



A VOICE FOR CHOICE  
ADVOCACY

## “Vaccine Passports”

A fast track to more inequity, racial disparity and lack of access

April 15, 2021

Dear Governor Newsom, California State Senators, Assembly Members, and County Boards of Supervisors,

While many federal and state elected officials have stated there are no plans to mandate “vaccine passports,” societal mandates are primed to become a reality in California. For example, after April 15<sup>th</sup>, 2021, per CDPH, larger events are allowed to operate only if all attendees are either vaccinated or provide a negative antigen test to COVID-19<sup>1</sup>. While this may be a positive action when seen through the lens of public health, such requirements are the beginning of a very slippery slope, which, if implemented, will land California in a place primed for discrimination, inequality, corruption and a violation of the basic tenants of the US and California Constitutions.

A Voice for Choice Advocacy asks you to **BAN THE USE OF ANY AND ALL “VACCINE PASSPORTS,”** or any similar proof of immunity/lack of disease, in both public and private sectors.

“Vaccine passports,” also referred to as “digital passports,” “immunity passports,” “the green pass,” or “vaccine administration applications,” facilitate the requirement to show proof of vaccination, proof of a negative antigen test or proof of positive antibody titers, to access social, civic and economic activities, such as going to a store or a concert, traveling by train, plane or cruise ship, or entering the workplace. While on an extremely narrowly tailored basis, proof of immunity/lack of disease may be appropriate, on a large scale basis, it poses a significant burden on society, including potential:

- Civil rights discrimination due to:
    - Racial inequities
    - Economic disparities
    - Religious or conscious beliefs
  - Violation of the American Disabilities Act
  - Violation the Constitutional Freedom of Movement clause
  - Medical privacy and security issues
  - Corruption, forgery and implicit bias
- (More detailed explanation of each can be found in the Appendix)

“Vaccine passports” would risk enshrining such discrimination and undermining the true effort to reduce the spread of COVID, which is why the World Health Organization<sup>2</sup> and the American Civil Liberties Union<sup>3</sup> have condemned the implementation and use of “vaccine passports” or similar mechanisms. The International Health Regulations (2005) (IHR) reads that countries/states can “implement health measures that ‘achieve the same or greater level of health protection than WHO recommendations’”; however, such measures must have a health rationale, be non-discriminatory, consider the human rights of travellers, and not be more restrictive of international traffic than reasonably available alternatives.” “Vaccine passports,” by definition, cannot adhere to these regulations.

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<sup>1</sup> [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Dimmer-Framework-September\\_2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Dimmer-Framework-September_2020.pdf)

<sup>2</sup> <https://www.reuters.com/article/us-health-coronavirus-who-vaccines/who-does-not-back-vaccination-passports-for-now-spokeswoman-idUSKBN2BT158>

<sup>3</sup> <https://www.aclu.org/news/privacy-technology/coronavirus-immunity-passports-are-not-the-answer/>



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“Vaccine passports” also make scientific assumptions with respect to vaccine induced immunity, natural immunity and antigen testing, rendering their purpose potentially null and void:

- There is no conclusive evidence that vaccination stops transmission of SARS-CoV-2
- There is no evidence how long either vaccine immunity or natural immunity may last
- There is no evidence that vaccines will not cause viral mutation and type replacement
- There are serious issues with high PCR and rapid antigen test cycle thresholds resulting in the high false positive rates

“Vaccine passports” would set a dangerous precedent around equity, medical privacy and freedom of movement in the United States of America and California. To require or even allow businesses to enforce “vaccine passports” of any kind is akin to segregation. It infringes on human rights to travel, assemble, privacy, and free and informed consent.

When and where will it stop? Look to China, where a “Social Credit System” establishes a unified record system which tracks and evaluates each person and business based on their trustworthiness and merit, as deemed by the government and monitored in real-time. A poor social credit score effects travel prospects, employment, access to finance, and the ability to enter into contracts. While this may seem far-fetched in the United States, a vaccine passport requirement would set the ground work for a system where anyone with a smartphone could be easily tracked through a vaccine passport type app under the NSA’s PRISM surveillance program, and have their access to society “turned off.” The potential abuse of this system is too great to risk without commensurate benefits.

Aside from possible future variants which may evade COVID vaccines, the current emergency use authorized vaccines have been shown to be effective in preventing serious illness among the vaccinated. Similarly, those who have had COVID naturally also seem to be protected from reinfection. Those who are unvaccinated and have not knowingly had COVID pose little to no risk to either of these groups. Those who are vaccinated and those who remain unvaccinated, for whatever reason, should be allowed to assess the risk and make an informed choice for themselves with respect to resuming activities, rather than be required to provide proof of immunity or negative infection to engage in society.

California does not need to make inequities worse by creating a hierarchical, classist system which at best would discriminate and prevent equal access, and at worst would create a corrupt, social system.

**A Voice for Choice Advocacy thanks you for safeguarding California’s equity, access and racial disparity by ensuring “vaccine passports” or any similar proof of immunity/lack of disease are NOT required for any purpose, by any public or private entity in California.**

Thank you for your time and consideration. Please feel free to contact me if you have any questions.

Sincerely,

*Christina Hildebrand*

Christina Hildebrand,

President, A Voice for Choice Advocacy, Inc.

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Giving issues a voice, A Voice for Choice Advocacy advocates for people’s rights to be fully informed about the composition, quality, and short- and long-term health effects of all products that go into people’s bodies, such as food, water, air, pharmaceuticals and cosmetics.



## Appendix

### How Vaccine Passports lead to...

#### Civil rights discrimination due to racial inequities and economic disparities

In California, “vaccine passports” will exacerbate already existing health inequities giving minorities less access to the healthcare system. This notion was supported last week in the Centers for Disease Control and Prevention released data<sup>4</sup> showing only 16% of vaccinations were given to residents of counties with low rates of poverty and unemployment. While California is striving for more equitable vaccine distribution, by prioritizing up to 40% of vaccinations for low-income communities, California is still close to the bottom when it comes to actual vaccine distribution among vulnerable communities<sup>5</sup>. Black communities, in general, are also more hesitant to get vaccinated, due to their history with medical experimentation. This does not mean they will not get vaccinated eventually, but it means they are more likely to take a “wait and see” approach. Hispanic communities have been disproportionately infected with COVID-19, thereby having greater natural immunity, but have lower than average vaccination rates. Lower income communities, regardless of ethnicity, are also less likely to have access to free COVID testing, smartphones and internet access – all required for the implementation of digital “vaccine passports”.

#### Civil rights discrimination due to religious or conscious beliefs

Per the 1964 Civil Rights act, the U.S. Equal Employment Opportunity Commission (EEOC), which enforces [Federal laws prohibiting employment discrimination](#), states employees are protected from employment discrimination when it involves religious discrimination:

“Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs. (<https://www.eeoc.gov/religious-discrimination>)”

“Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act. Courts have defined “undue hardship” under [Title VII](#) as having more than a *de minimis* cost or burden on the employer. EEOC guidance explains that because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief.” (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>)

This is underscored by an article in the National Law Review (July 28, 2020)

(<https://www.natlawreview.com/article/vaccinate-or-terminate-mandatory-vaccination-workplace-policy>), which states:

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<sup>4</sup> [https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e1.htm?s\\_cid=mm7012e1\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e1.htm?s_cid=mm7012e1_w)

<sup>5</sup> <https://stacks.cdc.gov/view/cdc/104111>



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“The EEOC first tackled mandatory vaccination in 2009 in response to the H1N1 (“swine flu”) pandemic and incorporated into its guidance established law concerning medical testing and religious objections. In its publication [Pandemic Preparedness for the Workplace](#), the EEOC provided guidance regarding disability-related medical inquiries and medical examinations that might be relevant in a pandemic. As part of the 2009 guidance, the EEOC unequivocally concluded that both the ADA and Title VII prohibited an employer from compelling its employees to be vaccinated...regardless of their medical condition or religious beliefs – even during a pandemic.”

While this is specific to employment, the same tenants apply to persons with religious beliefs wanting to partake freely in society. For those with religious beliefs barring them from getting vaccinated, “vaccine passports” are a violation of the civil rights act and the first amendment right to religious exemption, which are without legal precedence. Denying persons the ability to honor their religious convictions goes against the founding principles of the US Constitution. There is no immediate threat of a severe adverse reaction to a contagious disease that justifies stripping these persons of their freedom of religion.

#### **Violation of the American Disabilities Act**

The Americans with Disabilities Act protects those who “have a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities, and those perceived by others as having such an impairment, from discrimination in the workplace.” While courts have never considered lack of immunity to a disease as such an impairment, the legislative history of the ADA is broad and would allow such an interpretation. It would therefore be considered discrimination if a person’s employment was based on whether or not they have immunity.

While the Equal Employment Opportunity Commission, the agency that enforces workplace protections, however, has classified COVID-19 as a “direct threat” to the workplace. So, despite ADA protections, employers can test employees for infection before letting them return to work. And someone who tests positive for COVID-19 could be excluded from the workplace until they recover.

While employers can require testing and exclude those who test positive from the workplace while they are contagious, they cannot require employees to show they are immune or require antibody testing to COVID-19 in order to work, as this is not considered a direct threat to the workplace. Furthermore, if only people with immunity were allowed to work this would disadvantage those who have not been sick or those without the antibodies to prove it, and so the lack of infection would constitute a disability. The inequality that “vaccine passports” could foster in these situations would be an ADA violation.

#### **Violation the Freedom of Movement clause**

If “vaccine passports” are to be used to monitor California’s incoming or outgoing travelers, they would be violating the United States doctrine of the “right to travel,” which allow US citizens to move freely between states, provides a citizen of one state who is temporarily visiting another state the “Privileges and Immunities” of a citizen of the latter state and the right of a new arrival to a state, who establishes citizenship in that state, to enjoy the same rights and benefits as other state citizens.



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**Medical privacy and security issues**

In order to function, “vaccine passports” require sensitive health information, which creates privacy and security issues with how that data is stored, transferred and received, when the “vaccine passport” is used. Without high security and privacy measures, including decentralization of data storage and deletion of received data, in place the private medical and other data from these “vaccine passports” is vulnerable to hacking and leaks. Furthermore if vaccine exemptions are included in the data, this may reveal further medical information and medical privacy infringement. New York’s Excelsior pass, which was rolled out earlier this month, allows anyone to access other’s medical information with a name, birth date and zipcode.

Depending on who owns the data captured in “vaccine passports”, this data could also be sold and linked to a social credit system, banking information, as well as other biosecurity information. In combination with such information, the premise of “vaccine passports” could be expanded to allow or deny access to all public or private spaces based on a third party’s evaluation of a person’s citizenry.

The data captured from “vaccine passports” also opens up the question of who has access to it and what surveillance measures will be tied to it. For example, will police departments and other government agencies be able to access data showing who was present at an event or in a store at a certain time, and who they were in contact with?

**Corruption, forgery and implicit bias**

For those without access to vaccination, or those who do not want to or cannot be vaccinated for whatever reason, the black market will produce a plethora of fake apps, fake vaccine cards and much more to allow those who “have not” to be able to function in society. This create an even more corrupt society and will defeat the entire purpose of “vaccine passports” rendering them completely ineffective. This is creates an equity issue as only those with means or connections will be able to access forgeries and fake apps.