

## Understanding the GOP Battle Over Vaccine Passports

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Months into a mammoth health-messaging campaign encouraging Americans to get vaccinated against COVID-19, we can say two things with confidence about the cohort of people still playing hard to get. The first is that, in absolute terms, this group has shrunk and may still be shrinking. Gallup reported yesterday that fully three quarters of U.S. adults say they are already vaccinated or plan to be; last December, only 65 percent said they planned to get the shot.

The second, however, is that some subset of that cohort is looking less and less gettable—more and more dug in on vaccine hostility. Like so many other things in the pandemic, skepticism toward the vaccine—or at least toward the notion that everyone should get it—has become for some a populist and anti-establishment shibboleth.

Meanwhile, the rise of more contagious variants of the virus means experts have spent recent months glumly revising their herd-immunity estimates upward, pegging the population-immunity number needed to truly stamp out the virus up from the 60-70 percent ballpark last year to, frequently, north of 80 percent now.

This doesn't mean things aren't still improving fast—every day more shots go into arms is another day COVID's foothold in America grows weaker. But it *does* mean that it's starting to dawn on more and more people that the virus isn't going away completely anytime soon, and that we need to start figuring out how vaccinated and unvaccinated people should behave toward and around one another in the meantime.

In recent weeks, a number of Republican state governments have moved to ban so-called vaccine passports—to forbid, in other words, government entities and/or businesses from requiring employees or customers to show proof of vaccination. Florida Gov. Ron DeSantis, Utah Gov.

Spencer Cox, and Arkansas Gov. Asa Hutchinson have each signed some version of such a ban into law; a similar bill is making its way through Iowa's GOP-run legislature. The governors of several other states, including Texas, Montana, and Arizona, have issued bans via executive order.

The thinking behind such passports is that, in a society still structured in many ways to minimize transmission of COVID, it makes sense to be able to know who has acquired immunity—why should the fully vaccinated, for instance, be required to continue wearing masks in public? The nation of Israel, a current leader in the fight to crush COVID, implemented a passport system called the “green pass” earlier this year.

But there remain good reasons to be skeptical of government-implemented passports in particular, including privacy concerns around a national database of vaccine recipients and concerns about widespread adoption creating a “two-tiered society” wherein some are allowed to participate in public life and others are not. President Joe Biden has ruled out pushing for any such national system, although his administration is working with tech companies to help create standards for proprietary passport systems.

It's with regard to these private passport systems that state-level Republicans have diverged. In Arkansas, Hutchinson has argued that businesses are their own best judges of what sorts of pandemic safeguards they want to keep in place. “I think you have to give latitude to the private sector,” he said last month. “As a government, no, the state will not be requiring or mandating vaccinations.”

According to conventionally conservative ways of thinking about government power, this is as boilerplate as it gets: *The state won't mandate this; the rest of you do as you wish*. Which is why it's interesting that other major Republican-run states, including Texas and Florida, have taken a different tactic: forbidding even private businesses from asking for proof of vaccination and insisting *that* is a victory for civil liberties.

In Texas, Gov. Greg Abbott's executive order prohibited not only state and local governments but also any business receiving public funds from “requiring consumers to provide documentation of vaccine status in order to receive any service or enter any place.”

“We will continue to vaccinate more Texans and protect public health,” Abbott said in a video statement, “and we will do so without treading on Texans' personal freedoms.”

In Florida, DeSantis signed a comparable order last month—and then signed a new law prohibiting nearly all businesses from making use of passports. “You have a right to participate in society without them asking you to divulge this type of health information just to go to a movie, just to go to a ball game,” he told Laura Ingraham last week. Private companies looking at using vaccine passports are “not going to be able to do it in the state of Florida,” he said.

Free market groups in both states applauded the governors’ moves, saying they were necessary to protect citizens’ rights to public accommodation and medical privacy.

“I think the two issues are protecting individual privacy with confidential medical information, and also not conditioning being able to access public buildings and move about in society on proof of confidential medical information,” Robert Henneke, general counsel for the Texas Public Policy Foundation, told *The Dispatch*. “We’ve long allowed people to correctly choose for themselves what types of medical care, vaccines, treatments, medical decisions that they make for themselves. And we should continue to respect that autonomy and also fiercely defend the privacy that’s inherent in personal medical decisions that people make for themselves and their families.”

Not everyone is convinced, however.

“They’re inventing a right that the law does not currently give them,” said Walter Olson of the Cato Institute. “This notion, which they came up with five minutes ago as far as I can tell, that no one is ever allowed to ask you whether you are even potentially contagious with a disease—it’s wild. If you believe in that kind of medical privacy, then you also believe it’s incorrect to ask you whether you have an active COVID case. Because if they do have the right to ask you that, well gee—they have the right to ask you about medical data about yourself.”

What’s going on here? The most plausible explanation is that the sort of balance struck by Hutchinson might be onetime conservative boilerplate, but it isn’t where the lines are drawn by today’s Trumpier, more populist right. According to this way of thinking, the most fundamental distinction in sorting out such matters isn’t the one between the government and the people—it’s the one between supposed leftist elites—whether in government, academia, public health, business, whatever—and “regular people.”

In a monologue on his primetime show this week, Fox News’ Tucker Carlson scoffed at the idea that there was a meaningful distinction between private and public vaccine passport programs:

“Just because there’s no official federal requirement to take the coronavirus vaccine does not mean that you and your family won’t be required to take it. With the full backing of the Biden administration, private industry and nonprofits may be forcing you to. ... Unless [Americans] speak up now, unless they resist this, they’ll be getting the shot whether they like it or not, and a lot more after this.”

A writer for the pro-Trump website *American Greatness* put the point even more succinctly this week: “Those who rule us in all these matters are essentially the same people ... Whether the institutions they control are public or private under our Constitutional system has ceased to matter.”

The result: public policy framed not just to protect people from being coerced into getting the vaccine, but from suffering any sort of social inconvenience should they choose not to get it.

“What you have is, you clearly have a substantial body of opinion that is influential in the Republican Party, that puts their own perspective of ‘no one’s going to talk to *me* that way, no one’s going to screen *me* out’—puts that above the liberty interests of others,” Olson said. “The impulse comes first, which is ‘they’re not going to do this to me.’ And then the legal rationalization comes afterward.”