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INELUCTABLY UNELECTABLE: VOTING ISSUES IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

The recent presidential election was the United States' most controversial since 2000. Though the media projected early on that Joe Biden was the winner of the contest, President Trump has forcefully and incessantly denounced that conclusion:

If you count the illegal votes, they can try to steal the election from us. . . . [Pennsylvania Democrats are] trying obviously to commit fraud. There's no question about that. . . . [T]here's tremendous corruption and fraud going on [in Georgia]. . . . [Mail-in voting is] a corrupt system and it makes people corrupt, even if they aren't by nature, but they become corrupt.¹

¹ Donald Trump White House Press Conference as Election Counts Continue. Transcript by rev.com.

In this article and a follow-up, we survey some of the halachic literature on electoral fraud and related issues.

VOTING "FOR THE SAKE OF HEAVEN"

The seminal halachic discussion of voting is a responsum of the Maharam of Rothenberg, who rules that when a community cannot reach a consensus regarding public affairs, the disputes are resolved by voting, and all eligible voters are adjured to express their opinions "for the sake of Heaven and for the well-being of the city."² This implies that not only governmental officials, but even individual voters, must set aside any personal interest they may have in the

² Hagahos Maimoniyos, Tefilah, perek 11 os 2 and Teshuvos Maimoniyos, Kinyan, siman 27, cited in Darkei Moshe C.M. beginning of siman 163 and codified by Rama Ibid. seif 1.

לע"נ הרב יוסף ישראל
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Dedicated in loving memory of
 HaRav Yosef Grossman zt"l



Excerpted and adapted from a shiur by
 Dayan Yehoshua Grunwald

PARSHAS VAYEITZEI

PRAYER PROXIMITY

And he encountered (*vayifga*) the place and stayed there overnight because the sun had set . . .

Bereishis 29:1

According to the Gemara (Brachos 26b), the word *vayifga* (from the root *pegi'ah*) refers to *tefilah*, from which the Gemara derives that Yaakov established the practice of davening Ma'ariv. The Gemara also says (Brachos 27b) that Ma'ariv is optional, though *Klal Yisrael* has accepted it as obligatory.

Tosafos (Brachos 4b) asks that given the inherent *reshus* status of Ma'ariv, why does the Gemara also say (Brachos 9a) that the *bracha* of *Ga'al Yisrael* about the Redemption from Egypt must be adjacent to *Shmoneh Esrei*? How can this be required if the entire Ma'ariv is optional? Tosafos answers that although Ma'ariv is not an absolute obligation, if one does recite it, *smichas ge'ulah lisfilah* is required.

This idea may also explain the approach of the Magein Avraham, who holds (106)

(continued on page 2)

Q&A from the
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In Hot Water II: Deeper

Q You wrote in last week's Q&A that all foods subject to the prohibition of cooking on Shabbos—with the exception of water, oil, and certain spices—should not be placed in a *kli sheini* even when it is definitely not *yad nichveis bo*. When adding instant tea, instant coffee, sugar, or milk to hot water on Shabbos, must it be a *kli shlishi* or will a *kli sheini* suffice?

(continued on page 2)

(continued from page 1)

matters at hand and vote according to their best disinterested assessment of the general community's interest.³

R' Eliezer Gordon of Telz, however, in the course of an analysis of whether relatives of a candidate for office are eligible to vote, grapples at length with the implications and scope of the Maharam's requirement that every voter must express his opinion "for the sake of Heaven." He concludes that at least in his case, relatives are nevertheless entitled to vote, after committing to express their opinion "for the sake of Heaven" to the extent possible. He explains that in principle, voters should have the right to vote however they please, even not "for the sake of Heaven," because they are like partners in the community and they have the right to make decisions regarding the partnership as they see fit. The requirement to express their opinions "for the sake of Heaven" is merely a "takanah (corrective edict)," and since it is not the fault of the relatives that they are unable to be absolutely objective, we require merely that they commit to not be deliberately partial to their relative. Additionally, Rav Gordon notes that in his case the vote was not to choose the objectively superior candidate, since both candidates were equally qualified, but merely to determine the community's preference.⁴

VOTE BUYING, ESTABLISHED AND ALLEGED: THE CHASAM SOFER

Based in part upon this fundamental

³ See Teshuvos R' Eliezer Gordon teshuvah 4 os 4.

⁴ Teshuvos R' Eliezer ibid. osios 3-4,10. Cf. Shu"t Divrei Malkiel cheilek 1 siman 36 os 9 and cheilek 4 siman 83 s.v. Umah shechasumim who maintains that relatives are ineligible to vote because they are considered interested parties and there was never any intention to grant them the right to opine in such a case.

insistence of the Maharam that voters must vote "for the sake of Heaven," the Chasam Sofer rules that if a voter is paid for his vote, his vote is disqualified (and the voter himself is disqualified from voting in a repeat election regarding the same matter).⁵ He also disqualifies a voter who accepts compensation for his vote on another ground: The Trumas Hadeshen rules that all public officials have the same eligibility requirements as judges, and a sinner may therefore not hold public office, just as he may not serve as a judge.⁶ The Chasam Sofer makes the remarkable assumption that even *individual voters* who are deciding a public matter are held to the same standard as public officials and judges, and just as a judge who accepts compensation for judging—and a fortiori one who accepts a bribe—is disqualified, so, too, is a voter who accepts compensation for his vote disqualified.

The Chasam Sofer is emphatic, however, that in order to deprive the winner of the election of his victory, the testimony of two qualified, disinterested witnesses is required. Mere rumor is insufficient, as are the claims of local residents, their relatives, and relatives of the candidates,⁷ and even the confessions of voters that they sold their votes and of buyers that they purchased them are not admissible as evidence.⁸

⁵ Teshuvos R' Eliezer ibid. osios 6-10 has a lengthy discussion of this point and ultimately disagrees with the Chasam Sofer and maintains that voters who return the money they received in compensation for their vote are eligible to vote in a repeat election.

⁶ Shu"t Trumas Hadeshen Psakim Uchesavim siman 214, cited in Darkei Moshe ibid. beginning of siman 163, and codified by Rama ibid. siman 37 se'if 22.

⁷ The Chasam Sofer mentions relatives of the winning candidate, but the same presumably holds true for relatives of the losing candidates.

⁸ Shu"t Chasam Sofer C.M. siman 160, cited in Pis'chei Teshuvah ibid. siman 8 se'if katan 2.

(continued from page 1)

A It is permitted to recook (off the fire) previously cooked solids on Shabbos, but *Rishonim* disagree whether one may recook previously cooked liquids that have cooled. According to the Rama, one should be stringent, so for example, cooked-then-cooled water should not be placed in a *kli rishon* on Shabbos. The Mishnah Berurah (318:71) regards solids that will dissolve in water, e.g., sugar, instant tea, and instant coffee, as liquids, and he therefore forbids recooking them.



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Therefore, milk (which is pasteurized at the dairy) and tea essence, though they were fully cooked before Shabbos, should not be recooked on Shabbos, so one should not put milk into *yad soledes bo* water that is in a *kli rishon*. Previously cooked soluble solids like sugar, instant tea, and instant coffee should also not be placed in a *kli rishon*. But the Mishnah Berurah permits putting cooked-then-cooled liquids in a *kli sheini*, because it is only a *chumra* not to recook such liquids. Thus to introduce previously cooked additives to tea or coffee, it is sufficient for the beverage to be a *kli sheini*. (Igros Moshe (O.C. Vol. 4, 74:16) writes that he personally is *machmir* to place the water in a *kli shlishi* before putting things in his tea or coffee.)

Note that although a *kli shlishi* can't cook most foods, among those it *can* cook are uncooked tea leaves and uncooked coffee; these are unlike instant tea and coffee, which are factory cooked.

(continued from page 1)



that women are not obligated to recite *Shmoneh Esrei*, yet he also holds (70) that women are obligated in *smichas ge'ulah lisfilah*. The Machatzis Hashekel explains that although women may make a short request to fulfill their

daily obligation of *tefilah*, if they choose to recite *Shmoneh Esrei*, they must also be *someich ge'ulah lisfilah*.

May one announce immediately before the Ma'ariv *Shmoneh Esrei* to insert an addendum (e.g., *Ya'aleh v'yavo*), or is that considered a *hefsek* (interruption) between *ge'ulah* and *tefilah*? The Rashba, quoted by the Shulchan

Aruch, rules that it is not considered a *hefsek* because it is for the purpose of the *Shmoneh Esrei*; additionally, Ma'ariv is a *reshus*, so the requirement for *semichas ge'ulah lisfilah* is more lenient than for Shacharis. However, the Kaf Hachaim and Shulchan Aruch HaRav (in his Siddur) note that the custom is not to announce this.



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