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Opinion: The consequences of an activist court

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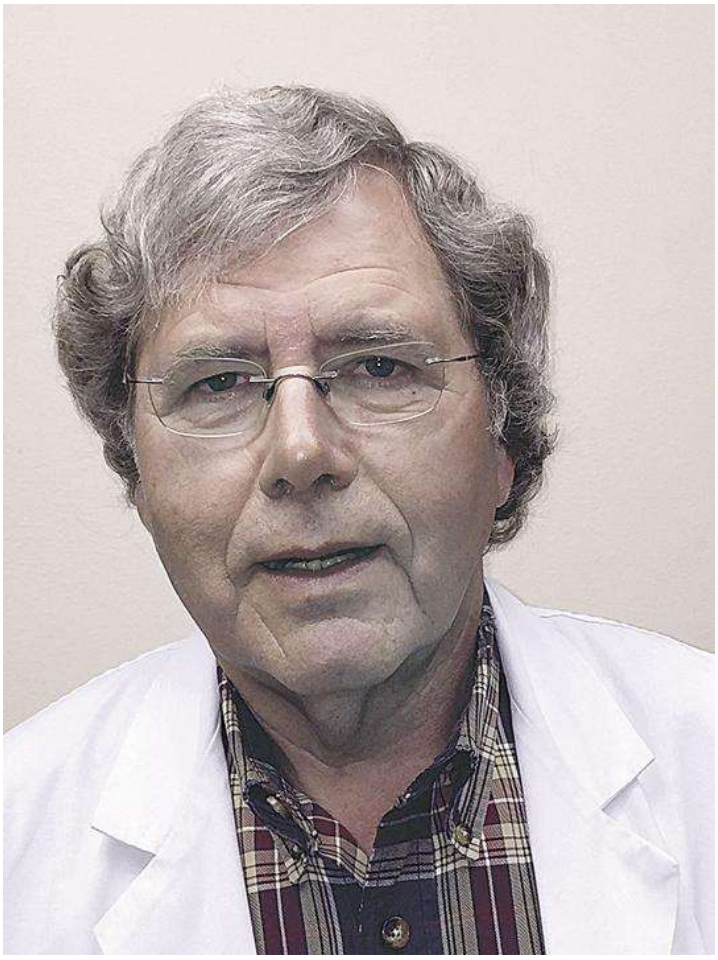
We will suffer the consequences of Trump's federal court and Supreme Court appointees for a long, long time.

The litmus test for Trump appointees when he succeeded in packing the federal bench involved two areas — ending abortion rights and dismantling the "administrative state." Shockingly, the leaked draft opinion overturning Roe v. Wade seems to confirm the end of women's right to choose, and the consequences for Idaho will be devastating.



Not only will abortion be entirely illegal in Idaho, but our Legislature's copycat of the Texas ban will also make any health care provider subject to a felony conviction, with a two- to five-year sentence for performing an abortion, a remarkable intrusion on a woman's right to choose. That felony may cross state lines, such that a provider in Oregon, for instance, may be subject to prosecution in Idaho under this statute. Even if that doesn't hold, poorer women without the means to travel will not have access to legal, safe abortions, and we will see a rise in maternal deaths, as before Roe v. Wade and Casey.

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In addition, Idaho lawmakers, emboldened by the leaked Supreme Court decision, are now contemplating restrictions on contraception. House State Affairs Committee Chairman Brent Crane has indicated he will hold hearings on legislation banning emergency contraception and termination pills prescribed up to 10 weeks of pregnancy, further restricting women's options.

He also stated he wasn't certain whether IUDs ought to be banned, then seemed to back away from that statement. Crane stated he'd heard safety concerns and "complications" caused by morning-after pills and Plan B (which medically abort early pregnancy) despite years of safe use clearly demonstrated in the medical literature. With remarkable arrogance, he is suggesting substituting his uneducated opinion for that of medical professionals.

If Idaho lawmakers prevail in banning some methods of contraception, women will die — particularly those with limited financial means to travel. White old men will have their way with telling women what they can and cannot do with their bodies, invading their right to privacy and dictating morals in what ought to be a private matter between a woman and her physician.

But the other area the Trump appointees advocate, with serious consequence, is in the area of administrative regulation: prohibiting federal agencies from adequately interpreting statutes relating to public health and welfare, all part of the far-right effort to dismantle the federal government. Beginning with Neil Gorsuch, conservative judges openly advocated for abandoning the "chevron deference," based on a unanimous 1984 Supreme Court decision that said judges must defer to reasonable interpretations of ambiguous statutes by federal agencies.

As a result, a Texas federal judge recently overturned the Centers for Disease Control and Prevention's mask mandate for public transportation. In the Health Freedom Defense Fund Inc. v. Biden, Judge Kathryn Kimball Mizelle declared the CDC had no authority under the 1944 Public Health Services Act to issue the mask mandate. In fact,

the CDC had only temporarily extended the mask mandate and in all probability would have soon ended the mandate. But the larger issue surrounds the ability of the CDC, and other federal agencies, to institute public health measures when necessary to save lives.

Interestingly, this “defense fund” advocacy group was founded by Hailey, Idaho resident Leslie Manookian, who has also sued the city of Hailey and Ada County for their mask mandates. The group chose a plaintiff in Texas specifically, since Judge Mizelle was known to be vehemently opposed to any federal regulatory rules, including public health regulations. Mizelle, who was appointed by Trump after he lost the election, was opposed by the American Bar Association as unqualified, but nonetheless appointed.

Nevertheless, Mizelle ruled that the PHSA, despite a laundry list of restrictions the federal agencies could institute, including “inspection, fumigation, disinfection, sanitation, pest extermination and destruction” and “other measures” excluded a mask mandate. Mizelle concluded that sanitation didn’t include masking and that somehow “other measures” didn’t apply — a decision clearly reaching for a rationale to invoke a predetermined judicial philosophy.

Mizelle even admitted the value of the mandate, stating “the court accepts the CDC’s policy determination that requiring masks will limit COVID-19 transmission and will decrease the serious illness and death that COVID-19 occasions … but that finding by itself is not sufficient to establish good cause.”

Just imagine if we had an Ebola outbreak in this country and this ruling prevails and the CDC is powerless to intervene, even though massive deaths could occur, since “that finding by itself is not sufficient to establish a good cause.” Again, remarkable arrogance in substituting this judge’s unschooled opinion for that of the professionals at the CDC, who are charged — by law — with protecting public health.

Both judicial philosophies — opposition to reproductive rights and the attempts to dismantle the federal government’s regulatory ability — will have far-reaching and long-lasting deleterious effects on the public health and welfare — the most basic

responsibility of the federal government. Frighteningly, one can only imagine what other rights these appointees could restrict next, such as the right to marry whomever one wishes, and what other risks to public health the courts could next inflict.

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