EDITORIALS & OPINIONS

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Pass HB 3103 to help the river

House Bill 3103 has hit a dam, and that could be bad for the Deschutes River.

The problem with the river is that it looks great as it moves through Bend. Upstream? Well, upstream flows can get so low that fish die and the Oregon spotted frog is struggling to hang on.

HB 3103 would create more flexibility in how stored water can be used. That flexibility of fluidity could help the river upstream.

Think about Wickiup Reservoir. All the water in that reservoir — as much as there is, at least — is officially designated for use by North Unit Irrigation District near Madras.

If the goal is to best use the system of water storage and water rights in the basin to best meet the water needs of the basin, limits on use like that can get in the way. Before you can remove those limits and move a drop, there are problems. There's disagreement about how water should be used. Some people want more for fish and frogs. Some want to take water rights away from the people who own them.

HB 3103 is a baby step. The Oregon Department of Justice said that, with some exceptions, Oregon's Water Resources Department doesn't have the authority to change storage rights. HB 3103 would allow a change for the use of water. So if the desire was there, you could allow release of water from Wickiup to help improve flows in the Upper Deschutes to improve the health of the river.

Many groups have testified in favor of the bill, particularly as it has been slightly amended. Central Oregon LandWatch testified in favor of the original bill. WaterWatch of Oregon, Trout Unlimited and some cities in Oregon have supported the bill as amended.

The Oregon Farm Bureau, which represents some 6,700 families, opposes it.

To begin with, the Farm Bureau is skeptical that the Oregon Water Resources Department no longer has the authority to change storage rights. The Farm Bureau also wants other issues resolved, such as the ability to move the location of water storage and move a diversion point. The Farm Bureau's worry is that those issues will continue to go unresolved if they are not linked to resolving change in the use of the water.

That is a legitimate concern. It's simply easier to get agreement on changing use than it is on moving where water is stored or moving a diversion point. We're going to oversimplify it: Environmental interests see the benefit in changing the use of water because it enables them to achieve environmental goals — more water for fish and frogs. Changing where water is stored or moving a diversion point can be seen as reinforcing the status quo of Oregon's water system, which environmental groups are not so interested in.

Does House Bill 3103 achieve everything it could or everything it should? No. The priority for the Oregon Legislature, though, should be to improve the state's water system. HB 3103 does that for the Deschutes River and other places, including the Willamette River. Waiting around for perfect agreement on the perfect bill will do nobody any good. Pass HB 3103.

The three C's drive vaccine hesitancy

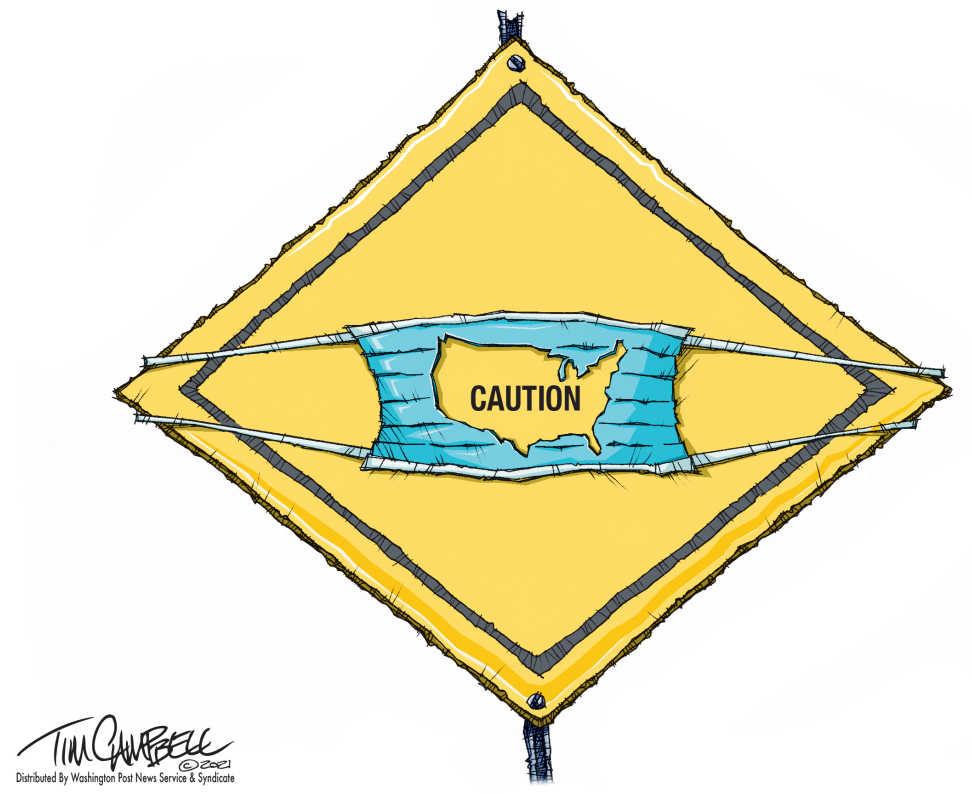
Convincing people to get their COVID-19 vaccination can be a mix of art and science. Deschutes County did a survey in March to try to unlock some answers.

The findings weren't that surprising. The basic assumption about any vaccine hesitancy are the three C's: confidence, complacency and convenience. Confidence refers to vaccine effectiveness and safety. Complacency is the assumption that the risk is low or other things are just more important. And convenience is about how it takes time, effort and a jab in the arm to get vaccinated. The survey was conducted in early March, and 390 people were interviewed.

Among those who said they were unlikely to be vaccinated, long-term effects of the vaccine were a chief concern, followed by the government's involvement in ensuring the vaccines were safe and the possibility of allergic reactions. People clearly preferred the idea of getting vaccinated in a more intimate setting such as a doctor's office, rather than a mass vaccination clinic. Online sign-ups for vaccinations were seen as a barrier for older populations and for Latinos. Most people said they intend to comply with mask mandates even after they were vaccinated.

You have probably already made up your mind if you are going to get vaccinated or not. If you are leaning no, we respect your choice. Just think about if you should do it — not necessarily for yourself — but to help protect your friends and those you love.

Editorials reflect the views of The Bulletin's editorial board, Publisher Heidi Wright, Editor Gerry O'Brien and Editorial Page Editor Richard Coe. They are written by Richard Coe.



Antitrust law is the key to making the NCAA pay student athletes

BY SANDEEP VAHEESAN
Special to The Washington Post

A day after Gonzaga and UCLA won their Elite Eight contests and joined Baylor and Houston in the Final Four of men's college basketball, the Supreme Court heard oral argument in National Collegiate Athletic Association v. Alston, a case that could remake college basketball and football in the United States. In Alston, a group of basketball players and football players challenged, on antitrust grounds, the NCAA's rules prohibiting pay to players and won a partial victory, with the district and appellate courts striking down the NCAA's ban on payments tied to education. As the players successfully argued, the NCAA's caps on player compensation restrain competition among colleges for athletes' talents.

The NCAA now asks the high court to reverse the judgment in favor of the players and grant it an effective antitrust immunity. (The Open Markets Institute, where I serve as legal director, filed an amicus brief in support of the players.) At oral argument, several justices expressed skepticism that colleges, operating through the NCAA, should have the right to collusively cap compensation to the athletes who draw millions of fans, under the guise of "amateurism." They were right to do so. The NCAA is, in effect, an employer cartel that deprives the predominantly Black basketball and football players of a fair share of the revenue they generate.

The NCAA is a peculiar institution. Many of its Division I colleges and universities run highly lucrative basketball and football programs. The NCAA and the major conferences produce tens of billions of dollars in annual revenue from the two sports. Member colleges, however, share only a small portion of this revenue with the players because they agree not to pay the players a wage and cap their compensation at a scholarship covering tuition, room and board and ancillary expenses of college attendance. Because not all players receive full scholarships, some have reported not having enough money to obtain food and other necessities. Whereas professional basketball and football players earn about 50% of league revenue in salaries and benefits, their college counterparts receive less than 20% of their sports' revenue in the form of scholarships. Where do the remaining 80% of revenue go? In part to coaches like Alabama's Nick Saban and Kentucky's John Calipari, who each make nearly $10 million dollars a year.

Ordinarily, the NCAA's conduct would be clearly illegal under the antitrust laws as an association of employers collusively holding down the compensation of its workers. Until recently, however, the NCAA successfully used a 1984 Supreme Court case to defend its wage-fixing. In NCAA v. Board of Regents of the University of Oklahoma, the court struck down the NCAA's rules that prevented top football programs from entering into separate television broadcasting contracts. In passing, it also praised the social value of amateur athletics. The NCAA has since persuaded several courts that this throwaway line in a decision invalidating the NCAA's restraints on TV contracts protected its restrictions on compensation for players.

Despite the NCAA's expansive interpretation of Board of Regents and earlier victories in litigation, the players in Alston challenged the NCAA's rules against paying players and won at trial. They successfully defended this victory on appeal.

The courts, however, denied the players justice in full measure. They permitted the NCAA to introduce justifications of its restraints on player compensation. While rejecting most of the NCAA's rationalizations, the lower courts did credit one of them: According to the NCAA, a nontrivial segment of college sports fans value watching college sports because the players do not receive competitive compensation in the way professional athletes do. In other words, capping player compensation is a way in which the NCAA differentiates its basketball and football from the NBA, the NFL, and the WNBA. Because of this consumer "benefit," the courts only invalidated the NCAA's restraints limiting compensation to "education related payments." The courts kept the NCAA's general ban on wages and salaries for players intact.

In research published in 2015, most Black sports fans supported paying players, while only about 20% of white fans favored this change. Notably, white viewers who expressed the strongest anti-Black racism were the most opposed to colleges paying players.

There's reason, though, to hope that the majority on the Supreme Court will ultimately find that the lower courts did not go far enough. Our antitrust laws protect workers and other producers, just as much as they protect consumers. Employers like the NCAA have no right to hurt their workers in order to supposedly cater to viewer preferences.

Sandeep Vaheesan is the legal director at the Open Markets Institute, an anti-monopoly research and advocacy group.

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We welcome your letters. Letters should be limited to one issue, contain no more than 250 words and include the writer's signature, phone number and address for verification. We edit letters for brevity, grammar, taste and legal reasons. We reject poetry, personal attacks, form letters, letters submitted elsewhere and those appropriate for other sections of The Bulletin. Writers are limited to one letter or guest column every 30 days.

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Be careful when cheering Dominion lawsuit against Fox News

BY MARGARET SULLIVAN
The Washington Post

When Sidney Powell and Rudy Giuliani became fixtures on right-wing media with their outlandish election conspiracy theories, their disinformation was more than just false. It was harmful.

Repeated appearances by those former President Donald Trump allies on Fox News, Newsmax and One America News helped convince millions of Americans that the 2020 presidential election was rigged. Some who ingested the lies ended up storming the U.S. Capitol, where lives were lost or ruined on Jan. 6. Even now, a substantial chunk of the country refuses to accept the Biden presidency as legitimate.

Given that harm, it's easy to understand why defenders of democracy might be cheering the billion-dollar lawsuits filed against Fox by two voting-technology companies, Smartmatic and Dominion Voting Systems.

The two companies are seeking damages of more than $4 billion from Fox, claiming that their corporate reputations and employees' well-being were deeply harmed by lies that their equipment was used to manipulate the vote.

In some ways, it's a relief to see someone hold Fox to account, especially since nothing else seems able to restrain right-wing media outlets from spreading disinformation. Fox, calling the suits meritless, has said it is proud of its election coverage.

The suits (along with signals that more are coming) have had an apparent effect: Fox Business abruptly ended Lou Dobbs's show, without saying why; unusual corrective segments have aired; the election-lie story has simmered down somewhat.

For those who care about the reality-based news media, there's a down side. Nobody is thinking about that more intently than the people at a small investigative California newsroom called Reveal, run by the nonprofit Center for Investigative Reporting.

"These defamation suits can decimate the legitimate press," said D. Victoria Baranetsky, general counsel at Reveal.

Reveal was hit by a defamation case after its two-year investigation tied a charity, Planet Aid, to a cult and raised serious questions about Planet Aid's spending. It's the kind of watchdog work that investigative journalism is supposed to do.

Planet Aid sued for $25 million — twice the annual budget of the Center for Investigative Reporting. A judge threw the case against Reveal out of court last week, but it took four years and millions of dollars. And, in its wake, the defamation-lawsuit playbook remains. It's an existential threat for some media companies.

"Other news organizations might look at this lawsuit and decide that reporting on powerful or deep-pocketed organizations isn't worth the risk," Baranetsky wrote in an op-ed in the Columbia Journalism Review, co-written with Alexandra Gutierrez, a First Amendment fellow at the Center for Investigative Reporting.

It's happening in an atmosphere in which long-standing media rights are under siege in other troubling ways.

Just weeks ago, federal appeals court Judge Laurence Silberman sent chills down the spines of free-press advocates when he issued a harsh dissenting opinion in a defamation case decided by the D.C. Circuit.

Silberman, one of the most prominent and influential conservative judges in the country, attacked Times v. Sullivan — the 1964 case that solidified press freedom in the United States by establishing a high standard for public officials to sue over libel and defamation. In it, the Supreme Court said that even if a news report about a public figure was false, it couldn't be the basis for a libel judgment unless it showed "reckless disregard" for the truth.

The ruling reflects the principle that news organizations, staffed by fallible human beings, will sometimes get things wrong and must be allowed to do their jobs with some protections from punishment.

These long-standing protections are what Trump railed against when he promised, years ago, to "open up" the libel laws and get money from media companies for stories he didn't like.

It would be comforting to think that defamation suits won't ward off good journalism while seeking to punish the spreading of irresponsible lies. Comforting — but far from a sure thing.

Margaret Sullivan is The Washington Post's media columnist.