

CLOVIS CITY COUNCIL MEETING

October 18, 2021

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Flores
Flag Salute led by Councilmember Ashbeck

Roll Call: Present: Councilmembers Ashbeck, Bessinger, Mouanoutoua, Whalen
Mayor Flores

PRESENTATION – 6:02

6:02 – ITEM 1 - PRESENTATION RECOGNIZING PARTICIPANTS OF THE 2021 CHILDREN'S BUSINESS FAIR.

Business Development Manager, Shawn Miller, and Children's Business Fair Host, Mykel Suntrapak, made a presentation and recognized the children participating in the Children's Business Fair at ClovisFest.

6:12 – ITEM 2 - PRESENTATION OF PROCLAMATION DECLARING OCTOBER 2021 AS SUDDEN INFANT DEATH SYNDROME AWARENESS MONTH.

Councilmember Ashbeck presented a proclamation to Dr. Sousa and Dr. Nelson declaring October 2021 as Sudden Infant Death Syndrome Awareness Month.

6:16 – ITEM 2A - PRESENTATION OF PROCLAMATION DECLARING OCTOBER 2021 AS DOMESTIC VIOLENCE AWARENESS MONTH.

Councilmember Whalen presented a proclamation to Marjaree Mason Center representatives Nicole Linder, Tamara Durant, Dr. Rene Ramirez, and Clovis Chief of Police, Curt Fleming, declaring October 2021 as Domestic Violence Awareness Month.

PUBLIC COMMENTS – 6:22

Eric, resident, commented on various issues related to COVID-19 and vaccine mandates.

Joe, resident, commented on various issues related to COVID vaccines.

Fresno County Resident, provided an update on the issue regarding a Woodside development in Clovis where an irrigation pipe was damaged and is in need of repair.

Blanca, resident, commented on various issues related to COVID-19.

Steven Bricker, resident, commented on various issues related to COVID vaccines.

Elin Carlson, resident, commented on various issues related to COVID-19.

Bill Lurch, resident, commented on various issues related to COVID-19.

Resident, commented on various issues related to COVID vaccines for students.

CONSENT CALENDAR – 6:55

Motion by Councilmember Ashbeck, seconded by Councilmember Bessinger, that the items on the Consent Calendar be approved. Motion carried by unanimous vote.

3. Administration - Approved - Minutes from the October 4, 2021
4. Finance – Received and Filed – Investment Report for the Month of June 2021.
5. Finance – Received and Filed – Treasurer’s Report for the Month of June 2021.
6. Finance - Approved - **Res. 21-113**, A Resolution of Intention (ROI) to Annex Territory (Annexation #70) (T6166 - SEC Gettysburg/Highland), to the Community Facilities District (CFD) 2004-1 and to Authorize the Levy of Special Taxes Therein and Setting the Public Hearing for December 6, 2021.
7. Finance - Approved - **Res. 21-114**, A Resolution of Intention (ROI) to Annex Territory (Annexation #71) (T6348 - NEC Willow/Nees & T6367 SEC Nees/Armstrong), to the Community Facilities District (CFD) 2004-1 and to Authorize the Levy of Special Taxes Therein and Setting the Public Hearing for December 6, 2021.
8. General Services - Approved – **Res. 21-115**, Amending the City’s Classification Plan by Revising the Police Lieutenant, Police Captain, and Police Chief Classifications.
9. General Services – Approved – **Res. 21-116**, Authorizing the Execution of the Certifications and Assurances for the FY 2021-2022 California SB1 State of Good Repair Program.
10. Planning and Development Services - Approved - Final Acceptance for CIP16-11 Peach Avenue Street Widening.
11. Planning and Development Services – Approved – **Res. 21-117**, Final Map Tract 6301, located in the southeast area of Shepherd Avenue and Temperance Avenue. (Valley Coastal Development, LLC (Granville Homes)).
12. Planning and Development Services – Approved – **Res. 21-118**, Annexation of Proposed Tract 6301, located in the southeast area of Shepherd Avenue and Temperance Avenue, to the Landscape Maintenance District No. 1 of the City of Clovis. (Valley Coastal Development, LLC (Granville Homes)).

PUBLIC HEARINGS

6:57 – ITEM 13 - APPROVED INTRODUCTION - **ORD. 21-06**, OA2021-003, A REQUEST TO AMEND THE CLOVIS DEVELOPMENT CODE, TITLE 9 TO THE CLOVIS MUNICIPAL CODE, RELATING TO HOUSING DEVELOPMENT PROJECT STANDARDS AND PROCEDURES, DENSITY BONUS PROVISIONS, ACCESSORY DWELLING UNITS, AND REVIEW PROCEDURES. CITY OF CLOVIS, APPLICANT.

Motion by Councilmember Ashbeck, seconded by Councilmember Whalen, for the Council to approve the introduction of **Ord. 21-06**, OA2021-003, amending the Clovis Development

Code, Title 9 to the Clovis Municipal Code, relating to housing development project standards and procedures, density bonus provisions, accessory dwelling units, and review procedures. Motion carried by unanimous vote.

7:48 – ITEM 14 - APPROVED ITEMS ASSOCIATED WITH APPROXIMATELY 3.48 ACRES OF LAND LOCATED SOUTH OF SHAW AVENUE, BETWEEN LEONARD AND AGUA DULCE AVENUES. DEYOUNG PROPERTIES, PROPERTY OWNER/ APPLICANT; QUAD KNOPF – SCOTT ZAAYER, REPRESENTATIVE.

Aurora Ybarra, resident, commented on concerns regarding traffic in the neighborhood with the addition of the new housing development.

Brandon De Young, developer representative, commented on the goals of the development and addressed the traffic concerns shared by Aurora Ybarra.

ITEM 14A - APPROVED INTRODUCTION – **ORD. 21-07**, R2021-007, A REQUEST TO REZONE 3.48 ACRES FROM THE R-1 (SINGLE-FAMILY RESIDENTIAL) ZONE DISTRICT TO THE R-1-MD (SINGLE-FAMILY RESIDENTIAL MEDIUM DENSITY) ZONE DISTRICT.

Motion by Councilmember Ashbeck, seconded by Councilmember Mouanoutoua, for the Council to approve the introduction of **Ord. 21-07**, R2021-007, rezoning 3.48 acres from the R-1 (single-family residential) zone district to the R-1-MD (single-family residential medium density) zone district. Motion carried by unanimous vote.

ITEM 14B - APPROVED – **RES. 21-119**, TM6377, A REQUEST TO APPROVE A VESTING TENTATIVE TRACT MAP FOR AN 18-LOT SINGLE-FAMILY SUBDIVISION ON 3.48 ACRES OF LAND.

Motion by Councilmember Ashbeck, seconded by Councilmember Mouanoutoua, for the Council to approve a resolution approving a vesting tentative tract map for an 18-lot single-family subdivision on 3.48 acres of land. Motion carried by unanimous vote.

COUNCIL ITEMS

8:07 – ITEM 15 - APPROVED - IMPLEMENTATION OF ASSEMBLY BILL 361 WHICH AMENDS THE BROWN ACT EFFECTIVE IMMEDIATELY TO ALLOW LEGISLATIVE BODIES OF LOCAL AGENCIES TO CONTINUE TO MEET REMOTELY DURING DECLARED EMERGENCIES UNDER CERTAIN CONDITIONS. NOT IMPLEMENTING AB 361 WOULD REQUIRE THE CITY TO COMPLY WITH THE BROWN ACT AS WRITTEN PRIOR TO EXECUTIVE ORDER N-29-20 ISSUED BY THE GOVERNOR ON MARCH 17, 2020.

Bill Lurch, resident, commented requirements to quarantine for the Councilmembers.

Motion by Councilmember Whalen, seconded by Councilmember Bessinger, for the Council to approve staff's recommendation to not implement AB 361, which would require the City to comply with the Brown Act as written prior to executive order N-29-20 issued by the governor on March 17, 2020. Motion carried by unanimous vote.

8:23 – ITEM 16 - APPROVED – **RES. 21-120**, A REQUEST TO APPROVE A RESOLUTION IN OPPOSITION TO PACIFIC GAS & ELECTRIC'S JUNE 2021 GENERAL RATE CASE FILING TO CALIFORNIA PUBLIC UTILITIES COMMISSION REQUESTING SUBSTANTIAL RATE INCREASES

Motion by Councilmember Whalen, seconded by Councilmember Mouanoutoua, for the Council to approve a resolution in opposition to Pacific Gas & Electric's June 2021 general rate case filing to California Public Utilities Commission requesting substantial rate increases. Motion carried by unanimous vote.

17. APPROVED – **RES. 21-121**, A REQUEST TO REPEAL EMERGENCY ORDERS 2020-14 AND 2020-15.

Motion by Councilmember Whalen, seconded by Councilmember Bessinger, for the Council to approve a resolution to repeal Emergency Orders 2020-14 and 2020-15. Motion carried by unanimous vote.

CITY MANAGER COMMENTS – 8:35

COUNCIL COMMENTS – 8:39

CLOSED SESSION – 8:42

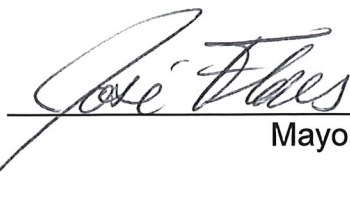
18. Government Code Section 54957
PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT
Title: City Manager

19. Government Code Section 54957.6
CONFERENCE WITH LABOR NEGOTIATOR
Agency designated representative: Scott Cross, City Attorney
Unrepresented employee: City Manager

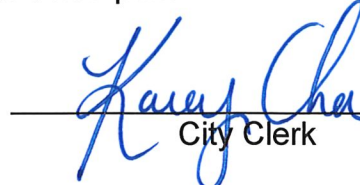
The City Council unanimously selected John Holt to be the next City Manager upon Luke Serpa's retirement at the end of the year, subject to formal approval of an employment agreement at the November 1, 2021, regular City Council meeting.

Mayor Flores adjourned the meeting of the Council to November 1, 2021

Meeting adjourned: 11:07 p.m.



Mayor



City Clerk



Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, October 11, 2021 11:00 AM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-10-11

Item Number (put "0" if your comment is regarding an item not on the agenda): 0

Full Name: Randy Williams

Email: randy@559.beer

Comment: AB 61 and SB 314 extend outdoor dining operations expanded as part of pandemic regulatory relief, SB 389 authorizes continued sale of to-go alcoholic drinks. Based on these being signed into law last Friday, October 8, 2021 we want to apply for a permanent area for outdoor dining where our street corral currently sits. We would also like to continue the same outdoor location during this application for permanent status. Below is what we found on the state website related to the recent announcement for reference;

Governor Gavin Newsom today signed legislation building on the state's successful pandemic adaptations and unprecedented supports for hard-hit small businesses, including measures that allow restaurants to continue benefiting from the sale of to-go alcoholic drinks and expanded outdoor dining opportunities.

AB 61 provides important flexibility so that restaurants can safely expand outdoor dining and continue to serve the communities they call home. SB 389 by Senator Bill Dodd (D-Napa) allows restaurants, bars, breweries and wineries that sell food to offer to-go alcoholic beverages with food orders through December 31, 2026.

<https://www.gov.ca.gov/2021/10/08/governor-newsom-signs-covid-19-recovery-package-to-support-businesses-continue-successful-pandemic-adaptations/>

We are thrilled this legislation is now the law.
Supporting Files (2 Max.):

Date: October 11, 2021
Time: 11:00 am
Remote IP: 76.227.234.250

PUBLIC COMMENTS

October 18, 2021

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Wednesday, October 13, 2021 1:50 PM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-10-18

Item Number (put "0" if your comment is regarding an item not on the agenda): 0

Full Name: Rick Forcella

Email: rpforcella@aol.com

Comment: To be brief, I believe 2 weeks to put garbage out for a curb side clean-up is too much. 1 week is plenty of time to clean out the residence of unwanted items or yard waste. People driving through the neighborhood, digging in piles of stuff to find that certain something, is getting annoying. Maybe Clovis should do like Fresno and have the pick-up once a year not twice, think of the savings.

And how do people accumulate sooo much junk every 6 months? Just a thought.

Supporting Files (2 Max.):

Date: October 13, 2021

Time: 1:49 pm

Remote IP: 108.234.252.223

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, October 18, 2021 9:51 AM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-10-18

Item Number (put "0" if your comment is regarding an item not on the agenda): 0

Full Name: Elin Carlson

Email: elincarlson@earthlink.net

Comment: The San Joaquin Board of Supervisors passed a resolution prohibiting vaccine mandates. As considered in last week's discussion, this IS the hill to die on, and I urge you to adopt this or something similar. I've also put this in the hands of Steve Brandau and asked him to do the same on a county level, but the more local governments that take a stand, the better. Here is the text of the resolution is attached.

24 state attorneys general have threatened a lawsuit against the federal government with even more powerful language and I have a copy of that letter for you as well for your reference.

This will take boldness and courage, but you all are on this council at this time for such a time as this.

Thank you!

Supporting Files (2 Max.): <https://cityofclovis.com/wp-content/uploads/elementor/forms/616da60fae3a7.pdf>

Date: October 18, 2021

Time: 9:51 am

Remote IP: 99.106.251.120



SAN JOAQUIN
 COUNTY
Greatness grows here.

Board of Supervisors

Tom Patti, *Chairman, Third District*
 Mike Anderson, *Chief of Staff*

October 7, 2021

Board of Supervisors
 44 N. San Joaquin Street, Suite 627
 Stockton, CA 95202

Adopt A Resolution Prohibiting the Use of Mandatory Vaccine Passports by any San Joaquin County Office, Board, Agent or Private Businesses

Fellow Board Members:

RECOMMENDATION

It is recommended that the Board Adopt a Resolution to prohibit the use of Mandatory Proof of Vaccine Certificates (Passports) by any San Joaquin County Office, Board, Agent or Private Business.

REASON FOR RECOMMENDATION

The State of California has reportedly been in discussions to mandate and restrict access to Government Buildings, businesses, hotels, bars and restaurants without Proof of COVID-19 Vaccination(s). The Mandatory use of "Vaccination Passports" have recently been adopted and are being required for building entry in the Counties of San Francisco and Los Angeles.

Our businesses have suffered throughout the Pandemic- This unnecessary restriction will further erode many businesses ability to survive by eliminating a large percentage of the un-vaccinated population from entering, working, using specific businesses or government services. Numerous studies have shown that children and adults that have previously had COVID-19 are much less susceptible to a reoccurring infection or transmission due the antibody buildup of the natural immune system of the human body, and are less likely to transmit and to develop symptomatic COVID-19 indicators.

FISCAL IMPACT

There is no fiscal impact associated with the approval of this item.

ACTION FOLLOWING BOARD APPROVAL

Direct the Clerk of the Board to transmit official copies of the signed document to:

- 1) California State Assemblymembers AD-12 Flora and AD-13 Villapudua

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- 2) California Department of Public Health
- 3) California Medical Director Michelle Baass, DHCS
- 4) California Governor Gavin Newsom

Respectfully,



Tom Patti, Chair
Third District Supervisor

Cc: County Administrator
County Counsel
Clerk of the Board for Agenda 10/12/21

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

R E S O L U T I O N

R-

A RESOLUTION PROHIBITING THE USE OF MANDATORY VACCINE PASSPORTS BY ANY SAN JOAQUIN COUNTY OFFICE, BOARD, AGENT OR PRIVATE BUSINESSES

WHEREAS, an individual’s COVID-19 vaccination status and records are protected health information that should not be shared by mandate; and

WHEREAS, COVID-19 vaccine passports should reduce individual freedom and sacrifice patient privacy; and

WHEREAS, no FREE government should ever compel disclosure of protected health information; and

WHEREAS, the Vaccine Passports would create a division among our populace and violate the fundamental American principal that all people are created equal by establishing two classes of citizens - vaccinated and unvaccinated - that are treated differently; and

WHEREAS, the Vaccine Passports would further erode public trust and violates the basic dignity of each American Citizen; and

WHEREAS, this type of government interference further divides a divided nation; and

WHEREAS, a Vaccine Passport would become the next generation of a “Show me your papers” totalitarian regime.

NOW, THEREFORE, BE IT RESOLVED, that the San Joaquin County Board of Supervisors does hereby prohibit the use of Vaccine Passports by any county office, board or agent, and

BE IF FURTHER RESOLVED, that the San Joaquin County Board of Supervisors strongly discourages the use of Vaccine Passports by any other agency or business within the county. Everyone should be free to choose whether or not to receive the COVID-19 vaccinations and/or boosters and no one should be discriminated against in any way for the personal medical decisions they make.

PASSED AND ADOPTED _____, by the following vote of the Board of Supervisors, to wit:

AYES:

NOES:

Attachment: Resolution (8693 : BOS - District 3 - Vaccine Passport Ban)

Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky,
Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota,
Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and
Wyoming

September 16, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500

Dear President Biden,

We, the Attorneys General of 24 states, write in opposition to your attempt to mandate the vaccination of private citizens. On September 9, you announced that you would be ordering the Department of Labor to issue an emergency temporary standard, under the Occupational Safety and Health (OSH) Act, which would mandate that private sector employers require most of their employees to either get a COVID-19 shot, submit to weekly testing, or be fired.

Your plan is disastrous and counterproductive. From a policy perspective, this edict is unlikely to win hearts and minds—it will simply drive further skepticism. And at least some Americans will simply leave the job market instead of complying. This will further strain an already-too-tight labor market, burdening companies and (therefore) threatening the jobs of even those who *have* received a vaccine. Worse still, many of those who decide to leave their jobs rather than follow your directive will be essential healthcare workers. This is no idle speculation. A New York hospital recently announced its plans to stop delivering babies after several staff members resigned in the face of New York's mandate.¹ And recent polling suggests those frontline healthcare workers are not outliers.² Thus, Mr. President, your vaccination mandate represents not only a threat to individual liberty, but a public health disaster that will displace vulnerable workers and exacerbate a nationwide hospital staffing crisis, with severe consequences for all Americans.³

¹ John Yoon, *A small upstate New York hospital will stop delivering babies after 6 workers quit rather than be vaccinated*, New York Times, Sept. 13, 2021, <https://www.nytimes.com/2021/09/13/nyregion/upstate-ny-hospital-stop-delivering-babies.html>.

² Washington Post-ABC News Poll, Aug. 29-Sept. 1, 2021, https://www.washingtonpost.com/context/aug-29-sept-1-2021-washington-post-abc-news-poll/899d77db-ef60-46c9-b028-8f3298df8659/?itid=lk_inline_manual_42 (reporting that of unvaccinated workers not currently required to be vaccinated, if faced with a vaccine mandate, only 16% would get vaccinated, 35% would ask for an exemption, and 42% would quit).

³ Andrew Jacobs, *'Nursing Is in Crisis': Staff Shortages Put Patients at Risk*, New York Times, Aug. 21, 2021, <https://www.nytimes.com/2021/08/21/health/covid-nursing-shortage-delta.html>.

This government edict is also likely to increase skepticism of vaccines. You emphasized at your September 9 announcement “that the vaccines provide very strong protection from severe illness from COVID-19 ... [and] the world’s leading scientists confirm that if you are fully vaccinated, your risk of severe illness from COVID-19 is very low.” You further stated that “only one of out of every 160,000 fully vaccinated Americans was hospitalized for COVID per day.” And you said “the science makes clear” that “if you’re fully vaccinated, you’re highly protected from severe illness, even if you get COVID-19.” The mandate, however, sends exactly the opposite signal: it suggests that *the vaccinated* need protection from those who, for whatever personal reason, choose not to or cannot receive a COVID-19 shot. That is hardly a statement of confidence in the efficacy of vaccines.

The policy also fails to account for differences between employees that may justify more nuanced treatment by employers. Most glaringly, your policy inexplicably fails to recognize natural immunity. Indeed, the CDC estimated that by late May 2021, over 120 million Americans had already been infected, and that number is likely tens of millions higher today.⁴ And your sweeping mandate fails to account for the fact that many workers—for example, those who work from home or work outdoors—are at almost no risk of exposure from their co-workers *regardless* of vaccine status. A one-size-fits-all policy is not reasoned decision-making. It is power for power’s sake.

Your edict is also illegal. You propose to enforce your mandate through the rarely used emergency temporary standard provision in the OSH Act. According to the Congressional Research Service, the Department has attempted to adopt an emergency temporary standard only one other time since 1983 (and that one exception came in June of this year and is being challenged). An emergency temporary standard does not have to go through notice and comment and can be made effective immediately upon publication. Because of this lack of process and oversight, courts have viewed these standards with suspicion. Between 1971 and 1983, the Occupational Safety and Health Administration (OSHA) issued nine emergency temporary standards. Of those, six were challenged. The courts fully vacated or stayed the standards in four cases, partially stayed the standards in another, and upheld only one of the six.

Courts are skeptical because the law demands it. To justify an emergency temporary standard, OSHA must determine that “employees are exposed to *grave danger* from exposure to *substances or agents* determined to be toxic or physically harmful or from *new hazards* . . .” and it must conclude that “such emergency standard is *necessary* to protect employees from such danger.”⁵ Each of the italicized phrases defeats your attempt to rely on this statute. First, while “grave danger” is left undefined, your own statements during the announcement that those who are vaccinated have little chance of hospitalization or death undercut any assertion that there is “grave danger.” Moreover, many Americans who have recovered from COVID-19 have obtained a level of natural immunity, and the statistics are clear that young people without co-morbidities have a low risk of hospitalization from COVID-19. You thus cannot plausibly meet the high burden of showing that employees in general are in grave danger.

What is more, the COVID-19 virus is not the sort of “substance,” “agent,” or “hazard []” to which the statute refers. OSHA, as its full name suggests, exists to ensure *occupational* safety.

⁴ Centers for Disease Control and Prevention, Estimated COVID-19 Burden, updated May 29, 2021, <https://perma.cc/QKL7-VS36>.

⁵ 29 U.S.C. § 655(c)(1).

In other words, it deals with *work-related* hazards, not all hazards one might encounter anywhere in the world. Congress made this clear in empowering OSHA to establish workplace standards not concerning whatever it likes, but rather “employment and places of employment.”⁶ The findings Congress passed with the law say the bill was motivated by a concern that “personal injuries and illnesses *arising out of work situations* impose a substantial burden upon ... interstate commerce.”⁷ Congress expressly intended to encourage “employers and employees in their efforts to reduce the number of *occupational safety and health hazards* at their places of employment.”⁸

When used in the context of a law directed toward occupational safety, the words “substances,” “agents,” and “hazards” relate to the dangers presented by the job itself—for example, chemicals used at job sites and tools used to carry out tasks—not to dangers existing in the world generally. And indeed, this is consistent with how the Act elsewhere uses these words. One provision, for example, requires the government to prepare a report “listing all toxic substances *in industrial usage*.”⁹ Another provision repeatedly imposes duties and powers regarding “substances” and “agents” to which employees are exposed as part of their employment.¹⁰ Still another requires studies regarding “the contamination of workers’ homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.”¹¹ All of these provisions are most naturally focused on dangers occurring at work *because of one’s work*, as opposed to dangers occurring in society generally, *including* at work.

Finally, broadly mandating vaccinations (or weekly COVID-19 testing) for 80 million Americans, simply because they work at a business of a certain size, hardly seems “necessary” to meet any such danger. On the contrary, it is vastly overbroad and inexact. There are many less intrusive means to combat the spread of COVID-19 other than requiring vaccinations or COVID-19 testing. The risks of COVID-19 spread also vary widely depending on the nature of the business in question, many of which can have their employees, for example, work remotely. The one-size-fits-almost-all approach you have decreed makes clear that you intend to use the OSH act as a pretext to impose an unprecedented, controversial public health measure on a nationwide basis that only incidentally concerns the workplace.

To the extent there is any ambiguity on this score, a few interpretive principles command this narrower interpretation.

First, there is “the background assumption that Congress normally preserves the constitutional balance between the National Government and the State.”¹² As a result, Congress must speak clearly if it wishes to upset the constitutional balance of power. Allowing OSHA to mandate vaccines to protect against a virus that is endemic in society generally would vastly alter the constitutional balance of power. Millions of Americans work for private companies subject to OSHA rules. Thus, reading the statute as empowering the Department of Labor to regulate employees’ responses to illnesses existing in society at large would entail reading it to regulate the

⁶ 29 U.S.C. § 652(8).

⁷ 29 U.S.C. § 651(a).

⁸ 29 U.S.C. § 651(b)(1).

⁹ 29 U.S.C. § 675.

¹⁰ 29 U.S.C. § 669.

¹¹ 29 U.S.C. § 671a.

¹² *Bond v. United States*, 572 U.S. 844, 862 (2014) (internal quotation marks omitted).

health and well-being of millions of Americans. That would be a sweeping intrusion on traditional state authority: “the regulation of health and safety matters is primarily, and historically, a matter of local concern.”¹³

Second, the major-questions doctrine leads to the same result. Courts “expect Congress to speak clearly when authorizing an agency to exercise powers of ‘vast ‘economic and political significance.’”¹⁴ Reading the emergency temporary standard provision as permitting the Department of Labor to regulate private health decisions made outside of work would be a major power indeed. Because the statute does not clearly empower the Department to regulate such matters, it must be read not to do so.

Third, the constitutional-doubt canon resolves any lingering ambiguity. “A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.”¹⁵ Reading the emergency temporary standard statute to permit your proposed order would create grave doubts about the statute’s constitutionality. Congress cannot hand its job to make the law to OSHA or any other agency—our Constitution vests the legislative power in Congress alone. Even if OSHA’s general grant of authority passes constitutional muster, which some have questioned, *this particular statute* is unconstitutional if it gives the executive branch complete discretion to regulate any matter related to the general health and safety of the American people. And any reading that would permit the executive branch to mandate vaccines would seem to do just that—if *that* order is allowed, then it is unclear what order would *exceed* the Department’s power.

This isn’t the first time you have reached for new and startlingly broad powers in old statutes. The Supreme Court recently halted your eviction ban because Congress had not granted the CDC the authority to issue such a decree. While the Supreme Court opined that your earlier “claim of expansive authority . . . is unprecedented,”¹⁶ your latest gambit goes even further. As the Supreme Court noted then, “[w]e expect Congress to speak clearly when authorizing an agency to exercise powers of ‘vast economic and political significance.’”¹⁷ And as with the eviction moratorium, Congress has *not* clearly granted you the authority to impose your sweeping vaccine mandate, which would have enormous social, economic, and political consequences.

According to you, Mr. President, this would affect nearly 80 million Americans. But many millions more will be directly and indirectly harmed. Millions of Americans are threatened with losing their jobs and the benefits that come with them, including life and health insurance and retirement benefits. Your threat carries with it the threat of people losing their homes and shifting the financial obligation of supporting currently independent and employed individuals to public support systems. Worse still, if your expansive reading of the law succeeds, the American people

¹³ *Hillsborough Cty. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 719 (1985).

¹⁴ *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, No. 21A23, 2021 WL 3783142, at *3 (U.S. Aug. 26, 2021) (quoting *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

¹⁵ *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916).

¹⁶ *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, No. 21A23, 2021 WL 3783142, at *3 (U.S. Aug. 26, 2021) (quoting *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

United States v. Jin Fuey Moy, 241 U.S. 394, 401 (1916).

¹⁷ *Ala. Assoc. of Realtors*, 2021 WL 3783142, at 3.

can expect further abuses, as it is hard to imagine any requirement that the law would *not* allow.¹⁸ You are clearly acting beyond the scope of the statute, and you will fail in court.

Some proponents of broad government mandates have claimed authority from the previously little-known case of *Jacobson v. Massachusetts*.¹⁹ But that case is irrelevant. It holds only that a *State's* vaccine mandate does not always violate the Fourteenth Amendment right to due process. The case does not come close to suggesting that the *federal government* has the power to impose such sweeping national mandates. Nor could it have. "Our Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'"²⁰ Your proposed plan would invert that structure and put the federal government at the forefront. States have taken varying approaches to dealing with the virus, and, whether you like it or not, that is how our constitutional structure is arranged.

The vaccines have helped protect millions of Americans, and there are surely others who could benefit from obtaining this treatment. But convincing those who are hesitant to do so would require you to allow room for discussion and disagreement. Instead, you have offered the American people flimsy legal arguments, contradictory statements, and threatening directives. It is almost as if your goal is to sow division and distrust, rather than promote unity and the public's health.

We thus urge you to reconsider your unlawful and harmful plan and allow people to make their own decisions. If your Administration does not alter its course, the undersigned state Attorneys General will seek every available legal option to hold you accountable and uphold the rule of law.

Respectfully,



Alan Wilson
Attorney General for South Carolina



Steve Marshall
Attorney General for Alabama



Austin Knudsen
Attorney General for Montana



Jason R. Ravensborg
Attorney General for South Dakota

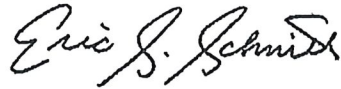
¹⁸ For example, will we see lockdowns of private businesses? Or because the available COVID-19 shots do not confer lasting immunity, should Americans expect to see a mandated third or fourth shot in the coming months?

¹⁹ 197 U.S. 11 (1905).

²⁰ *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (Roberts, C.J., concurring in the denial of injunctive relief) (quoting *Jacobson*, 197 U.S. 11 at 38).



Treg Taylor
Attorney General for Alaska



Eric S. Schmitt
Attorney General for Missouri



Douglas J. Peterson
Attorney General for Nebraska



Ashley Moody
Attorney General for Florida



John M. O'Connor
Attorney General for Oklahoma



Dave Yost
Attorney General for Ohio



Patrick Morrisey
Attorney General for West Virginia



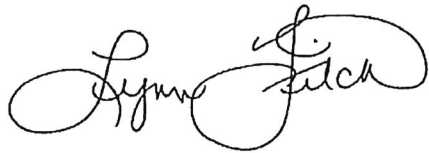
Sean D. Reyes
Attorney General for Utah



Mark Bnovich
Attorney General for Arizona



Jeff Landry
Attorney General for Louisiana



Lynn Fitch
Attorney General for Mississippi



Daniel Cameron
Attorney General for Kentucky



Wayne Stenehjem
Attorney General for North Dakota



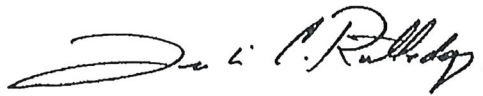
Todd Rokita
Attorney General for Indiana



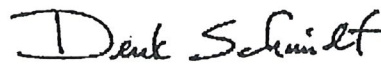
Bridget Hill
Attorney General for Wyoming



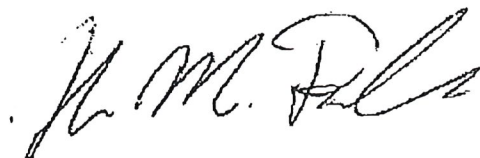
Ken Paxton
Attorney General for Texas



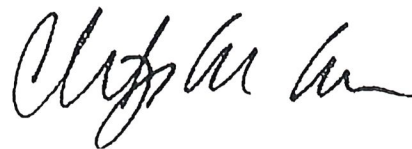
Leslie C. Rutledge
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John M. Formella
Attorney General for New Hampshire



Christopher M. Carr
Attorney General for Georgia

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, October 18, 2021 9:53 AM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-10-18

Item Number (put "0" if your comment is regarding an item not on the agenda): 17

Full Name: Elin Carlson

Email: elincarlson@earthlink.net

Comment: On the one hand, because of the quicksilver and capricious nature of what is being mandated out of Sacramento, it might behoove you to leave this in place just in case businesses need to respond quickly.

On the other hand, there is either an emergency or there is not.

If you repeal part of this order, you really should repeal all of it.

Supporting Files (2 Max.):

Date: October 18, 2021

Time: 9:53 am

Remote IP: 99.106.251.120