

# reason

## California Law Would Limit Free Speech at Vaccination Sites

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A new bill in California would limit free speech in the vicinity of COVID-19 vaccination sites. Violators could be punished by six months in jail and/or a \$1,000 fine.

The measure (SB 742) would make it a crime to "approach within 30 feet of any person while a person is making the approach within 100 feet of the entrance of a vaccination site and is seeking to enter or exit a vaccination site, or any occupied motor vehicle seeking entry or exit, for the purpose of obstructing, injuring, harassing, intimidating, or interfering with that person or vehicle occupant in connection with any vaccination services." But prohibited actions here wouldn't just be what we think of typically as harassment or intimidation; they would also include "the nonconsensual and knowing approach within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill, displaying a sign to, or engaging in oral protest, education, or counseling with that other person in a public way or on a sidewalk area."

That means protesters and pamphleteers would be required to have the express permission of everyone they encountered around the vaccination site or else be in violation of the law.

This is "clearly unconstitutional," opines legal scholar and blogger Eugene Volokh at *The Volokh Conspiracy*. "The First Amendment protects speech on public sidewalks, including offering leaflets, displaying signs, or conveying oral messages to people who haven't 'consen[ted]' (whether because they haven't thought about the matter, or even if they affirmatively don't want to see the sign or hear the message)."

The Supreme Court has allowed a Colorado law banning "'knowingly approach[ing]' within eight feet of another person [near a medical facility], without that person's consent, 'for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person.'"

But this ban was much shorter in distance—8 feet, versus the 30 feet proposed in the California bill—and in its 2000 decision, the Court specifically contrasted this to a 15-foot anti-speech zone it struck down in a 1997 case (*Schenck v. Pro-Choice Network*). More recently, in the 2014 case *McCullen v. Coakley*, the Court struck down a 35-foot free speech buffer zone around abortion clinics.

The Colorado law was also content neutral—that is, it applied outside any type of medical facility, not just vaccination sites. "Such subject-matter restrictions are unconstitutional, see, e.g., *Carey v. Brown* (1981) (holding that a residential picketing ban that applied only to nonlabor picketing was unconstitutionally content-based); *Reed v. Town of Gilbert* (2015) (holding that a sign ordinance that treated political signs, ideological signs, and signs giving directions to certain events differently was unconstitutionally content-based)," notes Volokh.

In the past, the American Civil Liberties Union (ACLU) has gone to bat against these types of restrictions, but "the American Civil Liberties Union said it has no issues with it [SB 742] as written," *California Healthline* reported.

Kevin Baker, ACLU California Action's director of governmental relations, told Volokh: "Were we to write the law ourselves, we might draw a somewhat different line. But we feel pretty confident that the courts would uphold SB 742 based on the buffer zone/bubble case law largely drawn from the fairly analogous context of reproductive health services. To be clear, however, we are not supportin/g (sic) the bill—we are simply neutral."

The bill is on track to full passage soon, having already passed the California Senate 33–4 and cleared the Assembly's public safety committee.

## **FREE MINDS**

**Judges are issuing warrants to wiretap social media accounts.** A case in Maryland has been drawing attention to the issue after Harford County law enforcement got a warrant to wiretap a drug suspect's Facebook activity.

"It's common for investigators to get warrants to collect information stored within social media accounts," the *Baltimore Sun* points out, noting that law enforcement authorities in the state have been doing it since 2018. "But the Harford case, authorized by a Circuit Court judge in February 2020, was one of only nine social media or digital app wiretaps applied for by authorities in Maryland last year, according to data reported to the Maryland Judiciary."

The tactic shouldn't necessarily raise alarms. "I think there's a reality that when you have a system that allows for users to create content to message others, it will be a valuable source of investigative leads for law enforcement," Aaron Mackey, a senior staff attorney for the Electronic Frontier Foundation, told the *Sun*. "What this sounds like to me is use of existing law to access communications....It is perhaps novel that they have deployed it in this particular context, and law enforcement is realizing that they have this capability."

And strong encryption can still keep government snoops away, the *Sun* adds:

What's available to investigators depends on whether the communications are end-to-end encrypted. Experts say authorities — despite attempts to force companies to allow them to do so — cannot listen in over encrypted phone calls using the wiretap warrant, while other messaging services carry an option of encryption that exposes the communications if not enabled.

While Facebook and Instagram services are not encrypted by default, users can enable that feature manually each time they begin a new message thread. Other popular apps and devices, such as WhatsApp and iPhone's FaceTime are end-to-end encrypted by default, making it impossible for law enforcement officials to listen in.

## FREE MARKETS

**Take a peek inside Democrats' \$3.5 trillion budget plan.** Among its many planks, the proposed budget would make permanent the pandemic's child tax credit and establish a number of new programs and federal benefits. These include:

- The first Civilian Climate Corps
- "Universal Pre-K for 3 and 4 year olds and a new child care benefit for working families"
- Two years of subsidized community college tuition
- A federal paid family leave and medical leave benefit
- Dental, vision, and hearing benefits for Medicare recipients
- "A new federal health program for Americans in the 'Medicaid gap'"

More topline spending details [here](#).

## FOLLOWUP

**Infrastructure bill headed to Senate passage today (with crypto regulations intact).** An amendment on cryptocurrency regulations did not make it into the final version of the infrastructure bill, which the Senate [is expected to vote on this morning](#).

"We're going to do a lot of damage. Who knows how much innovation we're going to stifle...It's not good, and it's going to bring us back here to clean up a mess that we could have prevented," Sen. Pat Toomey (R-Penn.) [said](#). Toomey was one of three senators—along with Ron Wyden (D-Ore.) and Cynthia Lummis (R-Wyo.)—who had proposed an amendment to the bill in order to safeguard cryptocurrency miners, developers, and others.

More on how the "crypto crackdown plot blew up the infrastructure bill" [here](#). *Reason's* Eric Boehm has more on the full infrastructure package [here](#).

## QUICK HITS

- A [beautiful rant about the Food and Drug Administration](#) and how it puts Americans at risk.
- Large school districts in Florida and Texas are [rejecting their state's law against mask mandates](#).
- "When New York decided to stop cracking down on sex workers, it maintained harsh policing of sex workers' customers," notes the Cato Institute. Kaytlin Bailey of The Old Pro Project explains on the Cato Daily podcast [why full decriminalization should be the path forward](#).
- U.S. Citizenship and Immigration Services (USCIS) has [modernized its policy on assisted reproduction](#). Now, babies born outside the U.S. with the help of technologies like in vitro fertilization will no longer be considered by USCIS to be born "out of wedlock," thereby allowing "a non-genetic, non-gestational legal parent of a child to transmit U.S. citizenship to the child if the parent is married to the child's genetic or gestational parent at the time of the child's birth, and the relevant jurisdiction recognizes both parents as the child's legal parents," the agency announced.

- An investigation from the nonprofit White Coat Waste Project (WCW) shines light on experimentation on animals. The National Institute of Allergy and Infectious Diseases (NIAID) "directed \$424,455 to researchers at the University of Georgia in September 2020 to infect dozens of beagles with disease-causing parasites in order to test an experimental drug on them," the *Daily Caller* reports on what White Coat Waste uncovered. "The task order states that the beagles are to be euthanized 196 days after the start of the study."
- The latest data from the Department of Labor turned up 10.1 million open jobs at the end of June.
- Statistician Nate Silver breaks down the latest U.S. data on COVID-19 cases, hospitalizations, and deaths. "Lately I've seen people ask why the US numbers don't look more like the UK, which had a surge in cases recently but comparatively few deaths. But US states that have vaccination rates ~similar to the UK actually have fewer deaths than the UK, though the numbers lag & may rise," he points out.
- Mississippi health authorities say there are no intensive care unit beds left in the state as new coronavirus cases overwhelm hospitals.
- The infrastructure package will fuel inflation, warns Stephan Miran at *The Wall Street Journal*. "While infrastructure, in the long term, will enhance the supply side of the economy and help keep inflation low, its effects in the short term will likely be the exact opposite. A recent working paper published by the National Bureau of Economic Research reviewed the evidence of infrastructure investment's short-term negative effects on the economy and found little sign of stimulus effects."