

WHERE FROM HERE?

*a conversation series about the
great acceleration of 2020 and
what it means for the future*



Panelists



Annette Hurst
ahurst@orrick.com



Daniel Forester
dforester@orrick.com



Lisa Lupion
llupion@orrick.com



Andrew Silverman
asilverman@orrick.com

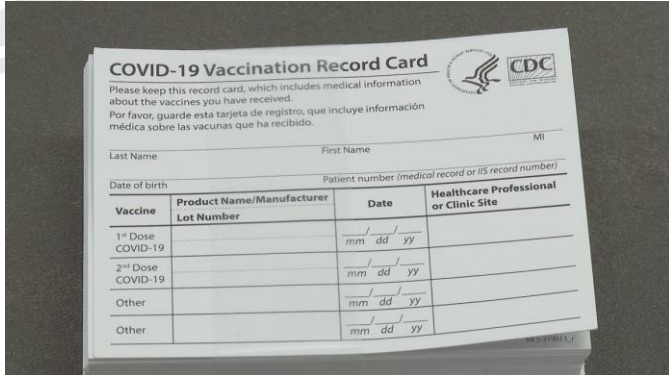


Shannon Yavorsky
syavorsky@orrick.com

A CONVERSATION ON VACCINE PASSPORTS

WHAT IS A VACCINE PASSPORT?

Vaccine Passports



- More than vaccination records
- More than international travel
- *“Vaccine Passports: What Are They, and Who Might Need One?” – NY Times, 4/9/21*
- *“Vaccination Passports are New Flashpoint in COVID-19 Pandemic” – Wall Street Journal, 4/9/21*
- *“Clarity still needed on effectiveness of COVID-19 vaccine passports, says [WHO]” - UN News, 4/6/21*



Ron Paul @RonPaul · Apr 5

"Vaccine passports" must be stopped.

Accepting them means accepting the false idea that government owns your life, body and freedom.



Vaccine Passports – State of Play

Mixed Governmental Direction

- U.S. Federal, FL, TX (No)
- New York (Excelsior Pass)
- EU (Digital Green Certificate)
- Israel (Green Pass)

Private Sector Forging Ahead

- Airlines, Cruise lines
- Airports
- Universities
- Arenas and Stadiums
- Museums
- Employers



Vaccine Passports – Build, Buy, Partner

NGOs

- International Air Transport Association
 - Travel Pass
- Commons Project + WEF
 - CommonPass

Private Sector

- CLEAR
 - Health Pass
- Vaccine Credential Initiative
- IBM

CONSTITUTIONAL CONCERNS



Federal Travel Restrictions

- Federal government has broad powers to restrict foreign and domestic travel
- Commerce Clause
- Public Health Services Act

Restriction must not unduly restrict fundamental right to travel



State Travel Restrictions

States have broad general police powers

- E.g. to quarantine

But the Constitution limits State powers

- Fundamental right to travel
- Dormant Commerce Clause
- Privileges and Immunities Clause (Art. IV, § 2)



Private Restrictions

Risk of possible disparate impact discrimination based on

- Disability
- Race
- Religion
- Socioeconomic status



What about banning vaccine passports?

Banning vaccine passports is not without its problems too

- See, e.g., cruise line industry reaction to vaccine passport ban in Florida

PRIVACY CONCERNS



Privacy and Security Issues with Vaccine Passports

- Does HIPAA apply?
- Keeping data secure
- What data will be collected?
- Who will data be shared with?

EMPLOYER CONCERNS



What Does A Vaccine Passport Mean For Employers

- Vaccination as a condition to:
 - Returning to the office?
 - Meetings and events?
 - Business travel?