

# SMITH & ASSOCIATES

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Address of E. David Smith, Esq., to the Plymouth, New Hampshire, Select Board, on behalf of client, Mr. Tejasinha Sivalingam, in seeking to reverse the Plymouth mask mandate and, at the very least, to create a religious exemption, February 22, 2021. A video is available [here](#).

*To the Honorable Select Board:*

I am here today to represent Mr. Sivalingam in his application to be exempted from the Plymouth Select Board's Emergency Public Health Order of August 10, 2020, which mandates face coverings.

I am an attorney-at-law admitted in the States of New York, New Jersey and Georgia, and appear here under the authority of Rules 5.5(c)(2) and 5.5(c)(4) of New Hampshire's Rules of Professional Conduct and the case *Amy M. v. Timberlane Reg'l Sch. Dist.*, 2000 U.S. Dist. LEXIS 20937, 2000 DNH 181.

Mr. Sivalingam is here to promote human life, human life free of the management of bureaucrats and equally free of the dictates of mob rule, which contradicts the protections afforded to the minority by our republic.

In seeking to breath freely and keep his face and smile visible to all in keeping with the dictates of his religious beliefs, he is not any threat to your health or the cause of anyone's death. In fact, he comes to preserve life, not just his life, but your life, too.

General John Stark said:

*Live free or die:*

We all know because it is the official motto of this State of New Hampshire. But what is not as well known is that General Stark's statement contains a colon and the sentence continued with an additional message for all time:

*Death is not the worst of evils.*

This is even more important than Live Free or Die. General Stark is telling us that we can't live free unless we realize that death is not the worst of evils.

The Governor and the CDC and the public health officials would have us believe that Death IS the worst of evils and in the name of avoiding death, we should agree to destroy all that lives and all the higher aspirations and values of a human being. In their world, it becomes evil to breath, to smile, be in contact with others. By now it is evident that this is not a short-term

inconvenience but rather a radical long-term lifestyle change where mask wearing and human avoidance will be permanently required, even after the vaccines!

The idea that a human being can spread disease agents and cause others to become ill from merely exposing his face is appealing, we see that children go through a phase in believing that, but it is not befitting a mature society. We are not so weak that human interaction will leave us dead. In fact, infection survival rates may be as high as 99.998%. That's 99.998%. Even the case survival rate in the United States as updated by John Hopkins at 5:23 pm today, including all nursing homes, people who tested positive but died of other causes, and so forth, is 98.225%.

But far fewer will survive a government that runs roughshod over the right to breath freely, meet with family and friends, make a living, attend group education, and restrict travel. No greater means to terrify the people into surrendering their rights can be conceived than the fear of death from something in the air. And, that is precisely why the threat of disease, real or exaggerated, has been the most effective way to bring about population control. In fact, the fear of disease was a prime tactic of the Nazi public health war on the people, first against the Germans and then expanding to the Jews and others under their dominion.

My client recognizes the challenge faced by the Select Board. Bombarded by constant fearful information and the idea that you are responsible to make healthy outcomes for everybody, it becomes difficult to think clearly. But amidst the fear, it is critical to uphold the principles that preserve life from dangers much greater than any virus.

The Select Board is not free to eradicate religious liberties because it feels fear or panic. Nor because everyone else is doing it.

There is no scientific or medical basis for these measures. But, that is not before us today because the Select Board have already chosen to set aside science and fact and impose upon themselves a mask requirement. In my review of the earlier minutes, it appears that the mask mandate was adopted not after careful investigation and testimony but rather after adoption of the conclusions of others. Innocently, I might add, since if a man is told he is about to die and that death is the worst of evils, there is no limit to what he may do in his desperation, including suspending his life, his family and all inquiry, all logic, all measure, and all reasonableness.

However, in the zeal to avoid death as the worst of evils, the Select Board members cannot do evil to your fellow man and force him to transgress his religious beliefs and practices and conscience.

And the Select Board cannot take cover under the Governor's Order because the Governor did not mandate that the Select Board make a mask order. The Select Board has volunteered to step into this fray by creating a mask mandate separate and apart from, and even more stringent than that of the Governor's. There was no need for the Select Board to get involved in masks in the first place and it cannot excuse it's involvement by saying that the Governor also has a mask mandate. Following others or following higher levels of government does not excuse responsibility.

Now, it is not for Mr. Sivalingam to question your philosophy and your religious beliefs, because undoubtedly there are those religious leaders that may influence you that have placed the fear of death ahead of traditional belief and practice – that is about your religious beliefs. The fact that you can rationalize wearing mask in your religious beliefs is about your religious beliefs. This is exactly why the Declaration of Independence and the United States Constitution and the New Hampshire Constitution, prevent you from imposing your religious beliefs and compromises on those who don't. Mr. Sivalingam's religious beliefs are not wavering and not subject to change based on the drumbeats of the CDC and the WHO and the scientists they fund and the media. Real or imagined, the prevailing threat and fear of death by breath is not a factor in Mr. Sivalingam's religious beliefs.

In recent times, there has developed a legal mistake, which is that if a government action affects all equally it therefore permissible. To quote from this Select Board's letter of November 12, 2020, "The Board has been advised that under this Ordinance, they are not discriminatory as long as the ordinance applies to each and every religion, race, gender, etcetera, of which it does, and no exemptions should be allowed."

This was tried already by previous tyrants. King Darius banned all prayer equally in the Book of Daniel (Chapter 6). The King's advisors used the trick we have before us today on King Darius and the citizens by making the ban apply to everyone equally and making it uniform and unchangeable, without exception. We are not the first generation to be lulled by the seeming equity of equally applied decrees - equally applied tyranny!

The line of legal thinking that the Select Board relies on is dangerously wrong.

This incorrectly places non-discrimination as the highest ideal. It is service of G-d which is our highest ideal. You cannot ban the service of G-d by claiming that since the ban meets the "non-discrimination" test it is therefore valid. The Constitution and the Bill of Rights limits government actions that would detract from the rights of the people. Limiting everyone's rights equally is an attack on the rights of all, equally.

The Kings of England may have discriminated against the Pilgrims but they would not have been acting more rightly if they had equally banned all forms of prayer. What an absurd idea that if you deny everyone's rights it's acceptable because it does not discriminate. King George himself would have shuddered at such a state of human thinking.

As Select Board member, Mr. Randlett, previously pointed out in the November 9, 2020, meeting, different religious beliefs should be respected. He is 100% right and his sense of that should not be then overridden by deferring to the town counsel. It is a mistake to bureaucratize the decision by deferring to the town legal counsel's opinion and letting that supersede the rights of the people. It is also irrelevant to look to other towns first before deciding to do what is right. The true plague of our times is surrendering our own thinking to that of experts, be it medical experts or legal experts. The Select Board should make its decision based on what is right not on the basis of its retained legal expert's opinion.

Select Board member, Mr. McIver, has stated that he has no intention in discriminating against my client. But the net effect is that the Town is demanding that my client set aside his religious beliefs in order to receive services in this Town and provide for his living needs in this Town, which is the commercial center for goods and services closest to his home.

I hope the Select Board will take the time to read the book, [My Opposition by Friedrich Kellner, the Diary of a German against the Third Reich](#). He was a clerk in a small German town just like Plymouth and you will recognize the increasing intolerance of those who think independently, the increasing reliance on experts, the increasing reliance on conformity, the increasing justification *Für ihre sicherheit* – For your safety.

That a mask mandate exemption has been created for medical reasons shows that there is no imminent and present danger from someone not wearing a mask. And there is no basis to give greater precedence to a medical reason over a religious reason. In fact, our current situation results from putting the body ahead of the soul.

In 2018, the Town enacted the Community Rights-Based Ordinance which under Section 4(e) makes it unlawful for the Select Board to violate rights protected by the Ordinance. It requires matters affect the rights of the people to be put to a vote of the people. It is a great imposition on the rights of the people to exclude from town services and town commerce those who do not wear a mask for any reason and for religious reasons. The mask ordinance was not enacted using the proper procedure. The mask ordinance is not a procurement of sand for road treatment which would appear to be within the jurisdiction of the Select Board. The mask ordinance is not within the jurisdiction of the Select Board and the Select Board should recognize its error and reverse the ordinance on that basis without prejudice for those that support it following the proper procedures under the RBO.

The RBO specifically goes to great length to re-assert the declaration of rights of the Declaration of Independence and to re-assert the strict limitations that the people have placed upon their federal and state governments.

Now we certainly pray that the Select Board will recall the words of General Stark and reverse the entire mask mandate and, in the meantime, will duly exempt those whose religious beliefs prohibit their wearing a mask. That would be the right result and avoid the need to further escalate this matter and put it to test in Court. Yet, if G-d forbid the Select Board should not reverse the mandate and not create the exemption and you later see Mr. Sivalingam walking in the streets with his face visible, his smile shared freely with all and his breath flowing freely, do not take it as defiance of this Select Board, but rather allegiance to G-d Almighty, to the bedrock of America and to keep all of us free from a government that has so fallen under the spell of public health as to give no quarter to those who believe in G-d – this is the freedom that will keep all of us alive. He will be a reminder to the residents and children of this town of how a free human being looks and acts no matter how much fear has taken hold. And, that is that is an act of love to save your lives.