

**NATHANIEL K. MacPHERSON**  
ATTORNEY AT LAW (CALIFORNIA)  
SOLICITOR OF THE SENIOR COURTS  
OF ENGLAND & WALES  
**nathan@beatirs.com**

**B. SCOTT MacPHERSON**  
(OF COUNSEL - MACPHERSON LAW, PLLC)  
ATTORNEY AT LAW (ARIZONA)  
ATTORNEY AT LAW (CALIFORNIA)  
ATTORNEY AT LAW (WASHINGTON, D.C.)  
**scott@beatirs.com**

# The MacPherson Group, LLC

**Attorneys at Law**  
**www.BEAT-IRS.com**

**ARIZONA OFFICE**  
24654 N. Lake Pleasant Pkwy.  
Suite 103-551  
Peoria, AZ 85383-1359  
T (623) 209-2003 F (623) 209-2008

December 2, 2020

City of Glendale  
5850 W. Glendale Ave.  
Glendale, AZ 85301

Jerry Weiers, Mayor  
Ray Malnar, Vice Mayor and Councilmember  
Bart Turner, Councilmember  
Ian Hugh, Councilmember  
Lauren Tomachoff, Councilmember  
Jamie Aldama, Councilmember  
Joyce Clark, Councilmember

**Re: Constitutional analysis of business closures, hiding one's face in public, and quarantining healthy people; Glendale is acting unconstitutionally.**

Dear Mayor and Councilmembers:

## **I. OVERVIEW**

- A. Business closures, quarantines, hiding their faces in public – this was supposed to last only two weeks, remember? That was the promise in April, as I recall. States that imposed the most severe lockdowns are doing it all over again in violation of the proverbial definition of stupid: “doing exactly the same thing again but expecting a different result.”
- B. For the reasons that follow, the “stupidity” needs to stop. People have had enough already, and as explained below it is unconstitutional and promotes Marxism.
- C. Because I mainly practice federal law, including constitutional law, this letter reviews business closures, hiding one's face in public, and quarantining healthy people (collectively, “the ordinances”) only from the perspective of federal law.

- D. I realize that Glendale's mayoral proclamation of June 19, 2020, does not shut down businesses or impose quarantines, but (1) the orders in other jurisdictions do, (2) other jurisdictions that aren't doing it are talking about doing it, and (3) I don't want Glendale to move in that unconstitutional direction. Glendale's proclamation does require that one hide one's face in public, and through it this City Council does purport to control businesses, so the Glendale proclamation is a subset of the broader ordinances in other jurisdictions.
- E. For the reasons explained below, the ordinances, which include, as a subset, Glendale's proclamation:
1. Violate Fifth Amendment Due Process and Equal Protection;
  2. Violate Fourteenth Amendment Due Process (Privacy);
  3. Violate First Amendment freedom of speech and association, including actually impeding communication;
  4. Promote Marxism;
  5. Are deficient for want of an explanation of their own rationale;
  6. Violate First Amendment freedom of religion;
  7. Violate logic for imposing that which has never worked yet (no rational basis);
  8. And violate logic for redefining a word to mean its opposite.

## **II. FIFTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION**

- A. Due Process requires that we are innocent until proven guilty, and that our rights not be taken without due process of law.
1. The argument presented by the ordinances is this: "If you do not cover your face with a mask and stay away from me, you will give me a disease that will harm me."
  2. From information not always presented in the ordinances and not made clear in Glendale's proclamation, one can assume that the relevant governing body is worried about hospitalizations and deaths.
  3. Given that assumption based on information outside of the ordinances, we query, who said that Citizen ABC is sick? Who said that Citizen ABC is carrying any

communicable disease at all, but specifically the one that we are supposed to be worried about?

4. As a first matter, at common law it is *per se* defamatory to accuse someone of having a communicable disease. So, what is the evidence for the defamatory statement aimed at everyone?
5. Does the principle of “innocent until proven guilty” not apply in Glendale, or in Arizona, or in the U.S.A anymore? Or are there no defamation laws?
6. Or does the City Council purport to be omniscient, or clairvoyant, such that it knows who has a virus and who does not, and it can identify individually those citizens who need to hide their faces in shame? And it happens to be everyone in the city over age six?
7. Why six years old? That sounds arbitrary.
8. Does the City Council assume – contrary to all statistics – that everyone is carrying and spreading a virus, let alone one that might be fatal?
9. According to the CDC website, the number of COVID-19 cases in the entire U.S.A. is about the same as the total population of New Jersey. Adjust this as necessary according to whatever the most recent statistics are, because the point will remain unchanged: the equivalent of 49 out of 50 States have never contracted the virus.
10. The point is, the City Council has declared everyone guilty without trial, that is, without any medical review whatsoever, and committed *per se* defamation. This is an abrogation of the single most fundamental concept in Western civilization: innocent until proven guilty (or, don’t defame without facts).
11. The point is that it is wrong to assume *a priori* that a given person has this disease (or any disease, for that matter), because statistically, he probably does not; 1 out of 50, remember.
12. Even doing the fraction from raw numbers of people rather than an analogy to the number of States in the Union, the percentage of COVID-19 cases is about 4% of the population nationwide. Cases, not death. Cases, not hospitalizations. (Again, adjust as necessary based on update numbers. It will not change enough to change the point.)
13. 4%. Think about that. Think about the legal fact that Due Process requires a specific finding regarding a specific individual before that individual’s liberty

may be curtailed. Who said that any given individual is within the 4% category of COVID-positive as opposed to the 96% category of COVID-negative?

14. As a matter of documented fact, 96% of the people are NOT carrying and spreading the virus, right? Why declare an “emergency”?
- B. The ordinances offer no reason why the targeted businesses must curtail and alter their operations.
1. Other cities have asserted authority to control how much business a business conducts, and where the business is conducted. While the City of Glendale has not done that, the City’s proclamation does purport to control businesses based on the number of people inside the business space.
  2. According to this City Council, if there are seven or eight people in a business space, everyone is fine. If instead there are ten or eleven people in the same space, then they’re going to kill each other by way of a fatal disease unless they hide their faces.
  3. Who said “less than 10” is the appropriate cutoff point? Where was that finding made, and how? Does it really make sense that death happens when ten people come under the same roof, as if the COVID-19 virus counts heads? Really?
  4. Other cities purport to have the authority to curtail operations at restaurants, bars, and “other large gathering places.”
  5. As to those other ordinances, the obvious deficiency is, who said that the disease is causing a problem at restaurants, bars, or other large gathering places? Where is that finding? Did anyone even investigate where, specifically, in a given city any disease is spreading, let alone COVID-19?
  6. For want of a finding that COVID-19 is spreading at or otherwise causing a problem at restaurants, bars, or other large gathering places, such an ordinance smacks of a due process violation against the owners of said businesses.
- C. Glendale’s proclamation is void for vagueness.
1. Turning back to Glendale’s proclamation specifically, the proclamation is void for vagueness in that it requires people to hide their faces and stay away from other people “not within their frequent and common association group or unit” and other people they are not “closely and frequently associated with.”

2. How about the people I exercise with every week? If consistently, week after week, my friends and I meet once a week at a gym for workouts together, are we a “frequent and common association group”? Are we “closely and frequently associating” with one another? How would I know? Where is it defined?
  3. How about if we met together twice a week? How about three times a week? What number is the magic number such that we are a “frequent and common association group”? Again, where is it defined?
  4. How about a weekly church service: is that frequent enough? How about a monthly book club? The point is that the term “frequent” is vague to the point that the proclamation is void.
- D. The ordinances discriminate between bars and restaurants without any reason at all.
1. Other cities have asserted authority to distinguish between restaurants and bars; e.g., maybe restaurants can open at 50% capacity but bars at only 25%.
  2. The City of Glendale’s proclamation does not make that distinction, thankfully, but in the interest of prevention, recognize that unless there is an explanation given for the discrimination against the citizen who owns a bar versus the citizen who owns a restaurant, that Glendale is imposing disparate treatment in violation of equal protection.
  3. Similarly, other cities have asserted authority to distinguish between sitting at tables and sitting/standing at bar counters. Again, in the interest of prevention, recognize that unless there is an explanation given as to how the COVID-19 virus tells the difference between tables and bar counters, that is disparate treatment in violation of equal protection.
- E. In some jurisdictions the ordinances discriminate without any reason at all between food service provided indoors with walls versus the same food service provided outdoors without walls.
1. Other cities have asserted authority to permit restaurant patrons to sit and eat at tables indoors but not outdoors – or vice versa.
  2. For some reason, some civic leaders think that the COVID-19 virus will not spread at a table that is protected from the elements by four sturdy brick or wooden walls, but it will spread at a table that is protected from the same elements by something less – or vice versa, depending on the city.

3. Thankfully Glendale has not fallen into that irrational trap yet, but in the interest of prevention, notice that without a clear explanation for how a COVID-19 virus knows the difference between being indoors and outdoors, any ordinance that curtails dining in one place but not the other is irrational and baseless and smacks of an equal protection violation.

### III. FOURTEENTH AMENDMENT DUE PROCESS (PRIVACY)

- A. As a first matter, “We the People” have the Due Process right to refuse medical treatment.
  1. In *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), the Supreme Court stated as a matter of law that competent individuals have the right to refuse medical treatment under the Due Process Clause. “The Fourteenth Amendment provides that no State shall ‘deprive any person of life, liberty, or property, without due process of law.’ The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.” *Id.* at 278.
  2. The holding of *Cruzan* was that a person has a right to die; that is, a citizen of the United States of America has a right to choose whether and what medical treatment – or no medical treatment — he will receive into his body.
  3. For this City Council to order under the pain of legal sanctions that a citizen must comply with a specific medical directive, is utterly contrary to the Due Process concept of the U.S. Constitution as declared by the Supreme Court.
  4. See also *Washington v. Harper*, 494 U.S. 210, 221–22 (1990), where the Supreme Court weighed the constitutional rights of an incarcerated individual who had been found to have a mental illness. Said the Court: “We have no doubt that, in addition to the liberty interest created by the State’s Policy, respondent [prisoner] possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment.”
  5. If an incarcerated person who is, individually and specifically, known to have a mental illness, still has a “significant liberty interest in avoiding unwanted” medical prescriptions, than how much more do the citizens who are not in prison and who have not been specifically identified as having any disease whatsoever!
- B. As a second matter, it would clearly be an ADA violation to not provide exemptions for medical reasons.

- C. As a third matter, have the members of the City Council medically examined anyone?
1. A medical health prescription, without ever interviewing the patient, without reviewing the patient's medical history, is malpractice and would result in loss of a medical license.
  2. Verily, before prescribing a medical prescription (here, a mask covering the nose and mouth) one must first talk with and examine the patient.
  3. So, is the City Council prescribing upon people a mask that covers their faces, to medically protect the mask-wearer from contracting some particular virus?
  4. Is the City Council doing this without even knowing whether such a mask is indicated or contraindicated for the individual wearer? Said again: which patients have the Council examined?
  5. Is the City Council willing to recompense the harm caused by the blanket, one-size-fits-all imposition of a medical device to citizens whom you harm with your negligent medical prescription? Further, does the Council have malpractice insurance to recompense the harm? If the answer to both questions is "no" then there cannot be a mask mandate.

#### **IV. FIRST AMENDMENT FREEDOM OF SPEECH AND ASSOCIATION**

- A. Because interpersonal communication is hampered by masks and "face coverings," freedom of speech is abridged and chilled.
- B. The universal consensus among academics who study communication is that more than half of a spoken message is conveyed through body language – not from the mere words themselves, or even from how the words sound (though this, too, is modified by face coverings).
- C. From watching television and movies we all know the significance of facial expression to a communication. Think of any "wooden actor" versus any Oscar-winning performance, especially a scene where the camera zoomed in on the actor's facial expressions, and the point is made.
- D. Therefore, it is undeniable that a government order that one hide one's facial expressions when speaking with other people, necessarily abridges speech.
- E. It is a syllogism: A significant portion of communication comes through the face. Covering one's face removes that communication. Therefore, covering one's face hinders communication.

- F. Restated: it abridges free speech. Q.E.D.
- G. By hindering communication, the ability to associate with others is also abridged, necessarily. More specifically, a law that limits group sizes at restaurants and parties by definition infringes upon association.
- H. Further, any ordinance that prohibits gathering together in certain locations and at certain times without first covering one's face, is an abridgment of freedom of association.

## **V. THE ORDINANCES UNQUESTIONABLY PROMOTE MARXISM**

- A. My initial Marxism argument was posted on my business website: <https://www.beatirs.com/periodicals> and then click "Marxism Unmasked." I have enclosed it here for your convenience.
- B. I have also enclosed my outline for a "Continuing Legal Education" presentation on Marxism.
- C. Article IV, Sec. 4, of the U.S. Constitution, guarantees and requires that each State in the union will have a republican form of government. Consider whether Marxism is consistent with that provision specifically, and consistent with the Constitution as a whole.
- D. With that as the background, here is an undeniable truth: Whoever controls the number of customers, and where the customers are, controls the business.
- E. Think of the stereotypical New Jersey mob boss from movies or television shows. The mob boss is not the owner of record in the city or county records hall, because he doesn't have to be. It doesn't even matter whose name is listed as "president" or "CEO" on a piece of paper. What matters is that the person whose name is on the piece of paper does whatever the mob boss says.
- F. In many places right now, the owners of restaurants (and gyms, too) cannot serve customers in their restaurants. Said another way, they cannot use their private property to operate their private business. Why? Because the person who is actually in charge said so, and this time the person actually in charge is not a mob boss. It's Big Brother (whether at the city, county, or state level).
- G. Footnote: "Big Brother" is a reference to the novel "1984" by George Orwell. After witnessing Marxism in action in communist Russia, Orwell wrote that novel to warn his native England of the dire threat that Marxism posed. In the interest of fulfilling

- your promise of protecting the legal rights of Glendale's citizens, you are obligated to read that book and the companion novel "Animal Farm."
- H. Instead of serving customers at the tables where customers have always sat, restaurant owners today often have to run their business on public land. That's right: private land is bad, but public land is good, because the guy in charge (Big Brother) said so.
  - I. I personally witnessed this in two cities in California, and now the City of Chandler is proposing it. In California, I witnessed restaurant "owners" (and I put that in quotes on purpose) setting up their tables outside on, variously, the sidewalk, or a parking lot, or a city park.
  - J. That's right: using private property to run a private business (e.g., a restaurant) is forbidden under local law. Using public property to run that same business is the only way to stay open.
  - K. In other places the number of, and the positioning of, customers is restricted. Restaurants cannot serve at full capacity because, again, Big Brother said so. Other types of businesses mark on the floor where customers must stand.
  - L. We both know that businesses have suffered this year as a result of these government-ordered closures and restrictions. Let us ask, who is making up for the losses or the shortages? Answer: the government. We both know that the federal government sent checks and grants to individuals and to businesses to make up for the losses resulting from COVID-19 restrictions.
  - M. Do you not see the Marxism in all of this? Is it not blatant? Usage of private property is illegal. One must use public property instead. The number of customers is restricted. The government will pay you for the resulting lost income.
  - N. Or in shorthand: the government controls the operation of your business and pays your wages.
  - O. Q.E.D. ,this is textbook Marxism!
  - P. The reason/excuse given by Big Brother for taking over businesses is the same reason/excuse for ordering everyone to dress like a Moslem woman under Sharia law.
  - Q. When does it end? ... Anyone? ... That's right, it doesn't end. There is no fixed criteria for when it stops. We are under a lifetime sentence of Marxism now, unless someone stands up and leads.

- R. But, why are the various governments, whether city or county or state, acting this way? The answer is obvious: the elected leaders want to promote Marxism. There is no other explanation for outlawing the use of private property to run a business, and to demand that businesses be run on public property.
- S. There is no other explanation for ordering humans to avoid their own kind, except for the obvious “1984/Big Brother” reference. How did Russia fall to Marxism? Answer: In fairness there were many components but a key part of the success was separating groups (avoiding their own kind) and then encouraging people to spy and report on those who do not comply with the separation orders. That sounds like telling a business to reject anyone who shows his face in public, doesn’t it?
- T. An order that everyone shamefully hide one’s face discourages interpersonal communication, promotes fear, and promotes the idea that only Big Brother is in charge, and promotes the idea that only Big Brother can save us from the evil forces that rock our world. It’s dialectical reprogramming.
- U. (And, it makes the enemies of Big Brother stand out.)
- V. If you control how many customers can eat at a restaurant, and when, and where they will sit, then, do you not in practical effect own the restaurant? If you can order the restaurant to close down with but a day’s notice, then do you not in effect own the restaurant?
- W. The answer is “yes.”
- X. The same goes for any other business, and the same goes for churches. Whoever can order the doors closed, is the owner for all practical purposes.
- Y. Almost every business and almost every church in almost the entire country is now owned in a practical sense by the city, county, or state government, all because no one said, “Wait, whoa, stop.”
- Z. The City Council of Glendale has not gone so far as to order restaurants to move tables onto Murphy Park or Marty Robbins Boulevard, but the Council does assert the authority to regulate where customers stand, and to order them to hide their faces from other humans while inside a private business. That distinction is only one of degree, not of kind, because that is still unprecedented control over businesses.

**VI. DEFICIENT FOR WANT OF AN EXPLANATION OF ITS OWN RATIONALE (COMPELLING STATE INTEREST) AND STATUTORY AUTHORITY**

- A. In addition to the constitutional issues just explained, the Glendale proclamation of June 19, 2020, is deficient for want of an explanation of a compelling state interest. The ordinance does not explain what the “emergency” is.
- B. The third “whereas” paragraph speaks of an “outbreak” of COVID-19 without citing any numbers from within the City of Glendale.
- C. The sixth “whereas” paragraph speaks of “a study,” without citing said study in any way. In contrast, in Section VIII, *infra*, I cite several studies that contradict the message of the “whereas” paragraph.
- D. The seventh “whereas” paragraph recites that the State Governor decreed that mayors may adopt “policies requiring the wearing of a mask ... for the purpose of mitigating the spread of COVID-19.” There is no mention of (1) authorization to shut down businesses or order people to stay away from people, and (2) there is no mention that anyone in the City of Glendale even has COVID-19.
- E. And therein is a glaring deficiency: no study, no finding, is anywhere mentioned that speaks of any cases of COVID-19 in Glendale. The media routinely reports statewide numbers, but how many of those cases are in Glendale?
- F. The proclamation cites A.R.S. § 26-311 as the legal authority. That statute says nothing about the manner of dress (i.e., cover one’s face) that a mayor (or a governor) can impose upon people, nor does the statute have anything to say about ordering people to stay away from one another in public.
- G. So, the two most important parts of the proclamation – ordering people to hide their faces from other people, and ordering people to stay away from other people – are outside the scope of the purported statutory authority behind the proclamation.
- H. The eighth “whereas” paragraph states that the purpose of the proclamation is to “help build public confidence.” Building public confidence is not a valid reason for the mayor to infringe upon constitutional rights, or to promote Marxism, in his city.
- I. Granting for the sake of discussion that COVID-19 has spread in the State of Arizona since June (the month of the proclamation), the media has widely reported on “asymptomatic” people, and the same would hold for every other disease: there are always asymptomatic people. A given individual can be exposed to disease x-y-z and never even know it because his immune system fights the disease off the way God intended immune systems to fight incoming germs.

- J. And that person will later test positive for the antibodies of disease x-y-z, even though he technically never had the disease, because his immune system actually did what immune systems do.
- K. Every year for literally decades on end influenza passes through the entire United States of America, infecting tens of millions of people, sending millions of them to doctors, hospitalizing hundreds of thousands of them, and killing tens of thousands of people. But it does not kill everyone, and literally every year, not everyone who is infected with influenza even needs to see a doctor, because their immune systems in cooperation with home remedies fight it off.
- L. The same goes for the common cold. The same goes for many diseases.
- M. The point is that the June proclamation falsely claims that some unspecified number of people merely being infected with a particular disease is a city-wide emergency. Merely being infected is not a problem. Where is the finding that in the City of Glendale, there is a “dangerous” level (an adjective that has to be defined) of something other than mere infection that our citizens’ immune systems are handling?

## **VII. FIRST AMENDMENT FREEDOM OF RELIGION**

- A. The First Amendment to the U.S. Constitution protects people against government restricting the “free exercise” of religion as well as government imposing religious practices.
- B. Recall that our legal system and our laws were built upon English common law, which was the law of the Pilgrims and the 13 colonies, and thus was the original law of the United States. The common law can be traced back 900 years to the Normans in the 11th century.
- C. In 1892, the U.S. Supreme Court walked through the history of the United States and specifically held that the United States was formed as a Christian nation, and at that present time, the year 1892, it was a Christian nation. That is part of the actual holding of the case *Rector, Etc of Holy Trinity Church v. United States*, 143 U.S. 457 (1892).
- D. The legal issue in the case was whether or not a church violated federal law by hiring a pastor from overseas. Congress had passed an immigration bill that made it illegal to pay for the voyage of an immigrant to the U.S.A. for a job in the U.S.A. (Yes, it was an anti-immigration jobs protection act, in the 1800s. The border was restricted.) A Christian church in New York hired a pastor from England anyway, and paid for his voyage across the ocean. The Supreme Court held that the church did not violate the

federal immigration law because there was no possible way that Congress could validly pass a law that restricted the hiring of a pastor:

The construction invoked [by the government] cannot be accepted as correct. It is a case where there was presented a definite evil [high unemployment in America], in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. *Holy Trinity*, 143 U.S. at 472 (emphasis added).

- E. Restated: The Supreme Court held that there was no possible way that Congress could validly pass a law restricting the ancient practice of the religion upon which the nation was built.
- F. Notice that the common law was the law that developed in and was used by Christian England and then the Christian United States. The common law is inherently, by design, a legal system consistent with Christianity, and it was on the basis of that Christian common law that the Supreme Court specifically said that it was impossible for Congress to interfere with the operation of a Christian church.
- G. Contrast that with the City of Glendale proclamation, where this City Council purports to have legal authority to violate the religious beliefs of citizens of Glendale when they are not participating in “a religious ceremony or service” but engaging in some other aspect of life. (Paragraph 2(d) of the City of Glendale proclamation.)
- H. The false assertion of this City Council is that religious beliefs matter only when one is participating in a religious ceremony or service, and at all other times and in all other circumstances religious beliefs are unimportant. That assertion itself is contrary to the First Amendment.
- I. The common law is judge-made, as contrasted against bills passed by the legislature and signed by the Governor or the President. The judges form their decisions by application of principles and adherence to the past. It works because of the assumption that universal inalienable principles actually exist.
- J. That’s the point of the *Holy Trinity* holding and that’s the point of the entire legal system of the entire United States of America: timeless laws actually exist.
- K. The Declaration of Independence expressly states a belief in a God who created people and set forth timeless universal laws – “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

unalienable Rights” and then seven unalienable rights are listed. That is the basis for the law throughout the entire United States, including Arizona.

- L. A government order that everyone hide their face in public like a Moslem woman living under Sharia law violates the conscience of many citizens. It is an affront to the Christian religion recognized by the Supreme Court for various reasons, including but not limited to the following:
1. In Genesis 1:27 we read that “God created man in His own image, in the image of God He created Him; male and female He created them.” Humans are image-bearers of God and “face coverings” cover that image. Moslem women living under Sharia law cover their faces. We’re not Moslems, we don’t live under Sharia law, and half of us are not women.
  2. In Numbers 6:22-26 we read, “The Lord spoke to Moses, saying, ‘Speak to Aaron and his sons, saying, Thus you shall bless the people of Israel: you shall say to them, The Lord bless you and keep you; the Lord make His face to shine upon you and be gracious to you; the Lord lift up His countenance upon you and give you peace. So shall they put my name upon the people of Israel, and I will bless them.’” By seeing one’s face, one’s countenance, we receive blessing. Hiding the face is the opposite of this.
  3. In Genesis 2:7 we read that “the Lord God formed the man of dust from the ground and breathed into his nostrils the breath of life, and the man became a living creature.” Similarly, in John 20:22 we read that, when Jesus “had said this, He breathed on [His disciples] and said to them, ‘Receive the Holy Spirit. If you forgive the sins of any, they are forgiven them; if you withhold forgiveness from any, it is withheld.’” In both the Old Testament and the New Testament the breath is life: temporal life and eternal life. Restricting the breath is restricting life.
  4. In Romans 10:17 we read that, “faith comes from hearing, and hearing through the Word of Christ.” Face masks and face coverings restrict oral communication (which studies show is more than the spoken words but includes facial expressions and intonation, both of which are, well, “masked” by masks) and it is specifically by oral communication from one person to another that the Gospel is shared and saving faith worked.
  5. The notion that one must hide one’s face in the presence of other human beings and remain apart because human beings are lethal threats to one another, is 180-degrees contrary to the historical Christian witness. The teaching of Christianity has always included that:
    - i. “It is not good that the man should be alone.” (Genesis 2:18);

- ii. “[We] are the salt of the earth” (Matthew 5:13) and are thus to engage the world;
  - iii. We are to “Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you.” (Matthew 28:19-20);
  - iv. We are to actually befriend those around us;
  - v. We are to “not forsake assembling together” (Hebrews 10:25);
  - vi. Jesus said “Let the little children come to me and do not hinder them.” (Matthew 19:14);
  - vii. We are to draw near to one another to help one another.
  - viii. “The Lord make his face shine upon thee,” we pray.
6. All of that requires being close to other people and befriending them and helping them face-to-face. Why, then, are we hiding our faces from each other and staying away from each other? Why, then, should I profess that anyone who is showing me his face or standing near me is about to kill me (or at least make me very sick)?
  7. By definition, evangelism requires a person-to-person relationship. Evangelism and preaching the Gospel are the antithesis of saying to the other person, “Stay away! You’re going to kill me, or at least make me very sick, if you get near me! So stay away and cover yourself, you dangerous creature!”
  8. We are supposed to boldly preach that God became one of us. Any viewpoint predicated on the idea that humans must stay away from other humans, is antithetical to the religious belief that God became one of us, and lived among us, and healed people by touching them.
  9. To raise a question of psychology and anthropology now, there is a perverse message that we’re teaching children when we teach them that it’s deathly dangerous to (1) approach another human being without covering their face, and (2) to approach another human being whose face is not covered, because (so the story goes) every single human being is a lethal threat to you, my child! So beware of your own kind!
  10. In Section VIII, *infra*, I cite some recent mask studies. In consideration of those studies, plus many more studies that corroborate them, and in consideration of the

CDC's own long-standing mask advice to healthy people up until the first quarter of this year, for Christians (actually, for everyone) to cover their face with a mask would be to lie about the actual proven danger of COVID as well as the efficacy of the mask. This is a matter of honesty striking at one of the Ten Commandments: "thou shalt not bear false witness."

11. Building on that point, to wear a mask knowing that the reason for the mask is unsound, is to support a false narrative — and worse, to promote the fear behind the false narrative. Promoting fear is antithetical to the Christian message; c.f., John 6:20 ("I am. Fear not.").
- M. We all know that the touch of another human, and the proximity of another human, are undeniably healing. We want our children to make friends and socialize in person with actual human beings of similar age. We cannot, then, insist that everyone stay at least 6-feet away from everyone else and hide themselves.
- N. Glendale's proclamation does not allow for these viewpoints and thus does not allow for the free exercise of religion.

#### **VIII. THE ORDINANCES VIOLATE LOGIC FOR IMPOSING THAT WHICH HAS NEVER WORKED YET (NO RATIONAL BASIS).**

- A. Somewhere, somehow, the leaders of cities, states, and even this nation lost the capacity to objectively reason through problems. Please, let us not include the leaders of Glendale in that recitation! If the lockdown and the mask orders worked the first time, then, why do we need another? If it did not work the first time, then why are we doing it again?
- B. Recall that Dr. Fauci said in the spring of 2020 that masks do not work. The fact that we are talking about masks in December proves that masks have not worked all year.
- C. Like, you know, communism would work if we just did more of it, right? (Isn't that exactly the thinking of civic leaders in the news today?) ... Wrong! Someone has to say, "No, this is irrational!"
- D. Again, this entire discussion is coming after months and months and months of nationwide mask-wearing. If the masks worked, then, why they have not worked after all of these months of trial? Why are we still in the same position having the same conversation?
- E. Recall the stated goal and plan early in 2020: "herd immunity." We wanted people to develop antibodies to the disease, so that antibodies would be passed around the

population, so that the “herd” as a whole would become immune. Who changed the goal? Who?

F. The N95 mask stops 95% of viruses 3 microns in size. This virus is 0.123 microns, or half that which an N95 mask will stop. The masks ordinarily sold online or in retail stores, and passed out by businesses to customers, are not as effective as the N95 mask, which means we are talking about stopping mosquitoes by putting up chicken-wire fences.

G. The science is conflicting at best, if not against masks. Cases in point:

1. See, e.g., the report concerning data from March-September 2020, reported here: <https://web.archive.org/web/20201126223119/https://www.jhunewsletter.com/article/2020/11/a-closer-look-at-u-s-deaths-due-to-covid-19>

2. Here’s the punch line of that report (quoting now, with emphasis by me):

Surprisingly, the deaths of older people stayed the same before and after COVID-19. Since COVID-19 mainly affects the elderly, experts expected an increase in the percentage of deaths in older age groups. However, this increase is not seen from the CDC data. In fact, the percentages of deaths among all age groups remain relatively the same.

“The reason we have a higher number of reported COVID-19 deaths among older individuals than younger individuals is simply because every day in the U.S. older individuals die in higher numbers than younger individuals,” Briand said.

Briand also noted that 50,000 to 70,000 deaths are seen both before and after COVID-19, indicating that this number of deaths was normal long before COVID-19 emerged. Therefore, according to Briand, not only has COVID-19 had no effect on the percentage of deaths of older people, but it has also not increased the total number of deaths.

3. See, e.g., the World Health Organization’s figures. As of October 2020, WHO reported that the global death toll currently attributed to Sars-Cov-2 infection (the virus that causes COVID-19) was 1,061,539. As against a global population of 7.8 billion people, that’s an infection fatality rate of approximately 0.0014, which is hardly different than the seasonal flu rate.

4. See, e.g., “COVID-19 & Public Health Totalitarianism: Untoward Effects on Individuals, Institutions and Society,” the 134-page report by Peter Breggin, M.D., dated August 30, 2020. In that report Dr. Breggin cites reports by at least five other doctors. His thesis is the following (with underling by me):

Public health experts and policymakers believe that they can estimate what is scientifically required to fight a pandemic and that their personally determined requirements override most or all other considerations. But as a physician, psychiatrist, and researcher who has spent more than fifty years writing and evaluating research studies, I can explain why public health experts and officials are vastly more limited in their scientific knowledge than they admit.

As other experts will confirm in this report, there is no historical precedent and no scientific basis to the ever-changing pronouncements by public health officials that have driven this nation into a state of fearful lockdown. Nearly every policy and practice—from closing of schools and the stay-at-home orders to the use of various medications and respirators—is subject to varied and conflicting scientific opinion, and to an overall lack of sound data.

5. See also the CDC report published in August 2020, that states on page 1261 that only 7.8% of those who got COVID-19 were “never” or “rarely” wearing a mask in the two weeks before they tested positive, and 85% were “always” or “often” wearing a mask. <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6936a5-H.pdf>.
  6. Thus, according to the CDC itself, a person is far more likely to get the virus if he wears a mask than if he does not wear a mask.
  7. See also the Danish mask study which found a 2.1% infection rate for mask wearers, and a lower rate of 1.8% for non-wearers. [https://knst.iheart.com/featured/garret-lewis/content/2020-11-18-danish-mask-study-21-infection-rate-for-mask-wearers-18-for-non-mask/?fbclid=IwAR1\\_yS7X7gUehOIa8A6Xgy55SBhzy5uDjlzmtY-21-hxS2K5pakW0jWAQZ](https://knst.iheart.com/featured/garret-lewis/content/2020-11-18-danish-mask-study-21-infection-rate-for-mask-wearers-18-for-non-mask/?fbclid=IwAR1_yS7X7gUehOIa8A6Xgy55SBhzy5uDjlzmtY-21-hxS2K5pakW0jWAQZ).
  8. See also this study in the New England Journal of Medicine: <https://www.nejm.org/doi/full/10.1056/NEJMp2006372>.
- H. If, then, the goal of the City Council is that the citizens of Glendale do not contract COVID-19, then a mask mandate would be utterly opposite that goal.
- I. See also the CDC data and peer-reviewed scientific reports at <https://swprs.org/face-masks-evidence/>. The conclusion is, quote: “So far, most studies found little to no evidence for the effectiveness of cloth face masks in the general population, neither as personal protective equipment nor as a source control.”

- J. See also <https://www.aier.org/article/the-year-of-disguises/>.
- K. How about we say out loud what we silently know is true: “The emperor is not wearing any clothes!”

**IX. IT VIOLATES LOGIC TO REDEFINE A WORD TO MEAN ITS OPPOSITE**

- A. One cannot act like Humpty Dumpty in the classic novel “Alice in Wonderland,” and redefine words at will. One cannot redefine “fire” to be “cold,” or redefine “ice” to be “hot.”
- B. And neither can one redefine “quarantine” to mean “lock up and isolate the healthy people.” We all know that “quarantine” means “isolate the sick people from the rest of us.” It does not mean “isolate the healthy people from the rest of us.”
- C. Yet, the ordinances do just that in practice, for in practice the ordinances act to separate healthy people from the society.
- D. I assert that redefining “quarantine” to mean anything similar to “keep healthy people out of society and away from one another” is irrational, and illogical, and offensive to intelligence.
- E. Rethink the term “social distancing.” The first word is “social,” as in “socializing,” as in being with people, as in the adjective, “She’s a social butterfly.” But this City Council has turned it around to mean the opposite by imposing distancing upon social interactions. All social interactions must occur at a distance. And, why? Because (so the excuse goes) it is literally dangerous for humans to draw near to one another, and talk with one another closely, and get to know one another closely.
- F. How does that sound like the true definition of the word?
- G. How does that not sound actually evil?
- H. How does that not sound like “Big Brother is watching” ?
- I. So this Council does not want children to hug visiting family -- because visiting family members are going to kill them. This Council does not want to teach young boys to stand up from their chairs and shake hands like a gentleman, because that other person isn’t gentle. He will kill us all, so we must never shake his hand (because we’d have to be closer than six feet to touch hands).
- J. According to this Council children must be taught to fear their own kind -- every single human they see is a threat to their life, and that’s why children must hide their faces and stay away from other people and never play with other children in public

parks. No birthday parties, because the faces of children are death. Don't show your face, don't look upon any other person's face, and don't get near anybody, or you'll die!

K. That is the practical definition of "social distancing," is it not?

## X. CONCLUSION

- A. Year 2020 has been nothing but bioterrorism for the profit of three industries: masks, hand sanitizers, and signs.
- B. As outlined above, there are many serious constitutional questions regarding the proposed ordinance, as well as the simple, rational argument of, "We already did this and it didn't work."
- C. Some of the deficiencies noted here were addressed in similar ordinances that have been passed in other jurisdictions around the country (such as the City of Phoenix, or the Panhandle Health District in Idaho), though those continue to be deficient in other ways. Thus, Glendale put forth a sloppy proclamation that is not up to the standards of other local jurisdictions around the country, even those that themselves would likely not survive constitutional challenges.
- D. The attached opinion of the Attorney General of Louisiana further addresses legal and constitutional issues.
- E. "Simply put, there is no pandemic exception to the U.S. Constitution and its Bill of Rights." (U.S. DOJ letter to California Governor Newsom dated May 19, 2020.)

With highest regards,

*/s/ Scott MacPherson*

Scott MacPherson, Esq.  
Glendale resident, Cactus District

Encl.: my essay posted at [www.beatirs.com](http://www.beatirs.com)  
my outline for a Continuing Legal Education presentation on Marxism  
State of Louisiana DOJ Opinion 20-0068 dated July 15, 2020