Montgomery County Council
By email / website

RE: Proposed Covid-19 Vaccine Passport System

Dear Council Members:

I am a Montgomery County homeowner and a lawyer practicing in the state of Maryland. I am writing in connection with the recently proposed Covid-19 Vaccine Passport System that would require several classes of Montgomery County businesses (e.g. restaurants, bars, gyms) to deny their full range of services (and in some cases, effectively deny all service) to certain classes of would-be patrons; namely, to adults who are unable to produce a completed Covid-19 vaccine card and photo ID, and certain classes of children.

Let me be clear at the outset that I oppose this proposed passport system. While it would be interesting and enlightening to have a deep, philosophical discussion of whether there are any circumstances that would justify adopting such an intrusive and unprecedented scheme, I will set that aside for the purposes of this letter. I will assume here that there are some situations that justify this sort of move – a contagious disease so severe, and a vaccine so effective against its transmission, that rational society might elect to sacrifice some bit of liberty in exchange for a substantial boost in biosafety.

But, at present, we are clearly nowhere near this scenario. The current Omicron variant of Covid-19, and the current vaccines from Pfizer and Moderna, fall well outside this ideal case. As has been well documented, the current Omicron wave – while dangerous to some – is in fact much less severe than the storms we’ve weathered before. Far more important, however, is the fact that the available vaccines – according to the CDC no less! – are not very effective at preventing individual infections, or preventing such infected individuals from passing the virus on to others, vaccinated or not. We’ve seen countless stories in the news over the past month of double- and triple-vaxxed politicians, journalists and celebrities contracting cases of Omicron – often, it would seem, from other vaxxed individuals – and being compelled to stay home on account thereof (see, e.g., the first paragraph of: https://www.wsj.com/articles/the-unseen-body-book-review-organs-anatomy-medicine-health-internal-affairs-11642175598).
Also, experience in other localities that have longer-established Covid vaccine passport systems shows that such policies are pretty much ineffective at stopping, or even meaningfully slowing, the spread of Omicron. New York City has had a Covid vaccine passport system in place for months, yet it led the nation in the steepness and swiftness of its Omicron wave. Can anyone legitimately claim that Washington, D.C., which until pretty much yesterday did not have such a policy, did meaningfully worse despite the lack of vaccine passports? Australia is famously strict on Covid restrictions, is heavily vaccinated, and restricts the unvaxxed from public life in many ways (cf. the recent expulsion of tennis star Novak Djokovic after he was first seemingly granted a vaccine waiver due to his survivor’s immunity), yet it is now experiencing an unprecedented surge of Omicron infections that, on a per-capita basis, is twice the daily caseload we are suffering in the U.S. In sum, on an individual level and on a society-wide level, science and experience are perfectly clear that, while Covid vaccine might provide important personal benefits to the taker in terms of lowering the odds of severe illness, it provides no meaningful protection against contracting an infection and/or spreading the virus to others.

With the foregoing in mind, the proposed vaccine passport system becomes difficult to understand, let alone justify. We know it will not serve to stop the spread or protect other patrons of such businesses against exposure and infection. Dining next to a vaxxed patron is essentially no different than dining next to an unvaxxed patron, when it comes to your risk of being exposed to (and coming down with) a case of Omicron yourself. Is the proposed policy instead meant to promote vaccine acceptance among local residents? Montgomery County is already more or less the most vaccinated county in the U.S. Is it simply to be seen as “doing something” and jumping on the same bandwagon as New York City, Washington, D.C., San Francisco, Boston and Minneapolis? Any parent of an elementary school aged child knows how to answer the whiny claim of “But all the other kids are doing it!” I recall the answer has something to do with lemmings and questioning the wisdom of walking off a tall cliff just because the rest of the crowd is doing so. More seriously, many Montgomery County residents chose to live here precisely because it is NOT Washington, D.C., or some other big city – because the public administration and public services here are frankly better and run on more intelligent lines. Blindly deferring to the mistakes of big-city machine politicians entirely undercuts what has made Montgomery County great.

I will close with this: The contemplated Covid vaccine passport system is a unprecedented and severe move. It will have profoundly racially exclusionary effects on persons of color who live throughout our region, and doubtless cause losses among many local small businesses. Covid has upended many of our assumptions and expectations about daily life and the running of society, so perhaps this point is not as obvious as it should be, so it deserves emphasis here – the decision to go down this road is a grave one. The reasons and purported justifications for doing so are obscure, unclear or just plain incorrect. And it is no surprise, therefore, that the end-game is equally unclear – what set of circumstances will justify the sunsetting of this proposed vaccine passport system, or, if adopted, should we expect this policy to be in place for the rest of our lives no matter how Covid evolves? Can we expect this
policy to slowly expand to include yearly flu jabs and other desirable public health measures that were traditionally left to the realm of individual choice?

We are on the precipice of something profound. Should the county government decide to enact this policy, under the current circumstances, I will immediately begin the process of relocating my family, my law practice and my tax dollars to a jurisdiction that does not govern itself on the basis of irrational fears and fads, but that operates on the basis of sound logic, respect for science and a commitment to excellence in public services and an open business climate. In short, I will move to a place that has what Montgomery County traditionally had, but is now at grave risk of throwing away.

Yours sincerely,

Noam B. Katz, Esq.