

## EDITORIALS &amp; OPINIONS

The Bulletin  
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# Congress should let pot businesses access banking

Legal businesses in the marijuana industry still don't have the same rights to use banks as other businesses. This has gone on too long. Congress should make the change.

U.S. Rep. Earl Blumenauer, D-Oregon, has reintroduced a bill in Congress to allow them to access banking.

What does it mean when you can't use a bank for your business? Cash. Lots of cash.

Who likes cash? Crooks.

It makes the employees of the businesses and the businesses unnecessarily appetizing to criminals. Willamette Week reported "cannabis dispensaries in the Portland metro area reported being robbed, burglarized or looted more than 100 times between March of 2020 and 2021." One employee was killed in December in an armed robbery.

Similar bills have passed the House

in recent years. But they had been held up in the Senate by Republican leaders. For instance, one Republican proposal also would have included a 2% THC limit on state marijuana programs if they didn't already have their own limits. THC limits have proven difficult to enforce.

We asked Rep. Cliff Bentz, R-Oregon, if he backs the bill. His spokesman told us he will give the bill full consideration should it come before the Judiciary Committee and to the House Floor for a vote.

With the change in the mix in the Senate, Blumenauer's bill has a better chance of passing Congress. Some version of it should.

# County's updates to wildlife habitat will impact development

More people in Deschutes County means deer, eagles and elk can have a more challenging time. Human development is not always animal friendly.

The county's information about the ranges of deer and elk had been out of date. Much the same was true for the homes of bald and golden eagles. But thanks to a grant from the Department of Land Conservation and Development, the county has updated its wildlife inventories. That can make a difference in how future development in the county will occur. The Deschutes County Planning Commission is expected to get a presentation about the new data on Thursday.

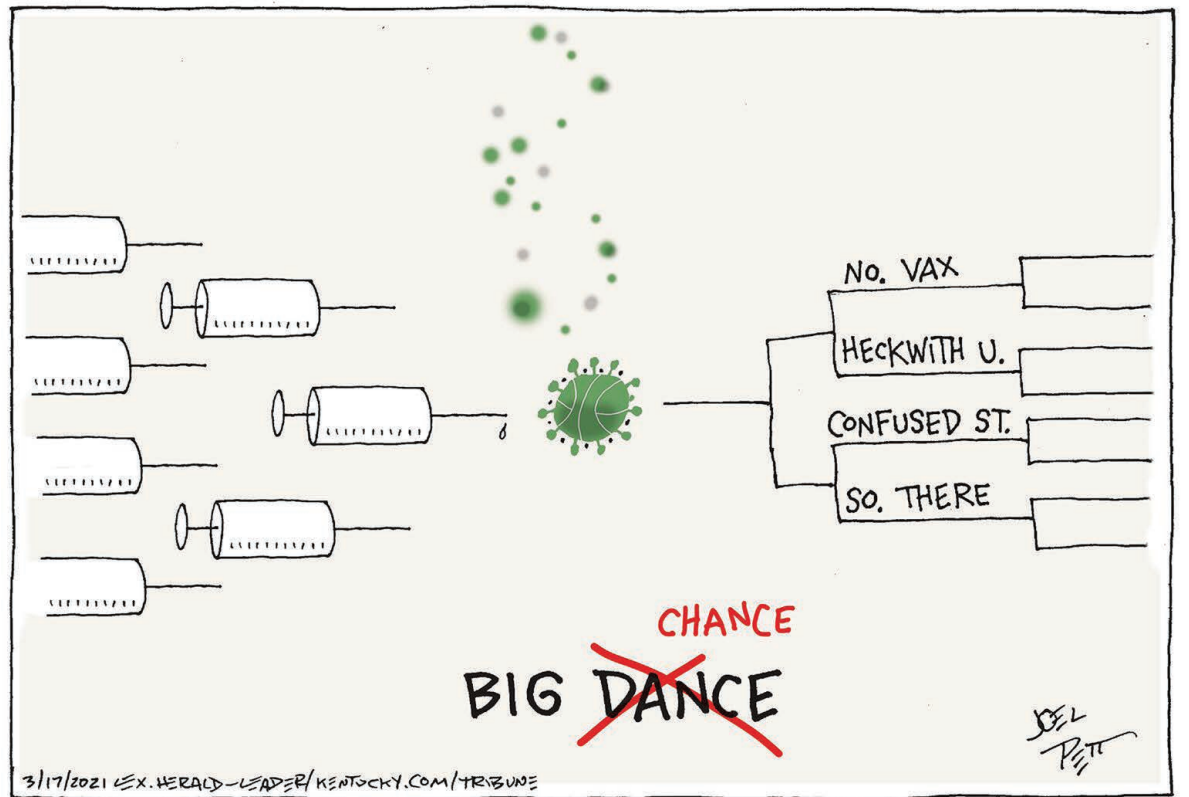
When the county got started, it had to choose what wildlife maps to update. It couldn't do everything. For instance, a county advisory committee decided not to look at deer migration corridors. And it also decided not to look at the habitat of threatened and endangered species such as the spotted frog, because those already get protection. It picked deer and elk winter range and the nesting sites of bald and golden eagles.

The results in general mean expanded areas identified as needing protection. For instance, the proposed, revised deer winter range went from 315,847 acres to 503,979

acres. Some of the data was collected by collaring deer and tracking their movements. Similarly the revised winter range for elk would grow to 411,190 acres. Sensitive habitat for the eagles would grow enormously from 2,297 acres to 344,778 acres. Maps are available in county documents at [tinyurl.com/deereagleelk](http://tinyurl.com/deereagleelk). Scroll way down to the bottom.

The growth of these proposed revised zones could impact development. For instance, golden eagle nests are buffered by a sensitive habitat area with a radius of 2 miles. There are some 103 golden eagles' nests identified. Bald eagles get a smaller ¼-mile radius buffer and there are some 116 bald eagle nests. Development within such a radius triggers a review of the potential impacts of a project under the federal Bald and Golden Eagle Protection Act.

It does not mean that no development would be allowed within 2 miles of a golden eagle nest or ¼ mile of a bald eagle nest. A 200-home development in Naperville, Illinois, recently got approval and its boundary is within 824 feet of a bald eagle nest — less than a ¼ of a mile. But development in deer and elk winter ranges and within eagle habitat can mean legal challenges. So the county's more accurate information for animals will translate into more questions for humans.



# Water, sanitation key to plight of women

Editor's note: The following is part of an ongoing, twice a month series of columns regarding climate change and its ramifications for Central Oregon.

Society views progress through growth, but we are reaching the planetary boundaries of our expansion. We need society to survive and thrive whether it grows or not. Our challenge is to meet the needs of everyone within the means of the planet.

In other words, making sure no one falls short on life's essentials, while ensuring Earth's life-support systems remain intact. Things may look good in the U.S. while not so spectacular in developing countries.

**Planetary boundaries:** This piece looks outside our country with a global perspective on planetary capacities, focusing on water, sanitation and hygiene in agriculture, education and then closer to home in changing some of our behavior.

**Doughnut economics:** Kate Raworth represents a novel approach for defining preconditions for human development, modified from the original work in Nature magazine by Johan Rockström et al., 2009. This approach shows how crossing certain biophysical thresholds could have negative consequences for humanity.

All the following have limits that, if reached, will adversely impact our planet: (1) climate change, (2) destruction of the ozone layer, (3) air pollution, (4) acidification of the oceans, (5) natural ecosystem conversion to cropland, (6) biodiversity loss, (7) overloading nitrogen (N) and phosphorus (P) due to fertilization, (8) chemical pollution and (9) freshwater withdrawals. Four of them are already reaching dangerous limits (1, 5, 6, 7) — all four directly or indirectly related to agriculture.

The world has now arrived in the Anthropocene-era where human actions, above all others, have the most profound impact on the functioning of ecosystems. Not surprisingly, many human impacts are generated because of agriculture — the chief driver of climate change, land use change, biogeochemical flows of N and P, biodiver-

**Climate Changed**  
CENTRAL OREGON  
CROSSROADS  
By Scott Christiansen



sity loss, and depletion of freshwater resources.

To seize a glimpse of what this reality looks like, see the sobering Netflix documentary — David Attenborough: A Life on Our Planet. Then watch Gretta Thunburg tell us why we need, not hope, but action. If not moved to act, then read The Terrifying Warning Lurking in the Earth's Ancient Rock.

**Feminization of agriculture:** The developing world is still heavily reliant on agriculture for jobs and national income. The management of rural development and transformation is in the hands of men, women and children; but in a great number of developing countries, as men move out of family farming to work in industry, women and children tend to the agricultural tasks the men leave behind. Many women even take on new jobs and responsibilities and this phenomenon is called the feminization of agriculture.

**Helping women to cope:** What are some significant actions we have in our power to immediately improve the plight of women? Sustainable Development Goal 6 (Clean water and sanitation) emphasizes the importance of improved water, sanitation and hygiene for women.

For example, women are the preferred candidates for jobs in value-enhancing work in the agricultural sector — like processing fruits and vegetables — where sanitary conditions associated with keeping the food clean is often prioritized over the toilet facilities made available for the female employees.

Workplace hygiene is a big part of job satisfaction.

Education is also important in raising capacity of women to take on these jobs and to break into management positions. Gender-segregated

toilets in schools and factories would have a direct effect on girls' retention in school and women excelling in the workplace after graduation. See the simple but inspiring Girl Effect video to see what effect education and policies can have on improving the conditions of girls and young women.

**No loo — No I do.** Sticking with the water, sanitation, and hygiene theme, the Community Led Total Sanitation concept proposes a world free of open defecation. Part of this movement is a campaign in India called the "No Toilet, No Bride" or "No loo — No I do," which promotes toilet uptake by encouraging women to refuse to marry men who do not own a private toilet.

**A place for advocacy.** It is hard to believe that open defecation and unsanitary bathrooms are so prevalent, but both are a fact of life. In the face of this reality, some people get fired up to speak up, like Rose George, a tireless women's advocate from Australia, who urges development workers to organize protests for better sanitation.

**Take a longer view.** It may look like an impossible hurdle to confront these developmental problems; however, it may be helpful to highlight some tremendous success stories, such as Japan's trajectory from a country of latrines 75 years ago to a place with the most advanced toilets in the world. What technology!

**Behavior modification.** Surely, many cannot even think of changing their behavior, but maybe it is time to examine the work of companies who make bidets and NGOs that work on behavior modification. Why? Because getting people to move away entirely from toilet paper will save millions of trees and the ecosystems that they inhabit.

Furthermore, communication needs to highlight that companies like Procter & Gamble, Kimberly-Clark, and Georgia-Pacific continue to make toilet paper from 100% virgin forest fiber, feeding a devastating "Tree to Toilet Pipeline."

Scott Christiansen is an international agronomist with 35 years of experience. He worked for USDA's Agricultural Research Service and the U.S. Agency for International Development.

# Businesses are losing COVID lawsuits to insurance companies

BY STEPHEN CARTER  
Bloomberg

Remember last year's kerfuffle over whether providers of business interruption insurance would have to pay when local COVID-19 rules forced proprietors to close? The verdict is now in ... and it hasn't gone well for business owners. In fact, according to the University of Pennsylvania Law School, which has developed a tool to track COVID-related litigation, the insurers have overwhelmingly won.

The controversy arose after most state governments responded to the pandemic with shutdown orders. Many business owners demanded that their insurers compensate them for lost income, but the claims were routinely denied. Business owners sued, and I predicted in this space that they would mostly lose. Most business interruption insurance policies simply don't cover pandemics.

The number of COVID-related insurance lawsuits is in the four figures, and Penn's database covers only those where the defendant's motion

to dismiss (or for summary judgment) has been ruled on. Nonetheless, the pattern is clear. Out of 187 cases in federal court where the judge has ruled on the insurer's motion to dismiss with prejudice (meaning that the plaintiff can't refile the suit), insurers have won 76% of the time. In several more cases, the court has decreed a narrower dismissal. In only 8% of cases has the insurer's motion to dismiss been denied.

This pattern holds whether or not the insurance policy in question contains an express exclusion for harm caused by viruses. Plaintiffs have done somewhat better in state courts, but some 70% of claims have been filed in, or "removed" to, federal court. (Why any plaintiff would prefer federal court is unclear, given that state courts have long been friendlier.)

The easiest cases to dismiss have been those where the policy excludes coverage for closures caused by viruses. The business owners nevertheless argue that the state's emergency mandates, not the novel coronavirus itself, forced the business to shut-

down. That argument keeps losing. As one federal judge put the point in mid-March, if the shutdown orders stemmed from the virus, the virus was "the predominant cause that produced the loss."

Even when the policy includes no virus exclusion the suits tend to be dismissed, because courts adhere to the traditional interpretation that business interruption insurance covers losses of income only when there has been physical damage — such as from fire — but not when the premises remain unharmed.

Why then so many lawsuits? Since the 1980s, legal scholars have generally accepted that in a world of perfect information, few if any civil cases would arise, because everyone would be able to predict the winner. Thus plaintiffs would file few lawsuits, and those they did bring would be settled.

But the theory doesn't always work. Why not? One answer, known as the divergent expectations model, predicts that early plaintiffs might file cases optimistically, but if they lose

more often than they win, later parties who could sue on the same issue choose not to waste the resources. The University of Pennsylvania Law School data tell us that this is exactly what has occurred with business interruption suits.

Filings peaked in late April of 2020, remained high through early summer, then tailed off rapidly. Volume during the last week of February was about one-fifth of the level at the height of the pandemic.

This is consistent with the divergent expectations model. Potential plaintiffs now have more information: They know their odds of victory are slim.

I'm not unsympathetic to business owners whose losses will go uncompensated, but the results were predictable. Nobody truly imagines that insurers intended to cover pandemic losses.

True, if it were possible to circumvent these obstacles, a private market in pandemic insurance would be welcome. Insurance has become, in the words of the sociologist Carol Heimer,

"one of the main regulatory institutions of contemporary societies." We tend to think of insurance as promoting moral hazard, but recent literature suggests that by providing incentives to take precautions, insurance can actually minimize risk and enhance enterprise value.

So, let's see: We have business income losses due to government-ordered shutdowns, and nobody's to foot the bill unless the industry in question has powerful friends in politics. Lawsuits are useless because insurance policies don't offer coverage, and there's not going to be a public option anytime soon.

Is the answer just "Life is tough"? Let's hope not. In a perfect world, businesses would direct their lawsuits against the entity that caused the losses — in this case, arguably the government. Alas, those lawsuits would likely be barred by sovereign immunity. That's too bad. I'd dearly love to see the government's claim of "necessity" fully ventilated in court.

Stephen Carter is a professor of law at Yale University.