Resolution No. 2021-15

A RESOLUTION OPPOSING VACCINATION DISCRIMINATION, SUPPORTING VACCINATION PRIVACY, AND EXPRESSING LOCAL SUPPORT OF STATE LEADERS FOR PROTECTING THE FREEDOMS OF MONTANA CITIZENS REGARDING VACCINATIONS

WHEREAS,

1. Privacy is a hallmark of the character of Montana. As the Montana Supreme Court has said, "Montanans have heightened expectations of privacy."[1] The Constitution of Montana contains an express guarantee of the right of privacy, which even the United States Constitution does not have.[2] The Montana Supreme Court has repeatedly characterized this state's constitutional right as unique and affording to Montanans privacy extending significantly beyond what is afforded by provisions of the United States Constitution.[3] The Court has said it is "one of the most stringent protections of its citizens' right of privacy in the United. States."[4] The Court recognizes that it reflects "Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives."[5]

2. Under the United States Constitution and the Constitution of Montana,

   A. A person has the valued and fundamental right to be let alone, free from governmental intrusion.[6]

   B. A person's home is his or her castle.[7]

   C. The right of privacy is a part of the constitutional guarantee of liberty and the pursuit of happiness.[8]

3. The Montana Supreme Court has said that "Medical records are quintessentially 'private' and deserve the utmost constitutional protection."[9]

4. It is a long-standing rule of American liberty and law that the individual right of privacy encompasses the decision to obtain or reject medical treatment.[10] This right is "inherent" to individual autonomy and includes the right to refuse medical treatment.[11] The United States Supreme Court has said this right to control fundamental medical decisions is an aspect of the right of self-determination and personal autonomy that is "deeply rooted in this Nation's history and tradition."[12]

5. As a matter of "informed consent," no physician may substitute his or her judgment, no matter how well founded, for that of the patient. The patient may refuse even life-saving treatment.[13]

6. In accord with these rights, the Legislature and Governor of this state have acted to protect Montanans against unwarranted government intrusions upon the privacy and liberty of the people relating to vaccinations.

7. On April 13, 2021, Governor Greg Gianforte issued Executive Order No. 7-2021, "Executive Order Prohibiting Vaccine Passports."[14] While strongly encouraging Montanans to get a COVID-19 vaccine, the Governor said, "Receiving one is entirely voluntary and will not be mandated by the State of Montana, nor compelled through vaccine passports, or other compulsory means. We are committed to protecting individual liberty and personal privacy."[15]

8. The 2021 Montana Legislature enacted House Bill 702 titled "An act prohibiting discrimination based on a person's vaccination status or possession of an immunity passport . . . ."[16] Governor Gianforte signed the bill into law on May 7, 2021. As described in *The National Law Review,* under this law, Montana became the first jurisdiction to recognize an individual's vaccination status as a category protected from discrimination. This protection is like the protection against discrimination in other categories such as race, color, religion, creed, national origin, sex, political ideas, etc. Persons wronged by discrimination relating to vaccinations may make a complaint to the Montana Human Rights Commission.

9. *The National Law Review* said:

> Under the law, businesses, governmental entities, and places of public accommodation may not refuse to serve or withhold goods from any person "based on the person's vaccination status or whether the person has an immunity passport." Likewise, employers may not discriminate against or refuse to employ an individual based on whether the person has been vaccinated or possesses an immunity passport. The law bars employers from requiring employees to receive vaccines, such as the current COVID-19 vaccine, "whose use is allowed under emergency use authorization or any vaccine undergoing safety trials."
>
> The law also prohibits employers from requiring employees to disclose their immunization status and bars employers from requiring employees . . . to possess an immunity passport.[17]

10. Conventional news sources such as the *Associated Press*[18] and *Newsweek*[19] recently have reported high officials of the federal administration as saying vaccinators needed to go "door-to-door – literally knocking on doors – to get help to the remaining people protected from the virus."

11. The proposal of a door-to-door push for vaccination is fraught with potential for invasion of privacy, trespassing, and imposition of an unlawful government chilling effect on the exercise of fundamental rights. While beginning with perhaps innocent offers of "information" or "help," such contacts at the castles of the people easily could decline into unlawful inquiries about vaccination status and other violations of the rights of Montanans as listed above.

12. Correspondingly, those who voluntarily wish to be vaccinated should be vigorously

aided by their government in obtaining access to lawfully distributed and administered vaccinations.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of County Commissioners of Richland County, State of Montana this 19th day of July, 2021, that:

1. **Support for Voluntary Vaccination.** We support all efforts of the state and local governments, private organizations, and individuals, including those of the departments of Richland County, lawfully to develop, test, license, distribute, and administer vaccinations so that those voluntarily wishing to be vaccinated can obtain access, and we encourage and direct the relevant departments of the county to be vigorous in aiding the people of Richland County to that purpose.

2. **No Appropriation for Door-to-Door Vaccination Push.** The Board of County Commissioners will make no appropriation of county funds regardless of how acquired, generated, or derived, regardless of whether by taxation, fees, grants, loans, or any other source or means, on a door-to-door promotion of vaccinations or inquiries about vaccination status, or any activity in violation of HB 702 2021 Montana Legislature or Executive Order No. 7-2021.

3. **No Other Resources for Door-to-Door Vaccination Push.** The Board of County Commissioners will devote no other county resources on a door-to-door promotion of vaccinations or inquiries about vaccination status, or any activity in violation of HB 702 2021 Montana Legislature or Executive Order No. 7-2021.

4. **Support for Our Leaders.** We thankfully support Governor Greg Gianforte, the sponsors of HB 702, and all Members of the Legislature of Montana who voted for HB 702 for the efforts they already have made to protect the privacy, liberty, and equality of the people of Montana relating to vaccinations and encourage them to continue their efforts.

Effective Date. This resolution shall be immediately effective upon passage, approval, and adoption.

Attest

Stephanie Verhasselt

Stephanie Verhasselt
County Clerk & Recorder

(county seal)

Duane Mitchell

Duane Mitchell
Chairman

Votes: 2 for
____ against
1 absent
____ abstaining

[1] *State v. Bassett*, 1999 MT 109, ¶ 42, 294 Mont. 327, 339, 982 P.2d 410, 418 (Mont. 1999).

[2] Constitution of Montana (1972), Art. II, Section 10; and *State v. Pastos*, 269 Mont. 43, 887 P.2d 199 (Mont. 1994).

[3] *State v. Elison*, 2000 MT 288, 302 Mont. 228, 14 P.3d 456 (Mont. 2000); *State v. Bassett*, 1999 MT 109, 294 Mont. 327, 982 P.2d 410 (Mont. 1999); *State v. Hubbel*, 286 Mont. 200, 951 P.2d 971 (Mont. 1997); and *Armstrong v State*, 1999 MT 261, ¶ 41, 296 Mont. 361, 989 P.2d 364 (Mont. 1999),

[4] *Armstrong v State*, 1999 MT 261, ¶ 34, 296 Mont. 361, 989 P.2d 364 (Mont. 1999), citing *State v. Burns*, 253 Mont. 37, 830 P.2d 1318 (Mont. 1992).

[5] *Armstrong v State*, 1999 MT 261, ¶ 34, 296 Mont. 361, 989 P.2d 364 (Mont. 1999), quoting Gryczan, 283 Mont. 443, 449, 942 P.2d 112. 122 (Mont. 1997).

[6] *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928).

[7] *State ex rel. Zander v. District Court*, 180 Mont. 548, 591 P.2d 656 (1979); *State v. Brecht*, 157 Mont. 264, 485 P.2d 47 (1971); *Welsh v. Pritchard*, 125 Mont. 517, 241 P.2d 816 (1952).

[8] *State ex rel. Zander v. District Court*, 180 Mont. 548, 591 P.2d 656 (1979); *State v. Brecht*, 157 Mont. 264, 485 P.2d 47 (1971); *Welsh v. Pritchard*, 125 Mont. 517, 241 P.2d 816 (1952).

[9] *State v. Nelson*, 283 Mont. 231, 242, 941 P.2d 441, 447, 448 (1997).

[10] *Armstrong v State*, 1999 MT 261, ¶ 54, 296 Mont. 361, 989 P.2d 364 (Mont. 1999), n. 8; and *Cruzan v. Mo. Dept. of Health*, 497 U.S. 261, 277-79, 110 S. Ct. 2841, 2851-52, 111 L. Ed. 2d 224 (1990).

[11] *Armstrong*, ¶ 55.

[12] *Moore v. City of East Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 1937, 52 L.Ed.2d 531 (1977).

[13] *Collins v. Itoh*, 160 Mont. 461, 467, 503 P.2d36, 40 (Mont. 1972).

[14] https://governor.mt.gov/EO-7-2021-Prohibiting-Vaccine-Passports.pdf, accessed July 13, 2021.

[15] "Gov. Gianforte Issues Executive Order Prohibiting Vaccine Passports," Governor's Office, April 13, 2021, https://news.mt.gov/Governors-Office/gov-gianforte-issues-executive-order-prohibiting-vaccine-passports, accessed July 13, 2021.

[16] HB702, https://leg.mt.gov/bills/2021/billpdf/HB0702.pdf, accessed July 13, 2021.

[17] Roger G. Trim and Raul Chacon, Jr., "Montana Enacts New Law Making Vaccination Status a Protected Class and Limiting Inquires into Immunization Status," *The National Law Review*, Volume XI, Numer 134, May 14, 2021, https://www.natlawreview.com/article/montana-enacts-new-law-making-vaccination-status-protected-class-and-limiting, accessed July 13, 2021.

[18] Zeke Miller, "White House calling out critics of door-to-door vaccine push," *Associated Press*, July 9, 2021, https://apnews.com/article/joe-biden-health-government-and-politics-coronavirus-pandemic-michael-brown-c5c9260bc083e7e9cc0e415caa43879f, accessed July 13, 2021.

[19] Anders Anglesey, "White House Blasts Door-to-door Vaccination Critics 'Doing Disservice' to Country, *Newsweek*, July 11, 2021, https://www.newsweek.com/white-house-blasts-door-door-vaccination-critics-doing-disservice-country-1608591, accessed July 13, 2021.