Opinion

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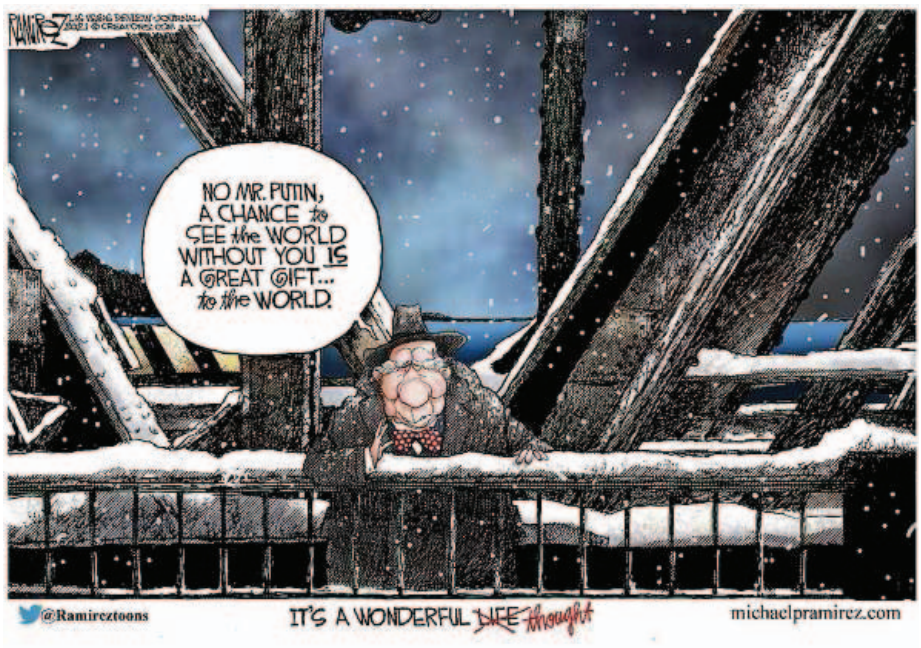

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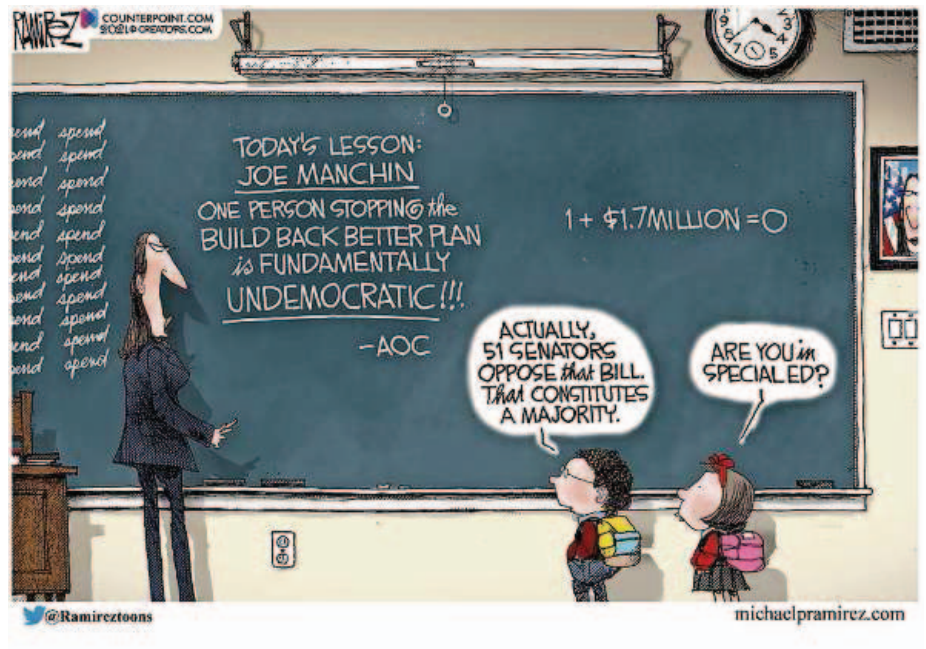

Build Back Better is a child health bill in disguise

JACQUELYN MARTIN | Associated Press

With the U.S. Capitol dome in the background, a sign that reads "Build Back Better" is displayed before a news conference.

SHETAL SHAH

The recent setback to the Senate's consideration of President Joe Biden's Build Back Better plan is a major loss for America's children. As pediatricians, we see the social spending proposal for what it really is: a child health bill. While reluctance to support the measure imperils the overall plan, parents, grandparents, teachers and those who care about children's well-being should hope the individual and uncontroversial, child-friendly aspects of the bill receive strong legislative support.

Lacking health insurance is a major reason children become sicker than necessary. Countless times, I've seen children come to the emergency room simply because they are uninsured and waited until a small cut became a massive, infected wound or an annoying cough became a major asthma attack now requiring intensive care. The Build Back Better plan would make the Children's Health Insurance Program (CHIP) permanent — preventing 9.6 million kids from losing health coverage and eliminating the need for Congress to haggle periodically over reauthorizing a critical child health insurance program.

The plan also continues coverage for children in Medicaid and CHIP for a full year, so children can see a doctor through the first 12 months of life, a time when children develop rapidly and also receive most standard vaccinations, along with preventive health tests like lead screening. This would be especially helpful in Florida, which has roughly 330,000 uninsured children.

It also means parents will not go to a pharmacy and be denied lifesaving medicine like insulin for their first year because they didn't navigate the tortuous, bureaucratic process of reauthorizing their children's health insurance. If you think that's easy, I have personally helped patients through the process, and it takes a doctor, care coordinator and social worker hours on the phone to simply renew insurance for which our patients were eligible.

The proposal would also fix loopholes in health insurance for new mothers by extending Medicaid coverage to low-income women for a year after birth, instead of the usual 60 days. Since this cost is shared with states, this extension is an inexpensive way to increase rates of breastfeeding — which benefits mothers and babies — reduce maternal smoking and provide access to contraception.

It will also save mothers' lives. Among developed countries, the United States has the highest rates of maternal mortality. New moms in the United States die at double the rate of French moms and triple the rate of Australian mothers. If enacted, this fix to Medicaid would reduce Florida's rate of maternal death from 22 to 15 per 100,000.

Other bipartisan programs include historic investments in pre-K, child care and school nutrition programs. Federal and state support for Pre-K programs would provide financial relief for millions of families, allow both parents to continue to participate in the workforce, and provide the early education pivotal to later school success. The brain achieves 90 percent of its growth in the first six years, and early education improves comprehension, memory, emotional regulation, information processing and language.

For more than a decade, less than half of children born into low-income families had access to Pre-K, creating a generation of educationally disadvantaged early learners. Investments in early child education yield two to 10 times the cost savings through adulthood. The pre-term infants we care for all have underdeveloped brains and would all benefit from Pre-K, but for too many of my babies' parents, it's unaffordable, compounding the handicaps these infants will face across child and early adulthood.

Growing childhood brains takes nutrition and energy. Children simply cannot learn if they are hungry. The pandemic has sharpened the national focus on child food insecurity, and aspects of the Build Back Better plan provide long-sought-after bolsters to school nutrition programs. Pediatricians know school meal programs, like free breakfast and lunch, are a lifeline for low-income students and families. But every summer, we look out for "summer hunger" cause by disconnecting these kids from those meals. Enhancing grocery benefits for families who qualify for these meals would prevent kids from going hungry from June to September. The bill also allows states to give free meals to all students in high-risk areas, reducing the stigma of free school meals and unburdening school districts of the need of qualifying each individual student and allowing them to spend those resources directly on education.

While other key supports for children such as tax credits and paid family leave are hotly deliberated, we should not miss the bipartisan opportunities to make historic leaps for children. These programs should not be collateral damage to contested debates on these policies.

Congress has asked for more time to debate the overall measure, but the kids cannot wait.

Dr. Shetal Shah is chair of the national Pediatric Policy Council.

Our courts are at risk of losing their legitimacy

MICHAEL MCAULIFFE

As the year closes, American leaders wrestle each other in unrelenting contests for power submerged in ideology, demagoguery and self-interest. No one side can win in any lasting sense in a republic, but that doesn't stop the combatants from fighting to the death — aiming for the demise of ideas and at times, it seems, of actual people. Our era in America is as histrionic as any Marvel film, but no guarantee exists that good eventually prevails.

In a rule-of-law nation, issues — minor or major — that arise from these battles often end up in the courts for ultimate resolution. The courts can play a critical stabilizing role as the country moves in fits and starts along the timeline of history. Courts replace violence. That function, however, depends on the court's credibility as a true referee and arbiter, not an ordinary soldier on the field.

This year has been a study in contrasts for the courts — much to be confident in, but too many judicial acts beneath their legal veneers appear to be political in nature. First, what was inspiring.

The trial judges in the criminal cases involving the deaths of Daunte Wright, Ahmaud Arbery and George Floyd — all receiving intense national coverage and scrutiny — provided examples of calm judicial guidance throughout the proceedings. These judges acted with professional diligence so that all parties had a fair hearing in what were highly charged matters. The resulting verdicts should be viewed as credible, regardless of whether they are considered correct by all.

The exception in the criminal trial courts might be the Kyle Rittenhouse trial in Wisconsin. In that case, the presiding judge repeatedly and publicly ruminated about the media coverage of his rulings and behavior. The judge, while very experienced, seemed notably unaware that he was himself being judged by a nation that needed the focus to remain on the sensitive issues being decided by the jury.

On the civil side, trial courts overwhelmingly responded with transparency and timeliness to the onslaught of lawsuits filed contesting the presidential election. More than 60 suits in state and federal courts requested relief ranging from rejecting particular ballots to declaring losers to be winners based on specious claims of fraud. Importantly, one can make the statement that there was no widespread election fraud with extra confidence because of the actions of trial court judges who, on the record, allowed the parties to present evidence they had (or didn't have) based on objective law and rendered their decisions in public.

Unfortunately, the most troubling portrait of the judiciary over the past year comes from the U.S. Supreme Court, our highest court. During oral argument in the challenge to the Mississippi law outlawing abortions after 15 weeks, the justices appeared to engage in a culture war in microcosm. A lay observer could well think the legal issues were a mere proxy by which the justices served up what was expected of them by their constituencies, whether that might be senators who conferred the position, a president who made the nomination, an advocacy group or some other source of support. The debate didn't appear to be about deference for long-standing precedent articulating a constitutional right. Further, the court's energetic use of the "shadow docket" (which does not employ the usual process of filings, advocacy and opinions) in cases including the litigation over the Texas statute that arms private litigants with the ability to punish abortion providers and those seeking abortions undermines any eventual decision the court issues.

Courts are at ongoing risk of devolving into factionalized forums that serve the loudest advocates with the most resources, or the judge's own personal views. The current political and cultural fights are testing the justice system's role as the best and most legitimate forum for resolving disputes (aside from free and fair elections). The courts first must provide due process to all parties who enter the halls of justice while not allowing abuses of the system to stall progress or preclude finality (election results). All else flows from that fundamental principle.

The upcoming year may answer the question whether we are a democracy in terminal decline. The courts will play a decisive role in that determination.

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Two cases that show the true meaning of the First Amendment

RUTH MARCUS

We need to talk a bit about the true meaning of the First Amendment.

Two otherwise unconnected episodes last week bring freedom of speech to the forefront. First, an Oregon man, Jared Schmeck, who insulted President Joe Biden on a Christmas call with the president and then complained that he was being attacked for exercising "my God-given right to express my frustrations in a joking manner."

Next, a New York state judge, Charles D. Wood, who not only kept in place his blatantly unlawful prior restraint against *The New York Times* for publishing documents obtained from Project Veritas but ordered the newspaper to turn over physical copies and destroy any electronic versions of the material.

Let me exercise my Constitution-given right to express my frustrations to suggest that neither individual understands the first thing about the First Amendment.

Schmeck had every legal right, as he says, to be rude to the president while he and the first lady were answering calls to NORAD's Santa tracking center. Schmeck ended the call with "Merry Christmas and 'Let's Go Brandon' " — then insisted he meant "no disrespect" by the obviously disrespectful phrase, whose meaning no longer requires elucidation.

Here we get to the meaning of the First Amendment. It means that here, unlike in authoritarian countries, Schmeck not only has the right to say what he wants about the president, he also can say it directly to him, without fear of being jailed, being fined or being punished by the government in any way.

But it is also fair game for others to criticize Schmeck for what he said. "I am being attacked for utilizing my freedom of speech," Schmeck complained, utilizing his freedom of speech.

Wrong. He is being attacked for being out of line, and while incivility is constitutionally protected, it is not immune from public criticism. "The remedy to be applied is more speech, not enforced silence," Justice Louis Brandeis wrote in a famous dissent.

Enforced silence brings us to the even more dangerous — and even more ignorant — event of the past week: Wood's order against the *Times*. The law here could not be clearer: Nothing is more repugnant to the First Amendment than telling a news organization what it can and can't publish.

The Supreme Court underscored that principle in the 1971 Pentagon Papers case, *New York Times Co. v. United States*, in which the government sought to prevent the *Times* and *The Washington Post* from printing classified documents. "These disclosures may have a serious impact," Justice Hugo Black wrote in rejecting that effort. "But that is no basis for sanctioning a previous restraint on the press."

Now comes Justice Wood, and his ruling came in a libel suit filed against the *Times* by Project Veritas, the conservative group that runs sting operations to expose alleged liberal bias in various institutions, including the mainstream news media.

The opinion is jaw-dropping in its constitutional illiteracy. The essence of the Supreme Court's teachings on the dangers of prior restraint is that it is not up to judges to determine in advance what is newsworthy. Schmeck at least has the defense of not having attended law school. Let us hope that a higher court will soon educate Wood in the meaning of the document he is sworn to uphold.