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PERSPECTIVE

Your town is not an independent republic

By Stephen M. Duvernay
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On November 2, the Oroville city council resolved that “the City of Oroville is declared to be a Constitutional Republic City.” The resolution apparently was inspired by unhappiness with the ongoing state of emergency due to the coronavirus pandemic. While no one is happy that the pandemic won’t go away, this stunt will not result in anyone getting a Republic of Oroville passport. California cities have no power to become breakaway republics, and a “constitutional republic city” is not a thing.

The Oroville council claimed that its action serves constitutional principles: “the separation of powers, individual rights, and the rule of law as outlined in the United States Constitution, including the freedom for local government to have local control over issues related to the citizens who reside within the City’s jurisdictional boundaries.” Yet the U.S. Constitution says nothing about local governments, and from the nation’s beginning cities have been solely creatures of state law with no federal protection for their existence. Both the U.S. and California Supreme Courts have long held that in our federal system the states are sovereign, but cities and counties are not. So in California as elsewhere, local governments are mere creatures of the state and exist only at the state’s sufferance. The federal constitution has nothing to say here.

Instead, California’s local governments (including Oroville) owe their existence to our state constitution and statutes, which provide for two kinds of municipal governments: general law and charter. Article XI, section 2 commands the state legislature to prescribe a uni-



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Oroville, California, November 23, 2021

form procedure for general law city formation and powers, and section 3 permits any general law city to adopt a charter. Government Code sections 34101 and 34102 similarly define general law and charter as the only two kinds of California cities. That rules out a California city becoming a “constitutional republic,” so the Oroville resolution is ineffective under California constitutional and statutory law.

Oroville adopted a charter in 1931, and Article I of its charter provides that “The municipal corporation now existing and known as the ‘City of Oroville’ shall remain and continue a body politic and corporate in fact and in law, by the name of the ‘City of Oroville’ and by such name shall have perpetual succession.” A charter amendment

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(not a mere resolution) is required to change that provision — and the California constitution requires a majority vote of city electors for charter amendments. Thus, the resolution is invalid under Oroville's own charter.

Even if Oroville could transform its form of government merely by wishing it so, that's probably not the real intent here. Declaring itself a "constitutional republic city" has about the same legal effect as deciding to become a magical unicorn. The important part is the resolution's stated purpose: "executive orders issued by the State of California or by the United States federal government that are overreaching or clearly violate our constitutionally protected rights will not be enforced by the City of Oroville against its citizens." That's where the action is.

The declared intent to ignore state and federal orders is designed to provoke conflict between municipal authority and state law. If all the resolution did was reaffirm the city's commitment not to enforce unconstitutional laws,

that would be uncontroversial. A city has no discretion to violate the state or federal constitutions. But the resolution goes further and states that the town will not enforce "any executive orders ... that are overreaching." Unlike constitutional violations, which at least theoretically impose an objective standard, whether government action is overreaching is in the eye of the beholder. The question is whether a city has authority to decide that for itself.

It does not: A California city has no authority to ignore state or federal executive orders it believes are "overreaching." Cities have broad police powers to aid or supplement state law, but a city is nevertheless subordinate to the state. Local action that conflicts with state law is void — even for charter cities in matters of state-wide interest like the pandemic. And a local action that rejects an emergency gubernatorial order conflicts with state law because it is inimical to and cannot be reconciled with state law. Government Code section 8567 provides that

gubernatorial emergency orders have the force and effect of state law, and section 8665 makes it a crime to refuse or willfully neglect to obey such orders. Thus, a local action that refuses to follow emergency orders is unlawful because it either directly requires what the state statute forbids or prohibits what the state demands.

This resolution seems destined to provoke a conflict for the courts to resolve. Suppose the omicron coronavirus variant prompts an emergency order requiring public meetings to be conducted remotely. If Oroville responds that the order is "overreaching" and instead mandates personal attendance at city council meetings, each city council member and staffer will confront conflicting imperatives. Someone will sue, the courts will need to sort this out, and (at least in our analysis) the result is likely to favor the state.

Finally, Oroville is arguably poking the wrong bear. The council has positioned itself and Oroville citizens for strife against gubernatorial executive orders. But even

asserting that authority is misdirected. The bulk of the state's emergency response is coordinated through several local government entities (county boards of supervisors, sheriffs, county public health officers, and school districts) that a city — even a constitutional republic city — has no power over. Of course, picking a fight with California's governor is more likely to gain national attention than squabbling with a county public health officer.

If the Oroville resolution is nothing more than a symbolic gesture of frustration or a ploy to gain national headlines, then by those shallow metrics it's a win. But rather than declare itself an independent city-state, the city council's energy would be better focused on the substance of Gov. Gavin Newsom's pandemic-response policies. Otherwise this stunt only plays into the "kooky California" narrative (see: Three Californias, Six Californias, secession, State of Jefferson, the clown-car recalls) and diverts a reasonable conversation about how best to respond to a public health crisis.