

Julie Enea

Subject: FW: Covid 19 Emergency Health Orders

From: Stanley Gibson
Sent: Thursday, May 21, 2020 9:59 AM
To: Julie Enea
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Please forward this Email to all Supervisors and please submit it for the May 21 meeting of the Ad Hoc Committee on Covid 19.

I am a resident of and voter in Walnut Creek and I want to commend the Board of Supervisors for finally setting up the Ad Hoc Committee on Covid 19 issues. The CCC SIP orders, including the most recent May 18 order, affect the freedom of every single resident of the county in a very substantial way. It is important that the people have a voice in how the order is implemented and in the substance of the order itself.

The referral creating the Ad Hoc Committee in its first sentence states:

“Although the Board of Supervisors has authority over County issues, under State law, when an emergency of this nature is declared and there is a pandemic of this magnitude, the Health Officer of each County has the legal authority to impose whatever orders she or he deem necessary to protect the public.”

We are now more than 60 days into the” emergency,” with no end in sight. As a practicing attorney for over 45 years in the field of commercial litigation, I strongly question the “legal” authority for the Health Officer to impose whatever orders he deems necessary to protect the public, or to extend those “emergency” orders indefinitely. I have reviewed the statutes cited by Governor Newsom (Gov’t Code Sections 8567 and 8627) and the Dept. of Health (H&S Codes Sections, 120130(c), 120135, 120140, 120145, 120150, 120175 and 131080). None of the statutes gives authority to the Health Officer to decide what activities are “essential”. That word is not anywhere in the statutes. The Health Officer, a medical doctor, is hardly qualified to decide which businesses will be allowed to continue operating, and thereby survive, and which businesses will have to close and likely fail. That is why so many questions have been raised about sec 16 of the April 29 and sec. 15 of the May 18 orders in which he attempts to define essential activities. The orders are confusing, ambiguous and, in many cases, make no sense. They are socio-economic and political judgments to be made by the elected representatives of the people.

One need to look no further than the California Constitution to learn what “essential” activities are:

"Sec 1 -- All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy....

"Sec7 - (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws....."

Under penalty of criminal prosecution, the Health Officer has ordered me, a healthy person, to stay inside my home except to engage in certain ill-defined activities which he deems "essential." That has deprived me of the right to enjoy life and liberty and to pursue happiness. I have been deprived of that liberty with no due process whatsoever. I could be subject to criminal penalties for visiting my family, grandchildren and friends, or even taking a drive to Sacramento to exercise my free-speech rights to protest these very actions.

The Health Order of May 18 and the two preceding it would make the dictators of a police state proud. I strongly doubt if Dr. Farnitano has ever read the California Constitution. It's not part of the training for a medical doctor. Nor, I suspect, is a degree in economics or political science required for the position of Health Officer. Attempting to regulate the activities of the citizens of the County in minute detail simply is not possible nor should it be unless you want to create a complete police state.

I would like to remind each Supervisor that when you took your oath of office, you swore to:

"....support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

The Supervisors are answerable to the people and there is an election approaching. I ask that each Supervisor honor his/her oath of office and direct the Health Officer to delete paragraphs 15, 5, 7, and 8 of the current Health Order.

Instead of wasting time drafting endless regulations attempting to control daily activities of healthy people and the businesses in the county, Dr. Farnitano should spend his time on HEALTH issues and data. What about focusing on nursing homes – a hot bed of infection and death in every county? I read in the SF Chronicle that he first ordered testing in nursing homes on May 6! If true, that is appalling. How many residents and employees of nursing homes have been tested? What are the results? How many have died? If you delete those statistics from the rest of the county, what is the infection rate? What is the death rate? How does this data compare to the data this and last year for the flu? Why isn't data for the flu being published? What are the age ranges of those testing positive

for Covid? Has testing been arranged so that every resident who wants a test can get one? How much testing for antibodies to Covid 19 has been done? When can all residents who want an antibody test get one?

We need to make rational decisions based on accurate data, and we need accurate data to make good decisions.

Respectfully,

Stan Gibson

Resident and voter in Walnut Creek