

## Concurrence with Rabbis Joshua Heller and David Fine

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**Joined by these representatives of the United Synagogue of Conservative Judaism on the Committee on Jewish Law and Standards: Dr. David Reifler, Edward Rudofsky, Patricia Werschulz**

*This paper was submitted, in July 2021, as a concurrence on “Counting a Minyan via Video Conference” by Rabbi Joshua Heller and “A Minyan is Constituted in Person” by Rabbi David J. Fine. Dissenting and concurring papers are not official positions of the CJLS.*

As we are hopefully emerging from the COVID-19 pandemic, rabbis and congregations, as well as businesses, schools, camps, courts, and many other individuals and institutions, are trying to determine what features of our lives during the pandemic should continue once it is over and in what ways should we go back as much as possible to how we lived our lives before the pandemic. We in the Conservative/Masorti movement are all in the debt of Rabbis Heller and Fine in providing halakhic guidance to help rabbis and congregations make those determinations, for what is at stake is nothing less than the shape of the future of Jewish life.

I have voted for all three options that Rabbi Heller presents as well as Rabbi Fine’s paper because I believe that they give sound halakhic justification for each of those alternatives. Moreover, in a time of adjusting to what we have learned during the pandemic is technologically possible and the desirable and undesirable features of using technology to worship together, I believe that we should leave it to the local rabbi (*mara d’atra*) to decide which of these options, all of which have halakhic justification, should be used in his or her setting. I say this for several reasons:

- 1) Historically, halakhic decisions were made by the *mara d’atra*, not the *rosh yeshivah*.
- 2) That historical precedent stems from potent practical concerns – namely, that the local rabbi would know the realities of the local community and what best fits its context, customs, and values. The local rabbi may surely consult with other rabbis and lay leaders whose knowledge and judgment may help determine what the local rabbi decides; indeed, the multitude of responsa in our tradition illustrates how often that was done. Ultimately, though, the local rabbi must decide what to do if the policy is to work within a given community.
- 3) In addition to these historical and pragmatic reasons to put the decision in the hands of the local rabbi, there is a philosophical one – namely the humility that we all must have in seeking to articulate the will of God. This is the basis of the position of “majoritarianism without authoritarianism” that, as Rabbi Gordon Tucker so well describes in his essay, is

the basis of the structure of the CJLS.<sup>1</sup> In my view, our current era is truly unprecedented; Jews have lived or died during pandemics in times past, but never before have we had the technology to carry on Jewish life remotely that we now have, and we now know at least to some degree the strengths and weaknesses of doing so. (One of the weaknesses that I deeply felt is that you cannot sing together on Zoom!). In these circumstances, then, when we do not know what the newly emerging realities of Jewish life will bring in each location, it is important for the CJLS to adopt the stance of humility articulated in Rabbi Tucker's essay in recognition that the local rabbi will know best what, if anything, to do now in using the new technology to conduct services and whether to adjust that policy in the months and years to come. The CJLS can and should play the important role of articulating the halakhically justifiable positions that a local rabbi might adopt and the strengths and weaknesses of each choice, as Rabbis Heller and Fine have done for the CJLS and the Conservative movement generally; but within those options, the CJLS should have enough humility to recognize that the local rabbi will know best which option is most appropriate for a particular community or institution.

I clearly would not vote for a practice that has no reasonable justification within halakhah, but Rabbis Heller and Fine have demonstrated that all four of these options are halakhically viable, even if some are more so than others. Hence I voted for all four.

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<sup>1</sup> Gordon Tucker, A Principled Defense of the Current Structure and Status of the CJLS," [https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/tucker\\_defense.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/tucker_defense.pdf) (accessed 7/20/21).