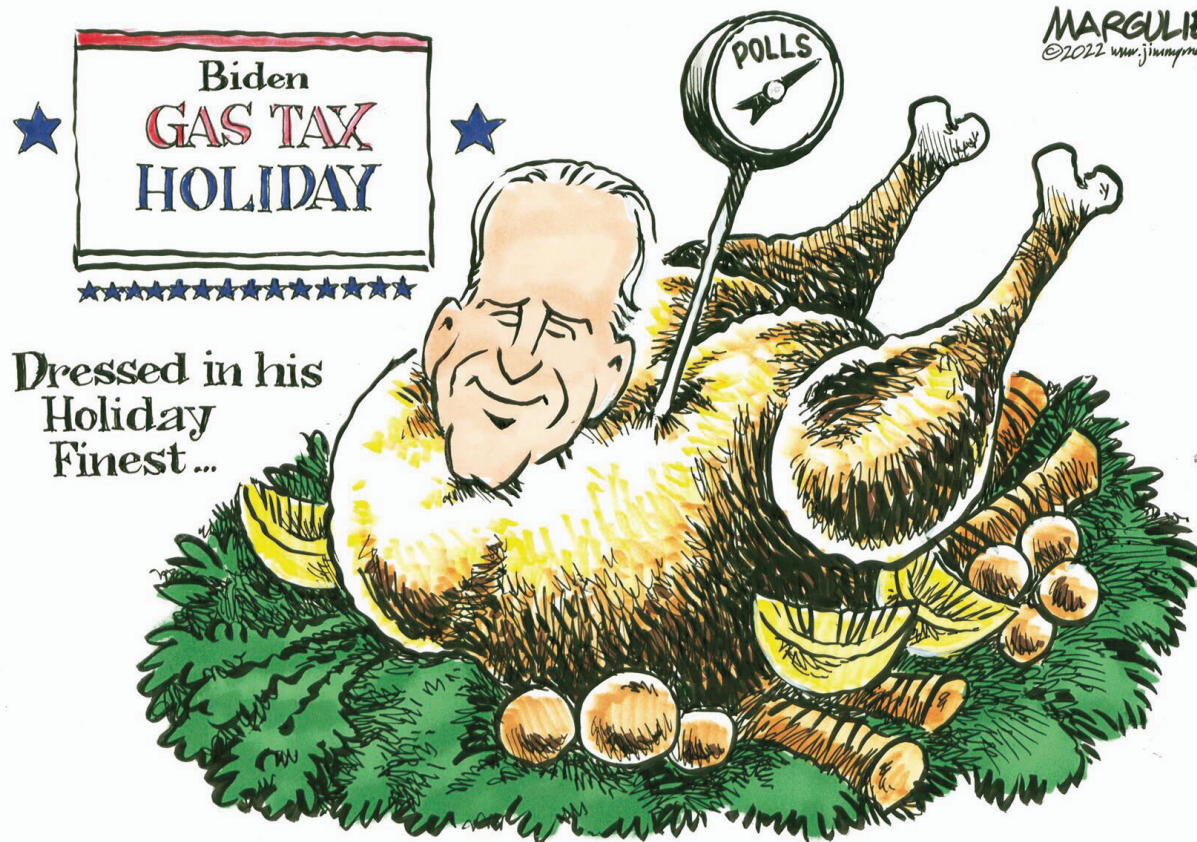
As global economic matters tend to be, this one is much more complicated. Economics and industry experts say many factors have contributed to rises in oil prices and the record-high fuel prices, including supply chain delays and worker shortages that have reduced oil production, Russia's invasion of Ukraine, and rising demand for fuel as the effects of the pandemic have eased.

The market works both ways. When oil prices plummeted early in the pandemic, corporate balance sheets reflected the trend. Exxon lost \$22.4 billion in 2020.

Moreover, the Federal Trade Commission has investigated allegations of price gouging in the industry many times, most recently late last year, and invariably finds no legitimate evidence for it.

Ultimately, fuel tax "vacations" won't be a panacea for drivers. But the savings are no less real just because they're modest.

— Jayson Jacoby, Baker City Herald editor



COLUMN

Tyranny of the majority wins the day

BY NOAH FELDMAN

Modern constitutional law as we have known it ended Friday, June 24.

When the Supreme Court overturned *Roe v. Wade* and *Casey v. Planned Parenthood*, it repudiated the very idea that America's highest court exists to protect people's fundamental liberties from legislative majorities that would infringe on them.

What the dissent aptly called a "catastrophic" decision is not only a catastrophe for women, who now can be forced to carry unwanted pregnancies to term. It is a catastrophe for all Americans — and for people all over the world who have built their own modern constitutional courts on the U.S. model. The tyranny of the majority won the day.

The right to an abortion was based on the principle of a living Constitution that evolves to expand liberty and equality. That same master principle of modern constitutional law provided the grounding for *Brown v. Board of Education*, ending segregation. It was the basis for *Obergefell v. Hodges*, finding a right to same-sex marriage. It is the same principle that undergirds dozens of other decisions establishing rights we today consider fundamental, from sexual freedom to stop and seizure, that were not considered similarly basic in 1791 when the Bill of Rights was ratified or in 1868 when the 14th Amendment was.

In place of the living Constitution that protects liberty and equality from the tyranny of the majority, the court in *Dobbs v. Jackson Women's Health Organization* announced a Constitution that only protects rights that already existed in the distant past. The majority considered it irrelevant that the people who ratified the original constitutional provisions did not include women, whose rights are at issue in *Dobbs* and whose equality is derogated by the de-

cision. According to the majority, the dead hand of the past rules our constitutional future.

It is no exaggeration to say that the *Dobbs* decision, written by Justice Samuel Alito and joined by four other conservatives, is an act of institutional suicide for the Supreme Court. The legitimacy of the modern court depends on its capacity to protect the vulnerable by limiting how the majority can infringe on basic rights to liberty and equality.

The *Dobbs* majority not only takes the court out of that business. It holds that the court should never have expanded the protection of liberty and equality in the first place.

The most basic argument of the *Dobbs* decision is that, in 1868, states did not consider abortion a fundamental right. That is accurate, as the magisterial dissent, co-authored by Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan, acknowledges.

But in 1868, there was also no clearly established right to contraception. There were no *Miranda* rights to protect arrestees. There was no right to choose your own sexual partner, let alone to marry the person you love. And there is no definitive historical evidence that the people who ratified the 14th Amendment thought that doing so prohibited segregation. If you take *Dobbs*'s logic seriously, all the landmark decisions establishing these rights are wrong.

Will the court now undertake a major effort to revisit these core rights?

Alito's majority opinion, which is not significantly different from his leaked draft, tries to suggest the court will not do that. Its only basis for that suggestion is to say that abortion is "unique" because it involves life. Justice Clarence Thomas, in a separate concurrence, called openly for revisiting rights to sexual freedom and gay

marriage. The dissenters argued cogently that it is now open season on those and similar basic rights.

It is hard for me to imagine that the rest of the conservative justices actually plan to roll back many of our most fundamental rights. Unfortunately, that hardly matters. State legislatures can and will now pass laws that violate or eliminate those rights. The lower courts will have to adjudicate them. Ultimately the Supreme Court will have to weigh in again.

The reason all this will happen is that the court didn't just overturn *Roe*. By overturning *Casey*, it called into question the core idea that the justices follow precedent. *Casey* stood for the idea that the court would uphold its past decisions absent a major, transformative reason to do so. Under *Casey*, lower courts would leave precedent in place. That norm is now gone. It's open season on fundamental rights.

Finally, a dead, non-living Constitution is a catastrophe because history doesn't actually limit the justices' discretion. Originalism was supposed to deliver judicial restraint. It doesn't. The majority can read history however it wants — and does. A conservative majority with no respect for precedent could easily be the most activist court we have ever had.

In short, the modern Constitution will never be the same. Neither will the Supreme Court. *Dobbs* will go down as one of the worst decisions in the court's history. *Dobbs* reverses rights on which the whole country has relied for half a century. The court has never done that before. The consequences will be disastrous — and far-reaching.

■ Noah Feldman is a Bloomberg Opinion columnist. A professor of law at Harvard University, he is author, most recently, of "The Broken Constitution: Lincoln, Slavery and the Refounding of America."

OTHER VIEWS

Masks can stem COVID wave in Idaho

EDITORIAL FROM THE IDAHO STATESMAN:

Just when we had gotten used to that feeling of not having a mask on our face, the debate over whether to mask in public has resurfaced with a resurgence of COVID-19.

The Centers for Disease Control and Prevention this month determined that Idaho's Ada, Elmore, Valley and Lewis counties are at high community risk, because of an increase in new hospital admissions per 100,000 people in the past seven days, the percent of beds occupied by COVID-19 patients, and the number of new COVID-19 cases per capita in the past seven days.

Based on those numbers, the CDC recommends all residents in those counties wear a well-fitting mask in public indoor settings, regardless of vaccination status.

That raises the debate once again whether to institute a mask mandate.

Boise city officials already discussed the possibility last week but chose to hold off on making any changes.

We all know where the Central District Health board stands. Led by Raúl Labrador and Ryan Cole, that board last month voted to remove any language about wearing a mask from its website and literature, referring instead to the CDC and letting people make up their own minds about

whether they should wear a mask.

When it comes to wearing a mask, people are tired. When it comes to mandates, it's clear some people won't listen, and because Idaho's public health laws provide for only a misdemeanor for violations — rather than a citation and a ticket, like for speeding — enforcement is untenable.

We still don't know if this latest wave of COVID-19 will be as severe as previous waves, which at times put Idaho in a state of emergency standards of care.

We hope that doesn't happen again, as predominantly unvaccinated COVID-19 patients took up so many resources in Idaho's our health care system, it limited the delivery of health care to non-COVID patients. That's why your decision not to mask and not to get vaccinated affects others, not just yourself.

Issuing a mask mandate in high-transmission areas is the right thing to do, but it's likely a waste of time, effort and angst.

We hate to let the bullies win, but the blowback and temper tantrums that mask mandates would set off wouldn't be worth the trouble. And a mandate without enforcement wouldn't compel scofflaws to do the right thing, anyway.

That leaves the rest of us reasonable people to do the right thing.

We've said it before and we'll say it

YOUR VIEWS

Loss of birth control access will be next target for conservatives

Abortion now, but what about birth control next?

Conservatives may feel vindicated about the overturning of *Roe v. Wade*, but now the reproductive health of all women in various states

will now be the business of the public. So much for privacy. So much for freedom.

Oregon will maintain its access, but for those choosing Idaho, just wait until all birth control will be eventually outlawed.

Tom Nash
Halfway

• Letter writers must include an address and phone number (for verification only).

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

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