Dear Council members

Please consider that the current proposal for vaccine passport, to coerce a medical treatment it can never pass the lawful litmus test.

It is the consensus of the medical community that the currently available Covid-19 vaccine injections ("Covid-19 injections") do not prevent the spread of Covid-19. Relevant federal agencies have repeatedly acknowledged this consensus. Therefore, there is no scientific or legal justification for Montgomery County to segregate injected and un-injected people. Indeed, since the Covid-19 injections do not confer immunity upon the recipients, but are claimed to merely reduce the symptoms of the disease, they do not fall within the long-established definition of a vaccine at all. They are instead treatments and must be analyzed as such under the law.

The Government's attempt to mandate treatments is subject to strict scrutiny.

The judiciary has too often assumed without analysis that requiring individuals to submit to Covid-19 injections is permissible under the determination made in Jacobson.25 However, because these injections do not confer immunity, but are instead merely treatments that may reduce the severity of symptoms, the proper analysis stems from Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990).26

In Cruzan, the Court addressed whether the parents of a young woman severely brain damaged in a car wreck could compel the hospital to remove her from life support in the absence of any clear directive memorializing her intent. Missouri

24 42 U.S.C. § 300aa-1 et seq. 25 Jacobson v. Massachusetts, 197 U.S. 11 (1905). 26 Although Cruzan was decided under the due process clause of the Fourteenth Amendment, this Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth Amendment also applies to the federal government under the due process clause of the Fifth Amendment. See, e.g., Bolling v. Sharpe, 347 U.S. 497, 500 (1954) ("In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.") See also, Adarand Constructors v. Pena, 515 U.S. 200 (1995) (same); Frontiero v. Richardson, 411 U.S. 677 (1973) (holding federal law discriminating on basis of sex unconstitutional under the Fifth Amendment due process clause based on Fourteenth Amendment analysis); Califano v. Goldfarb, 430 U.S. 199 (1977) (striking down federal racial classification on basis of Fifth Amendment due process clause stating that strict scrutiny is the proper standard for analysis of all racial classifications, whether imposed by a federal, state, or local actor. Id. at 231, superseded by statute); Jimenez v. Weinberger, 417 U.S. 628 (1974) (striking down provision of the Social Security Act based upon illegitimacy applying substantive due process analysis through the due process of clause of the Fifth Amendment).

required clear and convincing evidence of intent to remove a patient from life support, and the parents argued this violated both their and their daughter's Fourteenth Amendment substantive due process rights. Significantly for the issue at hand, the Court began by recognizing a fundamental human right of informed consent to medical treatment stemming from the right of self-determination, stating:

At common law, even the touching of one person by another without consent and without legal justification was a battery. Before the turn of the century, this Court observed that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Justice Cardozo, while on the Court of

Appeals of New York, aptly described this doctrine: “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.” The informed consent doctrine has become firmly entrenched in American tort law. The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment. 497 U.S. at 269–270 (citations omitted).

The Court went on to state that “[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions” citing three cases pertinent to our analysis here. First, the Cruzan Court cited Washington v. Harper, 494 U.S. 210, 221-222 (1990), where the Court recognized that prisoners possess “a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment.” Significantly, the Court in Harper stated that “[t]he forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person’s liberty.” 494 U.S. at 229. Second, the Cruzan Court cited Vitek v. Jones, 445 U.S. 480, 494 (1980), where the Court recognized that the transfer to a mental hospital coupled with mandatory behavior modification treatment implicated liberty interests. Third, the Court cited Parham v. J. R., 442 U.S. 584 (1979) where the Court recognized that “a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment.”

Cruzan was followed in 1997 by Washington v. Glucksberg, 521 U.S. 702 (1997), where the issue before the Court was whether the substantive due process right to refuse medical treatment included the right to assisted suicide. The following language of the Court is particularly significant to the issue presently before the Court:

The Due Process Clause guarantees more than fair process, and the “liberty” it protects includes more than the absence of physical restraint. Collins v. Harker Heights, 503 U.S. 115, 125 (1992) (Due Process Clause “protects individual liberty against ‘certain government actions regardless of the fairness of the procedures used to implement them’”) (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. ... We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. Cruzan, 497 U.S. at 278-279. 521 U.S. at 719-720. (internal citations omitted)

The fact that the Glucksberg Court identified the right to refuse unwanted lifesaving medical treatment as one in a long list of traditional fundamental human rights and liberty interests is extremely important because once a right is so identified, any governmental action infringing upon it is subjected to the “strict scrutiny” test. As stated by the Court in Glucksberg, “the Fourteenth Amendment forbids the government to infringe fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” Glucksberg, 521 U.S. at 721 (internal quotations omitted, emphasis in original).

The Court’s analysis in both Cruzan and Glucksberg was based upon a sick person asserting a right to deny treatment. The ETS mandate, on the other hand, forces treatment on perfectly healthy people. All of the arguments in favor of self-determination reviewed by the Court in Cruzan and Glucksberg are even stronger when applied to a perfectly healthy person’s right to refuse a treatment on the basis that it may make symptoms of a disease that healthy person may never contract less severe. And we remember here the uncontroverted medical consensus that Covid-19 injections do not prevent infection or transmission of the coronavirus; i.e., they do not create immunity in the recipients. The bar should be even higher to force a healthy person to accept “treatment” than to force a sick person to accept critical care. As stated by the Court in Harper, where a physically healthy prisoner objected to the administration of antipsychotic drugs, “[t]he forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person’s liberty.” 494 U.S. at 229.

Sincerely

Michelle Christmas