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Wearing Face Covering, Physical Distancing, and Other Measures to Control the COVID-19 Pandemic

Approved on February 1, 2021, by a vote of 18-0-0. Voting in favor: Rabbis Aaron Alexander, Jaymee Alpert, Pamela Barmash, Suzanne Brody, Nate Crane, Elliot Dorff, David Fine, Susan Grossman, Steven Kane, Jan Kaufman, Amy Levin, Daniel Nevins, Micah Peltz, Avram Reisner, Robert Scheinberg, Deborah Silver, Ariel Stofenmacher, and Iscah Waldman. Voting Against: none. Abstaining: none.

Question (Sheilah):

Is it a mandate of Jewish law for Jews to wear face covering in public, stay at least six feet apart, and adopt other measures recommended by public health authorities to contain the COVID pandemic for as long as it lasts? Would there be a similar mandate to follow the directions of health authorities if other pandemics occur in the future?

Answer (Teshuvah):

The Philosophical Context of this Question:

Western liberalism, as practiced in various forms by all Western democracies, is built on an assertion of individual liberty and rights. This claim of individual liberty and rights goes back to seventeenth-century thinkers like John Locke and Benedict Spinoza, and is embedded in the founding documents of, among other nations, the United States, Canada, France, and, much more recently, Israel. The United States has taken that doctrine further than most other Western countries, for one can sue the government in the United States, a right that does not exist in many other Western countries. More pervasively than in many other Western democracies, Americans think of themselves as individuals with rights rather than as part of a community. One manifestation of this attitude is the difficulty the United States has had in creating a health care system that serves everyone while many other Western countries have some form of government-guaranteed health care for all their citizens. Indeed, many Americans have stretched the individualism inherent in American law and culture to the point of libertarianism, seeking minimal government in all areas of life. This deeply held individualism and commitment to liberty has been manifest in the refusal of many Americans to wear face covering and to observe the rules of physical distancing and other measures suggested by public health authorities during the COVID-19 pandemic.[1] This violation of public health mandates has been a major factor in the unfortunate

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The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah. This teshuvah was approved by the CJLS in a fast-track process intended to provide answers expeditiously.

spread of the virus to infect, as of this writing, 24,496,018 people in the United States, causing more than 406,190 deaths.[2]

Jewish tradition is the polar opposite of these trends. The central Jewish story is the Exodus from Egypt, the revelation at Mount Sinai, and the trek to the Promised Land of Israel. We leave Egypt not as individuals, but as a group, and when we get to Mount Sinai we get not a single right: we get instead, by traditional count, 613 commandments. Yes, sometimes rights and duties are reciprocal; so, for example, my duty not to steal from you establishes a right that you have to your property. But rights and duties are not always reciprocal; my duties to my parents and my country, for example, are not the same as, or in return for, the duties of my parents or country to me. Moreover, if I get up in the morning with the perception that I am an individual with rights, then the world owes me; but if I get up in the morning with the perception that I am a member of a community with duties, then I owe the world. Indeed, precisely because the world does not owe me, I must be particularly thankful for what it does supply; hence the copious praise of God in Jewish liturgy for creating a world that serves our needs and the expressions in our liturgy of our acknowledgement and gratitude "for Your miracles that are with us each day," as the *Amidah* has us say at least three times each day.[3] (The Talmud's description of that duty is in concentric circles, in that I must preserve my own life first, then that of my family, then that of my local Jewish community, then the larger Jewish community, and then the rest of the human community.[4]) Jews living in nations whose form of government grew out of Enlightenment, liberal ideas, including all Western countries, routinely and often subconsciously balance these conflicting parts of their national and Jewish identities in multiple parts of their lives[5]

This ideological factor has contributed to the spread of the virus in Western countries, but it is clearly not the only factor that explains its spread, for the pandemic is worldwide across many

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[1] Stephanie Kramer, "More Americans Say They Are Regularly Wearing Masks in Stores and Other Businesses," Pew Research Center, https://www.pewresearch.org/fact-tank/2020/08/27/more-americans-say-they-are-regularly-wearing-masks-in-stores-and-other-businesses/ (accessed 12/21/20). We would like to thank Rabbi Robert Scheinberg for this reference. As that study shows, those who refuse to wear masks are more likely to identify as Republicans or Libertarians, but that is not to say that all Republicans or Libertarians refuse to do so; as Rabbi Jan Kaufman has pointed out to us, Larry Hogan, Republican Governor of Maryland, has been a forceful advocate of wearing masks in public during this pandemic. On the other hand, one clear example of this Republican/Libertarian pattern of ideology and behavior occurred recently in Tennessee, where the COVID infection rate on December 20-21 per 100,000 people was the highest in the United States, but the Republican governor, Bill Lee, while ordering restrictions on the numbers of people who could gather together, refused to issue a mandate to wear a mask in public. See Natalie Allison, "Gov. Bill Lee Enacts Gathering Restrictions, Refuses Mask Mandate as Tennessee COVID-19 Outbreak Surges," *Tennessean,* December 21, 2020, p. 1, https://www.tennessean.com/story/news/politics/2020/12/20/tennessee-mask-mandate-covid-19-cases-surge-bill-lee/3977135001/ (accessed 12/21/20).

[2] "Coronavirus World Map: Tracking the Global Outbreak," updated at 7:40 a.m. EST on January 21, 2021, *New York Times,* https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html (accessed 1/21/21).

[3] This is in the "*Modim*" blessing, the third from the last of every *Amidah* throughout the year. See also the remark of Ben Zoma in B. *Berakhot* 58a. We want to thank Rabbi Avram Reisner for reminding us to include this implication of this conviction of Judaism.

[4] My own life first: B. *Bava Metzi'a* 62a. Concentric circles for my duties to others: *Sifre* on Deuteronomy 15:7; B. *Nedarim* 80b; B. *Sanhedrin* 71a; M.T. *Laws of Gifts to the Poor* 7:13; S.A. *Yoreh De'ah* 251:3.

[5] For a more extensive discussion of the differences between Western liberal and Jewish understandings of who we are as individuals and as members of a community see Elliot N. Dorff, *To Do the Right and the Good: A Jewish Approach to Modern Social Ethics* (Philadelphia: Jewish Publication Society, 2002), Chapter One.

nations and cultures, with 96.9 million people infected worldwide as of January 21, 2021, causing more than two million deaths. Still, the ideological commitment of Western countries to individual freedom is significant in understanding the varying experiences with the pandemic of nations across the world, for countries like China, South Korea, and Japan, which have a more communal ethos, are faring better in containing the virus than countries with a more individualist ethos, like the United States, Canada, and the United Kingdom.[6] Sweden, which originally imposed no restrictions whatsoever, trusting its citizens to do what is reasonable, now is suffering with a major increase in the rate of infections there and is belatedly imposing restrictions.[7] Israel is also not doing well on this,[8] in part because many of its Ultra-Orthodox population have refused government mandates to restrict gathering in groups and in part because its secular population is used to individual freedom. Neither of those reactions is in line with the Jewish tradition as we interpret and apply it here.

Jewish Sources on Preserving Oneself and Others:

Saving a life, *pikkuah nefesh,* and avoiding danger to life, *sakkanat nefeshot,* can be called Judaism's prime directives, overriding almost every other commandment. There are several facets to *pikkuah nefesh* and *sakkanat nefeshot*: first, the proactive obligations to preserve and protect our own life and health and the lives and health of others and, second, to avoid doing that which endangers our lives and health and those of others.

Our first obligation is to preserve our own lives. Commenting on the word "*with*" in Leviticus 25:35, "*and your brother shall live with you,"* Rabbi Akiva taught, "Your life takes precedence over the life of another."[9] That means we must take steps to preserve our own lives before we concern ourselves with saving the lives of others. This is very much like the announcement on airlines that if masks conveying oxygen are deployed, first put on your own mask before helping others, for if you are impaired, you cannot help others. It is also in line with the instructions given to those trained by Red Cross programs to save lives of people at risk of drowning: "Throw, tow, row, go" is the mantra – that is, first throw an inner tube or something else that the person in the water can use to keep his or her head above the water while you get more people to help; if that is not possible, throw a rope out to the person while you stand on the shore; it that is not possible, row out to the person so that you are not exhausted when you get there; and, only as a last resort, swim out to the person to try to save him or her[10]. Thus in Jewish law as well as in these other contexts, you are required to take steps to preserve your own life before trying to save the life of others.

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[6] See note 2 above.

[7] Thomas Erdbrink and Christina Anderson, "*In Sweden, Infections and Calls for a Lockdown Are Rising*," *New York Times,* October 17, 2020, https://www.nytimes.com/2020/12/15/world/europe/sweden-coronavirus-restrictions.html (accessed 12/21/20).

[8] See note 2 above.

[9] B. *Bava Metzia* 62a.

[10] This is what Elliot Dorff was taught in 1958 at Camp Ramah in Wisconsin as part of his Senior Life Saving training.

At the same time, the Torah clearly commands us, "*Do not stand idly by the blood of our neighbor*" (Leviticus 19:6). The Talmud understands this to mean that we are obligated to do what we can to facilitate a rescue if, for example, we see someone drowning or being attacked by a wild animal or bandits, and we are required to incur financial outlay, if necessary, to do so,[11] even as we remain obligated to do all we can to protect our own lives and health in the process. This value of communal responsibility for each other is clearly embedded in the Torah and Talmudic citations referenced here, requiring personal risk and financial sacrifice to save and protect life. Surely, we are required to undergo personal discomfort or inconvenience to do so as well, as in wearing a face covering, such as a mask, and restricting our social gathering.

We are obligated to prioritize life over almost every other commandment. As Rabbi Yehudah quotes Samuel as saying, "…it states, '*You shall keep My statutes and My ordinances, that a person shall do and live by them* (Leviticus 18:5),' live by them and not die by them."[12] In other words, we must take care not to endanger our lives or those of others as a result of fulfilling the *mitzvot*. The Talmud and Codes warn that when confronted with a situation whereby fulfilling a *mitzvah* would result in endangering human life, whether our own or that of another, we are to choose the course of action that protects life and health because endangering life is a greater transgression than transgressing a ritual prohibition.[13] According to the Shulhan Arukh, no culpability attaches to the person who violates a religious obligation in an effort to save lives.[14] (Only three commandments supersede the obligation to prioritize one's own life: one must refuse to commit an act of idolatry, sexual immorality, or murder, even if such refusal endangers one's life.[15]) Jewish law exhorts us to save our lives, even if it means violating the laws of the Sabbath to flee on that day from fire, war, or plague. [16] (Indeed, there is a long history of Jews fleeing plagues.[17]) How much more so are we obligated to save our lives when no violation of Jewish law is involved!

These sources demonstrate that we have a duty to protect others from a third-party harm, such as disease, fire, or war. The duty to put a fence around your roof in Deuteronomy 22:8 led the Rabbis to assert that we also have a duty to protect people from dangers that we ourselves present, arguably an even greater duty than if we were not the source of the danger. So, for,

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[11] B. *Sanhedrin* 73a. In contrast, English Common Law, on which much of American law is based, establishes no duty to rescue, and only ten American states have established such a duty by statute, with minimal penalties for failure to do so; see "In Which States Do I Have a Duty to Help?" https://blogs.findlaw.com/law_and_life/2015/05/in-which-states-do-i-have-a-duty-to-help.html (accessed 11/26/20) and Eugene Volokh, "Duty to Report/Rescue Statutes," http://volokh.com/2009/11/03/duty-to-rescuereport-statutes/ (accessed 11/26/20).

[12] B. *Yoma* 85b.

[13] B. *Hullin* 10a; cf., Shulhan Arukh *Orah Hayyim* 173:2, *Yoreh De'ah* 116:5.

[14] Shulhan Arukh, *Hoshen Mishpat* 359:4, 380:3.

[15] B. *Yoma* 82a.

[16] See for example *Shu"t Rashbash* 195. We would like to thank Rabbi Daniel Nevins for noting this history and this responsum approving of fleeing a plague, even on Shabbat.

[16] See, for example, Moshe David Chechik and Tamar Morsel-Eisenberg, "Plague, Practice, and Prescriptive Text: Jewish Traditions on Fleeing Afflicted Cities in Early Modern Ashkenaz," *Journal of Law, Religion, and State,* October 8, 2020, pp. 1-27, https://brill.com/view/journals/jlrs/aop/article-10.1163-22124810-2020014/article-10.1163-22124810-2020014.xml?language=en; and see Nukhet Varlik, "Plague, Conflict, and Negotiation: The Jewish Broadcloth Weavers of Salonica and the Ottoman Central Administration in the Late Sixteenth Century," *Jewish History* 28:3-4 (2014), https://www.jstor.org/stable/24709817?seq=1 (both articles accessed 12/21/20).

example, we must chain a dangerous animal that we own.[18] We also are obligated to protect others when we, ourselves, could be the source of danger, for example, as a source of contagion. We learn this from Leviticus 13:45, according to which an infected person must call out "(*I am) impure, (I am) impure*" (וטמא טמא יקרא.) Among the many interpretations of this verse, the *Sifra* is especially relevant for our purposes, for it requires both covering one's face and announcing to others to distance themselves from the person with a contagious disease:

[ז] "ועל שפם יעטה" – חופה ראשו כאבל" וטמא טמא יקרא – "אומר פרוש. אין לי אלא זה בלבד, מנין לרבות שאר המנוגעים? ת"ל" טמא טמא יקרא ."

> *"[As for the person with a leprous infection, his clothes shall be rent, his head shall be left bare,] and he shall cover over his upper lip, and he shall call out, 'Impure! Impure!'"* (Lev. 13:45). *"He shall cover over his lip"* means that he covers his head like one in mourning. *"He calls out 'Impure! Impure!'"* by which he tells them to separate from him. This tells me of this particular illness alone. From what do I derive that other afflicted ones [with other illnesses] are also included? From [the redundant] *"'Impure! Impure!' he shall call out."*[19]

The *Sifra* learns from the repetition of *"impure"* in the verse that the requirement to cover one's face and socially distance (achieved by calling out "impure, impure") is applicable to any contagious disease and thus equally valid in our day as public health authorities today direct us both to cover our faces and to distance ourselves from others in case, even without symptoms, we or they are infectious.

Another oft-repeated interpretation of this verse is that the person with the contagious disease calls out about it as a way of asking other people to pray for God's mercy for him or her.

. כְּדְתַנְיָא: "וְטָמֵא טָמֵא יִקְרָא". צָרִיךְ לְהוֹדִיעַ צַעֲרוֹ לָרַבִּים, וְרַבִּים יְבַקְּשׁוּ עָלָיו רַחֲמִים.

> As the Rabbis have taught: "*He shall call out, 'Impure! Impure!*" to inform the public of his suffering so that the public will ask for God's mercy on him.[20]

This, too, has implications for us in the current pandemic, for even though we cannot visit people who are infected, we can and should keep them in our prayers and tell them, if we can, that we are doing so to assure them that their family, friends, and community have not abandoned them but, to the contrary, are thinking about them and praying for them.

As the above sources indicate, we have a responsibility to protect others even from ourselves. Therefore, if we are contagious or even likely to be so, we are required by Jewish law to protect others by quarantining ourselves until it is safe for us to engage with others. Because people infected with COVID are often asymptomatic for as much as two weeks, people who come

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[18] B. *Bava Kamma* 15b; S.A. *Hoshen Mishpat* 409:3. We want to thank Rabbi Joshua Heller for suggesting these sources to augment our argument.

[19] *Sifra,* Tazri'a, Parashat Ne'ga'im 12:7.

[20] B. *Shabbat* 67a; B. *Sotah* 32b; B. *Niddah* 66a; B. *Mo'ed Katan* 5a. We would like to thank Rabbi Daniel Nevins for calling our attention to the relevance of Lev. 13:45 and its interpretations for the current pandemic.

into contact with someone who tested positive or who is ill with COVID must protect others by being tested themselves with a reliable test taken not earlier than the recommended time period following exposure (three to five days as of this writing, depending upon the jurisdiction) and by remaining in quarantine at home for the recommended period of time (as of this writing, varying from a total of ten days to two weeks, depending upon the jurisdiction, including seven days following receipt of a negative result from a reliable test). Upon completion of such quarantine, facial covering, physical distancing, and hand washing remain required.

There is another facet to this discussion. In Judaism, our bodies are not really ours at all. They belong to God.[21] Therefore, we are prohibited from intentionally harming our bodies. Instead, we are to care for our bodies and, by extension, our health. Maimonides presents the obligation to avoid anything that would be injurious to our bodies, and to act in ways that promote our health, as a positive commandment.[22] In a similar vein, our Sages warn us not to rely on miracles to save us,[23] i.e., we are to act with care and caution rather than as if we are immune from dangers that surround us.

Life, of course, always involves a degree of risk. A host of normal activities can expose us to danger, whether from reckless drivers. fellow travelers on a plane spreading everything from the common cold to this season's flu, or anti-Semites who yearn to attack Jews in places of group gatherings like synagogues. The question, from the point of view of *halakhah*, is what degree of risk is reasonable. The Talmud permits the normal risks of living life, for example, getting pregnant for a woman, circumcising a child on a cloudy day (presumably a risk because of the diminished light available before the advent of electricity), or undergoing generally accepted medical procedures, which included bloodletting in rabbinic times, relying on the catchphrase from *Psalm* 116:6, שֹׁמֵר פְּתָאִים ה "God protects the simple hearted" to explain how the majority of people survive the average risks of normal life. [24] However, the Talmud also makes clear that God does not protect people from preventable danger, such as exposure to extreme weather:

וצינים פחים בידי שמים נינהו והתניא הכל בידי שמים חוץ מצינים פחים שנאמר (משלי כב) הַצינים פחים בדרך עיקש שומר נפשו ירחק מהם

> [The Gemara asks:] And are cold and heat at the hand of Heaven? Is it not taught [in a *baraita*:] All [matters are] at the hand of Heaven except for cold and heat, as it is stated: "*Cold and heat are on the path of the crooked, he who guards his soul shall keep far from*

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[21] Gen. 14:19,22, where God is referred to as *koneh*, "possessor" of everything in heaven and earth, which is a merism to include everything between heaven and earth. See also Deut. 10:14, Psalms 24:1, 100:3, etc., according to which God, as Creator, is also Owner of all that God created, including us human beings.

[22] M.T., *De'ot*, 1:1 ff., esp. 3:3.

[23] B. *Shabbat* 32a.

[24] B. *Ketubbot* 39a (regarding pregnancy); B. *Yevamot* 72a (regarding circumcision on a cloudy day); B. *Shabbat* 129b (regarding undergoing accepted medical procedures). Tzitz Eliezer citing Mabit II:216 permits people to travel on roads where there is "normal" risk, whereas others evaluate the acceptable level of risk on whether or not the chance for harm will be small or unlikely before taking a risk. For a good summary of the issues see David Bleich, "Summary of Recent Halakhic Periodical Literature," *Tradition* 48:2/3 (Summer/Fall 2015), 41-64; and Dovid Cohen, "Evaluating Risk, https://www.crcweb.org/kosher_articles/evaluating_risk.php (accessed January 21, 2021).

> *them"* [(Proverbs 22:5)? [This indicates that those who properly guard their life will separate themselves from dangers.][25]

In other words, one must take proper precautions. Maimonides summarizes the law on this:

אֶחָד הַגַּג וְאֶחָד כָּל דָּבָר שֶׁיֵּשׁ בּוֹ סַכָּנָה וְרָאוּי שֶׁיִּכָּשֵׁל בָּהּ אָדָם וְיָמוּת. כְּגוֹן שֶׁהָיְתָה לוֹ בְּאֵר אוֹ בּוֹר בַּחֲצֵרוֹ בֵּין שֶׁיֵּשׁ בּוֹ סַכָּנָה וְרָאוּי שֶׁיִּכָּשֵׁל בָּהּ אָדָם וְיָמוּת. כְּגוֹן שֶׁהָיְתָה לוֹ בְּאֵר אוֹ בּוֹר בַּחֲצֵרוֹ בֵּין שֶׁיֵּשׁ בּוֹ מַיִם בֵּין שֶׁאֵין בּוֹ מַיִם חַיָּב לַעֲשׂוֹת חֵלְיָא גְּבוֹהָה עֲשָׂרָה טְפָחִים. אוֹ לַעֲשׂוֹת לָהּ כִּסּוּי כְּדֵי שֶׁלֹּא יִפֹּל בָּהּ אָדָם וְיָמוּת. וְכֵן כָּל מִכְשׁוֹל שֶׁיֵּשׁ בּוֹ סַכָּנַת נְפָשׁוֹת מִצְוַת עֲשֵׂה לַהֲסִירוֹ וּלְהִזָּהֵר בַּדָּבָר יָפֶה יָפֶה. שֶׁנֶּאֱמַר (דברים ד ט)"הִשָּׁמֶר לְךָ וּשְׁמֹר נַפְשְׁךָ". וְאִם לֹא הֵסִיר וְהֵנִיחַ הַמִּכְשׁוֹלוֹת הַמְּבִיאִין לִידֵי סַכָּנָה בִּטֵּל מִצְוַת עֲשֵׂה וְעָבַר בְּ(דברים כב ח)"לֹא תָשִׂים דָּמִים"

> There is no difference between a roof or anything else that is dangerous and likely to cause death to a person who might stumble. If, for instance, one has a well or a pit in his courtyard, he must build an enclosing ring ten handbreadths high, or put a cover over it, so that a person should not fall into it and die. So too, any obstruction that is a danger to life must be removed as a matter of positive duty and extremely necessary caution, for it says, "Guard yourself and protect your life" (Deuteronomy 4:9). If he did not remove and left the obstacles that cause danger, he has violated this positive commandment and also violated [the negative commandment of] "Do not bring bloodguilt [on your house if anyone should fall from it]" (Deuteronomy 22:8)…

הַרְבֵּה דְּבָרִים אָסְרוּ חֲכָמִים מִפְּנֵי שֶׁיֵּשׁ בָּהֶם סַכָּנַת נְפָשׁוֹת. וְכָל הָעוֹבֵר עֲלֵיהֶן וְאוֹמֵר הֲרֵינִי מְסַכֵּן בְּעַצְמִי וּמַה לַּאֲחֵרִים עָלַי בְּכָךְ אוֹ אֵינִי מַקְפִּיד בְּכָךְ מַכִּין אוֹתוֹ מַכַּת מַרְדּוּת:

> The sages have prohibited many things because they are dangerous to life. If anyone disregards them and says: "What claim have others on me if I risk my own life?" or: "I do not mind this," he should be lashed for disobedience.[26]

At the present time, when the COVID-19 virus is anything but contained and is killing thousands of people daily, we are not facing a normal risk of daily life, just the opposite. Thus we clearly must take the precautions that public health authorities are requiring in order to contain the pandemic. At some point, when the vast majority of us will have been vaccinated and "herd immunity" will have been achieved, we may and should return to our normal lives, despite the inherent risks, taking the precautions that are reasonable.[27]

As Maimonides makes clear in the source cited above, we have a responsibility to take precautions both for our own sake and for the sake of others. Leviticus 19:18 commands us to "…*love your neighbor as yourself."* Commenting on this verse, Hillel taught, "What is hateful to you do not do to another."[28] Rabbi Akiva called this verse "the most important verse in the

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[25] B. *Ketubbot* 30a.

[26] M.T. Laws of Murder and the Preservation of Life 11:4-5.

[27] We would like to thank Rabbi Daniel Nevins for pointing out to us the necessity for setting limits on precautions in order to live our lives despite some risks.

[28] B. *Shabbat* 31a.

Torah."[29] We show our love for our neighbors when we take steps to protect their life and health as much as we would hope that they would seek to protect our own. However, what if our neighbors do not see certain of their actions as potentially hateful, or harmful, posing a danger to life and health? According to Rabbi Akiva, even if others are willing to take actions that endanger themselves, we are not free to endanger them, and if we do, we are culpable.[30] Even if others fail to take precautions to protect themselves, the obligation remains upon us to protect them. Indeed, endangering others' lives and health is considered even worse than endangering one's own life and health.[31] In this context, this means that even if others around us disregard the recommendations of public health authorities by failing to wear face coverings properly, physically distance, and follow the other instructions of public health authorities during the pandemic, we remain obligated to take every precaution for their sakes, as well as our own.

This is not only an individual responsibility, but a communal one as well. As noted earlier, the Jewish tradition is solidly communitarian. Yes, every person is created in the image of God and must be respected as such, but we are enjoined by our tradition not to separate ourselves from our community[32] – and, presumably, its efforts to assure communal safety and health – and we are also told that "all Israelites are responsible for one another."[33] As a result, even where government officials exempt religious groups from the health measures required of other institutions solely for reasons of preserving religious liberty (in the United States, these are First Amendment concerns) and not because the health conditions have changed in that area, we Jews must not take advantage of such exemptions during the pandemic but rather continue to care for the Jewish and general community by taking steps to contain the virus mandated by local public health authorities.[34] We

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[29] Y. *Nedarim* 30b.
[30] M. *Bava Kamma* 8:6
[31] B. *Bava Metzi'a* 62a.
[32] M. *Avot (Ethics of the Fathers)* 2:4.
[33] Used in the sense that we share in communal sins: B. *Shevu'ot* 39a; B. *Sanhedrin* 27b. Used in the sense that we share in communal virtues: *Midrash Tanhuma, Nitzavim* 2:1; *Midrash Tanhuma Buber* 5:2. It is used positively – that we each are accredited with the righteousness of a righteous person among us – in *Tanhuma Buber* on Deuteronomy 29:9, and it is used positively in a different way – that we are all responsible to each other to learn, teach, and fulfill the Torah of our God – in *Pesikta Zutarta (Lekah Tov)* 12a, which compares the singular verbs in Deuteronomy 10:12 with the plural verbs in 11:2 to teach us that we are both unique individuals and responsible to each other to learn, teach, and live up to the Torah. We would like to thank Rabbi Avram Reisner for alerting us to the negative implications of the first of these sources and some of the alternative sources listed above that use the same phrase to assert our positive connections as a People.
[34] Jewish law makes a presumption of the communal necessity to protect life and health that United States constitutional law does not require. Similarly, Jewish law does not require the same standard of certainty that United States constitutional law requires to mandate action to protect life and health. So, for example, in *Roman Catholic Diocese of Brooklyn v. Cuomo,* --- *US* --- (Nov. 25, 2020), the United States Supreme Court ruled that New York State did not show sufficient proof of the necessity of its regulation placing stricter restrictions on gatherings for religious services than for certain businesses. This ruling did not overturn previous Supreme Court decisions that state and local authorities have the legal authority to override claims of freedom of speech and religion in the name of preserving public health. See *South Bay United Pentecostal Church v. Newsom,* 590 U.S. ___(May 29, 2020). Nevertheless, many state and local jurisdictions continue to exempt religious institutions from state and local mandates in, for example, setting indoor and outdoor attendance limits. For discussions of previous court decisions on this matter, esp. *Jacobson* v. *Massachusetts*, 197 U. S. 11, 38, 25 S. Ct. 358, 49 L. Ed. 643 (1905), see Polly J. Price and Patrick C. Diaz, "Face-Covering Requirements and the Constitution," for the American Constitution Society, https://www.acslaw.org/expertforum/face-covering-requirements-and-the-constitution/ (accessed 11/27/20) and Daniel R. Karon and Giliann E. Karon, "To Mask Or Not To Mask? It's Not a

note here that although praying together as part of a community is a strong preference in Jewish law, the duty to pray three times each day falls on each individual Jew, whether as part of a minyan or not; as a result, contrary to the claims of Agudath Yisrael before the U.S. Supreme Court,[35] when health conditions require that groups not convene, even at a physical distance and even with face covering, we Jews should not press courts or other government authorities to allow congregating for religious purposes when public health authorities proclaim that it is dangerous to do so.

We assert these restrictions with full awareness of their financial and psychological cost. Objections to the continued restrictions on gathering together that people around the world have experienced for many long months are understandable: these restrictions have caused economic havoc for every nation, affecting the poor and disenfranchised markedly more than those who are economically better off. Vast numbers of businesses have closed, and bankruptcy filings are soaring. Many synagogues and Jewish institutions are also struggling. Moreover, the Jewish tradition's emphasis on our connections to family and community involves not only our duties to others, but also its recognition that we are by nature social, that "*it is not good for a person to live alone*" (Genesis 2:18), that we need interaction with others.[36] Still, we have learned during these many months during which we have lived with COVID that the economy cannot get better and we cannot safely socialize with others until we stop the spread of the infection. Until a large number of people can be vaccinated for the virus, which, as of this writing in January, 2021, is unlikely until at least the second quarter of 2021 if not the Fall, Jewish law's prioritization of our own life and health and that of others over almost everything else requires us to follow the directions of public health authorities to quarantine, when necessary, to wear face covering in public, to physically distance ourselves from others, and to limit the size of group gatherings even when faced with the economic and psychological/social fallout of doing what public health experts recommend.

Even the wide distribution of vaccines may not eliminate the requirement for masking, social distancing, and frequent hand sanitizing, as well as testing and isolation following possible exposure. The two vaccines most commonly available in the US, Israel and Western Europe as of January 2021 have a rate of up to 95% in preventing disease symptoms, but scientists and public health experts are still determining the duration of that effectiveness and, more critically, the

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Constitutional Question," for Columbia Law School, https://clsbluesky.law.columbia.edu/2020/10/29/to-mask-or-not-to-mask-its-not-a-constitutional-question/ (accessed 11/27/20).

[35] *Agudath Israel of America v. Cuomo,* linked with *Roman Catholic Diocese of Brooklyn v. Cuomo*; an Emergency Application for a stay of Governor Cuomo's order not to congregate was granted on November 25, 2020, in part because Agudath Israel spoke only of freedom of worship in "houses of religion," neglecting to mention that, although certainly not ideal, Jewish worship can be done in a way that fulfills Jewish law without congregating at all. For the disposition of the case, see https://www.scotusblog.com/case-files/cases/agudath-israel-of-america-v-cuomo/ (accessed 10/22/20); for their application, see here: https://www.supremecourt.gov/DocketPDF/20/20A90/160811/20201116134517389_Agudath%20Israel%20v.%20Cuomo%20-%20Emergency%20Application%20for%20Writ%20of%20Injunction.pdf (accessed 10/22/20). On the status of a minyan in Jewish law, see M.T. *Laws of Prayer* 8:1ff; S.A. *Orah Hayyim* 689:5; *Kitzur Shulhan Arukh* 12:12.

[36] On coping with the isolation that the pandemic has forced on us, see Elliot N. Dorff, "Loneliness, Family, and Community during the Pandemic," https://www.rabbinicalassembly.org/sites/default/files/2020-09/Loneliness%20and%20Community%20During%20the%20Pandemic%20Sept%2014.pdf (accessed 11/29/20).

effectiveness of vaccines in preventing a person from continuing to spread the virus after exposure, despite not experiencing symptoms of illness.[37] Other vaccines (in particular those approved for pediatric use or available to "lower risk" populations or in other countries[38]) may have different levels of effectiveness. Similarly, unknown is the effectiveness of current vaccines on virulent new virus strains already spreading in some areas or for how long infection conveys full immunity. Therefore, those who have already been vaccinated or recovered from illness might not require a mask for their own protection, but they are still obligated to avoid being the cause of harm to others. As a result, they must continue to follow expert public health guidance, which may include wearing masks, physically distancing, and continuing to test and/or isolate following exposure as directed in order to protect the health of those around them.

Such requirements, in turn, obligate us and the leadership of our synagogues and other Movement institutions to practice a tremendous amount of patience, courage, and commitment in order to make decisions consistent with our highest values of protecting life and health. The Committee on Jewish Law and Standards (CJLS) continues to provide guidance for how to navigate specific halakhic concerns related to personal and communal ritual observance in light of the requirements to protect life and health during the pandemic.[39]

Each situation requires its own evaluation of risk, which may change as local conditions change. So all we can unequivocally say here is that Jews and Jewish institutions must follow the instructions of reliable public health authorities and make choices that come down firmly on the side of caution in order to preserve life and health. Applying such instructions on the local level with the specificity required for creating safe practices for any particular synagogue, camp, or school may involve appointing a medical advisory committee that should include the rabbi as *mara datra*, the authority responsible for applying Jewish law to local conditions, and include or at least consult with specialists focused on the particular pandemic in question, e.g., epidemiologists, infectious disease specialists, and public health authorities. Care should also be taken to ensure that the rabbi and cantor are not intentionally or unintentionally pressured into approving of or participating in services and programs that, they feel, endanger their health. Jewish law treats self-perception of danger to one's own life and health as paramount, even where a doctor believes there is no such danger. The Talmud bases this decision on a verse from Proverbs, *"The heart knows the bitterness of its soul* (Proverbs 14:10)."[40]

On Wearing a Face Covering

The obligation to protect life and health by face covering is not fulfilled if one does not wear a face covering properly. While any face covering use is better than none, the proper way to

[37] https://www.nejm.org/doi/full/10.1056/NEJMoa2034577 , https://www.nih.gov/news-events/news-releases/peer-reviewed-report-moderna-covid-19-vaccine-publishes
[38] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32661-1/fulltext
[39] See, e.g., https://www.rabbinicalassembly.org/resources-ideas/covid-19-resources/halakhic-movement-guidance
[40] B. *Yoma* 83a. On the right of a person to refuse to undergo even a low level of danger to him or herself even if it means abrogating a mitzvah, see Bet Yosef Yoreh Deah 262 and the discussion in Bleich, "Survey of Halachic Literature, cited above in n. 24.

cover one's face to minimize danger to life and health, according to public health authorities as of the time of this writing, requires that a face covering, ideally a mask, be worn in a way that is firmly positioned around one's ears or head to ensure that one's nose and mouth are completely and consistently covered without having to resort to touching and adjusting one's face covering, thereby possibly touching and transmitting infectious agents to one's face or other surfaces. Masks that provide adjustable ear loops achieve this goal most effectively.

There are many different types of face coverings and masks on the market, including ones specifically designed for those engaged in physically taxing activity, like running. Wearing even a basic face covering or mask correctly can protect others from the dispersal of the wearer's own aerosolization of potentially infectious droplets, and thus, when combined with physical distancing and handwashing, helps fulfill our religious obligation to protect others' lives and health. However, masks with exhalation valves are not recommended because the holes in the valves can allow respiratory droplets to escape and potentially infect others.[41]

Other types of face coverings, e.g., medical (such as surgical or N95 masks) and KN95 masks, provide the added benefit of also protecting the wearer from exposure to contagion. Medical grade masks should be reserved for those who most need them, especially those serving in medical environments. As Jews, we have a responsibility to the well-being of the larger community and should not buy up supplies, like medical grade masks, that are necessary for the well-being of the very medical system upon which we rely to treat the ill and injured during this pandemic. However other reliable filtering masks, like KN95 masks, are currently available in ample supply on-line and in many localities. Wearing these higher-grade masks correctly (i.e., securely covering one's nose and mouth), when combined with physical distancing and handwashing, helps fulfill both the religious obligation to protect one's own life and health and the religious obligation to protect the life and health of others. For those who prefer cloth masks for aesthetic reasons, wearing both kinds of masks, an aesthetically attractive cloth mask fitted over a filtering mask like a KN95, is both a stylish and practical solution that is becoming popular.

Concluding Thoughts on our Obligation to Preserve Life and Health:

In the Mishnah's tractate *Sanhedrin*, our Sages remind us of the multi-generational consequences that our choices and actions can have on others: "Whoever destroys one life is as if that person destroyed an entire world. And whoever saves one life is as if that person saved an entire world."[42] Each of us is called upon, at one time or another, to sacrifice our self-interest for

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[41] "COVID-19: Considerations for Wearing Masks," Centers for Disease Control and Prevention. https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html (accessed January 21, 2021).

[42] M. *Sanhedrin* 4:5; B. *Sanhedrin*. 37a. The printed editions include the word "Jewish" before "life" in both clauses, but the manuscript versions of the Mishnah and the Babylonian Talmud and the Jerusalem Talmud (Y. *Sanhedrin* 4:9 [23a]) do not. In light of the fact that the authority for asserting this is rooted in all versions of this teaching in the Torah's story of Cain and Abel (specifically, Genesis 4:10), long before the Jews were a people, the versions stressing the universalist message of the text, i.e., lacking the word "Jewish" as a modifier before the word "life," are clearly correct, and so this lesson is intended to refer to all human beings, not only Jews.

the greater good, literally, to be our "*brother's keeper*" (Genesis 4:9). This is one of those times. Collectively and as individuals we have a responsibility to serve as "*a light unto the nations*" (Isaiah 49:6), to act in public and private in ways that reflect and model God's values, as described above, to resist engaging in behaviors that endanger the health and very lives of ourselves or others. If we fail to do so, we will fail in our most essential duty to protect from harm ourselves and our fellow human beings, thereby failing to do our part to save the world.[43]

Moreover, we have another central conviction of our faith: to strive to be holy, as individuals and as a community. Our Torah is clear: we are to be "*a kingdom of priests and a holy nation*" (Exodus 19:6), as individuals and collectively included in the command, "*You shall be holy, for I, the Lord your God, am holy*" (Leviticus 19:2). We show our love for God by acting in ways consistent with and reflective of God's holiness even when such acts require personal and financial sacrifice, as commanded in the opening verses of our central prayer, the *Shema,* "*You shall love the Lord your God with all your soul, with all your heart, and with all your might*" (Deuteronomy 6:4).[44] The Jewish duty to preserve our own life and health and that of others is thus not restricted to safeguarding our own wellbeing or that of other people; it is a duty we have to God to preserve God's property, which includes our bodies, and to act in ways worthy of representing God's holiness as God's holy people.

Ruling (P'sak):

1, Jewish law requires that Jews take appropriate measures to preserve their own life and health and that of everyone else in the human community. In the context of the current COVID-19 pandemic, this means that in public, Jews are halakhically required to wear appropriate face covering, physically distance, wash hands, obey maximum occupancy and attendance restrictions, and follow all other public health measures recommended by public health authorities (e.g., in the United States, the Centers for Disease Control and Prevention, or, in Israel, the Ministry of Health), exercising caution in removing the restrictions that were instituted to contain the pandemic even when legally allowed to do so and even when political officials ignore or disdain these recommendations. The duty to protect others is even greater if we have possibly been exposed to someone who may have COVID-19 or if we, ourselves, test positive for COVID-19, in which case we must quarantine ourselves for the period of time recommended by local public health authorities. Protecting health also includes taking the vaccine as soon as it becomes available and one is ethically eligible to take it according to the schedule of distribution established by local authorities.[45]

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[43] We would like to thank CJLS member Ed Rudofsky for his comments on our obligation to sacrifice for the greater good in order to fulfill role as a holy people and "*a light unto the nations*" and our obligation of *tikkun olam*, repairing the world.

[44] B. *Berachot* 61b.

[45] See Rabbi Micah Peltz, "Vaccination and Ethical Questions Posed by COVID-19 Vaccines" CJLS, HM 427:8:2021a. See also Rabbi David Golinkin, "Does halakhah require vaccination against dangerous diseases such as measles, rubella, and Covid-19?" CJLS HM 427:8:2021b.

2. In making decisions for Jewish institutions, for services and other gatherings, congregational and communal leadership must set policies consistent with the recommendations of public health authorities, even when the restrictions they recommend are not legally mandated and even when religious institutions are exempted on grounds of religious liberty from state and local mandates. This is because Jewish law requires that we exercise caution in order to preserve health and life even when such caution undermines our ability to meet together to engage in religious practices, whether or not ritually obligatory, such as praying together as a minyan or coming together as a community for a bar/bat mitzvah, wedding, or funeral.

3. These specific obligations for both individual Jews and Jewish institutions to protect life and health during a pandemic cease only when and where reliable public health authorities declare that such measures are no longer needed to contain the pandemic. At that time, we may and should resume our normal lives despite their inherent risks, including communal gatherings for religious, social, and other purposes, taking reasonable precautions to avoid the dangers that living a normal life entails.

4. If, at some future time, another contagious disease unfortunately threatens the life and health of humanity and public health authorities again require measures to contain the pandemic, Jews individually and collectively are obligated by Jewish law to follow the instructions and measures of public health authorities to contain the disease until ultimately a cure, vaccine, and/or another medical intervention becomes widely enough available effectively to eliminate the danger of spreading the pandemic, whether these instructions and measures are the same as those used to respond to COVID-19 or different ones in response to another virus or bacterium. We express the fervent hope, however, that such measures may never again be needed after this pandemic has ceased.[46]

[46] We would like to thank the following members of the Committee on Jewish Law and Standards who suggested important changes to an earlier version of this responsum: Rabbis Pamela Barmash, David Fine, Judith Hauptman, Joshua Heller, Jan Caryl Kaufman, Amy Levin, Daniel Nevins, Micah Peltz, Avram Reisner, and Robert Sheinberg and Mr. Edward Rudofsky. As usual, though, what we say here is our own interpretation of Jewish law on this issue.