SUPREME COURT OF THE UNITED STATES

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**475 U.S. 503**

# Goldman v. Weinberger

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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No. 84-1097 Argued: January 14, 1986 --- Decided: March 25, 1986

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JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner S. Simcha Goldman contends that the Free Exercise Clause of the First Amendment to the United States Constitution permits him to wear a yarmulke while in uniform, notwithstanding an Air Force regulation mandating uniform dress for Air Force personnel. The District Court for the District of Columbia permanently enjoined the Air Force from enforcing its regulation against petitioner and from penalizing him for wearing his yarmulke. The Court of Appeals for the District of Columbia Circuit reversed on the ground that the Air Force's strong interest in discipline justified the strict enforcement of its uniform dress requirements. We granted certiorari because of the importance of the question, 472 U.S. 1016 (1985), and now affirm.

Petitioner Goldman is an Orthodox Jew and ordained rabbi. In 1973, he was accepted into the Armed Forces Health Professions Scholarship Program and placed on inactive reserve status in the Air Force while he studied clinical psychology at Loyola University of Chicago. During his three years in the scholarship program, he received a monthly stipend and an allowance for tuition, books, and fees. After completing his Ph.D. in psychology, petitioner[p505] entered active service in the United States Air Force as a commissioned officer, in accordance with a requirement that participants in the scholarship program serve one year of active duty

for each year of subsidized education. Petitioner was stationed at March Air Force Base in Riverside, California, and served as a clinical psychologist at the mental health clinic on the base.

Until 1981, petitioner was not prevented from wearing his yarmulke on the base. He avoided controversy by remaining close to his duty station in the health clinic and by wearing his service cap over the yarmulke when out of doors. But in April, 1981, after he testified as a defense witness at a court-martial wearing his yarmulke but not his service cap, opposing counsel lodged a complaint with Colonel Joseph Gregory, the Hospital Commander, arguing that petitioner's practice of wearing his yarmulke was a violation of Air Force Regulation (AFR) 35-10. This regulation states in pertinent part that "[h]eadgear will not be worn . . . [w]hile indoors except by armed security police in the performance of their duties." AFR 35-10, ¶ 1-6.h(2)(f) (1980).

Colonel Gregory informed petitioner that wearing a yarmulke while on duty does indeed violate AFR 35-10, and ordered him not to violate this regulation outside the hospital. Although virtually all of petitioner's time on the base was spent in the hospital, he refused. Later, after petitioner's attorney protested to the Air Force General Counsel, Colonel Gregory revised his order to prohibit petitioner from wearing the yarmulke even in the hospital. Petitioner's request to report for duty in civilian clothing pending legal resolution of the issue was denied. The next day, he received a formal letter of reprimand, and was warned that failure to obey AFR 35-10 could subject him to a court-martial. Colonel Gregory also withdrew a recommendation that petitioner's application to extend the term of his active service be approved, and substituted a negative recommendation. [p506]

Petitioner then sued respondent Secretary of Defense and others, claiming that the application of AFR 35-10 to prevent him from wearing his yarmulke infringed upon his First Amendment freedom to exercise his religious beliefs. The United States District Court for the District of Columbia preliminarily enjoined the enforcement of the regulation, *Goldman v. Secretary of*

*Defense,* 530 F.Supp. 12 (1981), and then, after a full hearing, permanently enjoined the Air Force from prohibiting petitioner from wearing a yarmulke while in uniform. *Goldman v. Secretary of Defense,* 29 EPD ¶ 32,753 (1982). Respondents appealed to the Court of Appeals for the District of Columbia Circuit, which reversed. *Goldman v. Secretary of Defense,* 236 U.S.App.D.C. 248, 734 F.2d 1531 (1984). As an initial matter, the Court of Appeals determined that the appropriate level of scrutiny of a military regulation that clashes with a constitutional right is neither strict scrutiny nor rational basis. *Id.* at 252, 734 F.2d at 1535-1536. Instead, it held that a military regulation must be examined to determine whether "legitimate military ends are sought to be achieved," *id.* at 253, 734 F.2d at 1536, and whether it is "designed to accommodate the individual right to an appropriate degree." *Ibid.* Applying this test, the court concluded that "the Air Force's interest in uniformity renders the strict enforcement of its regulation permissible." *Id.*at 257, 734 F.2d at 1540. The full Court of Appeals denied a petition for rehearing en banc, with three judges dissenting. 238 U.S.App.D.C. 267, 739 F.2d 657 (1984).

Petitioner argues that AFR 35-10, as applied to him, prohibits religiously motivated conduct, and should therefore be analyzed under the standard enunciated in *Sherbert v. Verner,* 374 U.S. 398, 406 (1963). *See also Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707 (1981); *Wisconsin v. Yoder,* 406 U.S. 205 (1972). But we have repeatedly held that "the military is, by necessity, a specialized society separate from civilian society."[p507] *Parker v. Levy,* 417 U.S. 733, 743 (1974). *See also Chappell v. Wallace,* 462 U.S. 296, 300 (1983); *Schlesinger v. Councilman,*420 U.S. 738, 757 (1975); *Orloff v. Willoughby,* 345 U.S. 83, 94 (1953). "[T]he military must insist upon a respect for duty and a discipline without counterpart in civilian life," *Schlesinger v. Councilman, supra,* at 757, in order to prepare for and perform its vital role. *See also Brown v. Glines,* 444 U.S. 348, 354 (1980).

Our review of military regulations challenged on First Amendmentgrounds is far more deferential than constitutional review of similar laws or regulations

designed for civilian society. The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by theFirst Amendment; to accomplish its mission, the military must foster instinctive obedience, unity, commitment, and *esprit de corps*. *See, e.g., Chappell v. Wallace, supra,* at 300; *Greer v. Spock,* 424 U.S. 828, 843-844 (1976) (POWELL, J., concurring);*Parker v. Levy, supra,* at 744. The essence of military service "is the subordination of the desires and interests of the individual to the needs of the service." *Orloff v. Willoughby, supra,* at 92.

These aspects of military life do not, of course, render entirely nugatory in the military context the guarantees of the First Amendment. *See, e.g., Chappell v. Wallace, supra,* at 304. But "within the military community, there is simply not the same [individual] autonomy as there is in the larger civilian community."*Parker v. Levy, supra,* at 751. In the context of the present case, when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest. *See Chappell v. Wallace, supra,* at 305; *Orloff v. Willoughby, supra,* 93-94. Not only are courts "'ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have,'" *Chappell v. Wallace,* [475 U.S. 508] supra, at 305, quoting Warren, The Bill of Rights and the Military, 37 N.Y.U.L.Rev. 181, 187 (1962), but the military authorities have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy.

> [J]udicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged.

*Rostker v. Goldberg,* 453 U.S. 57, 70 (1981).

The considered professional judgment of the Air Force is that the traditional outfitting of personnel in

standardized uniforms encourages the subordination of personal preferences and identities in favor of the overall group mission. Uniforms encourage a sense of hierarchical unity by tending to eliminate outward individual distinctions except for those of rank. The Air Force considers them as vital during peacetime as during war, because its personnel must be ready to provide an effective defense on a moment's notice; the necessary habits of discipline and unity must be developed in advance of trouble. We have acknowledged that

> [t]he inescapable demands of military discipline and obedience to orders cannot be taught on battlefields; the habit of immediate compliance with military procedures and orders must be virtually reflex, with no time for debate or reflection.

*Chappell v. Wallace, supra,* at 300.

To this end, the Air Force promulgated AFR 35-10, a 190-page document, which states that "Air Force members will wear the Air Force uniform while performing their military duties, except when authorized to wear civilian clothes on duty." AFR 35-10, ¶ 1-6 (1980). The rest of the document describes in minute detail all of the various items of apparel that must be worn as part of the Air Force uniform. It authorizes a few individualized options with respect to certain pieces of jewelry and hairstyle, but even these are subject to severe limitations. *See* AFR 35-10, Table 1-1, and ¶ 1-12.b(1)(b) (1980). In general, authorized headgear may [p509] be worn only out of doors. *See* AFR 35-10, ¶ 1-6.h (1980). Indoors, "[h]eadgear [may] not be worn . . . except by armed security police in the performance of their duties." AFR 35-10, ¶ 1-6.h(2)(f) (1980). A narrow exception to this rule exists for headgear worn during indoor religious ceremonies. *See* AFR 35-10, ¶ 1-6.h(2)(d) (1980). In addition, military commanders may in their discretion permit visible religious headgear and other such apparel in designated living quarters and nonvisible items generally. *See*Department of Defense Directive 1300.17 (June 18, 1985).

Petitioner Goldman contends that the Free Exercise Clause of theFirst Amendment requires the Air Force to make an exception to its uniform dress requirements for religious apparel unless the accouterments create a "clear danger" of undermining discipline and *esprit de corps*. He asserts that, in general, visible but "unobtrusive" apparel will not create such a danger, and must therefore be accommodated. He argues that the Air Force failed to prove that a specific exception for his practice of wearing an unobtrusive yarmulke would threaten discipline. He contends that the Air Force's assertion to the contrary is mere *ipse dixit*, with no support from actual experience or a scientific study in the record, and is contradicted by expert testimony that religious exceptions to AFR 35-10 are in fact desirable, and will increase morale by making the Air Force a more humane place.

But whether or not expert witnesses may feel that religious exceptions to AFR 35-10 are desirable is quite beside the point. The desirability of dress regulations in the military is decided by the appropriate military officials, and they are under no constitutional mandate to abandon their considered professional judgment. Quite obviously, to the extent the regulations do not permit the wearing of religious apparel such as a yarmulke, a practice described by petitioner as silent devotion akin to prayer, military life may be more objectionable for petitioner and probably others. But the First Amendment does not require the military to accommodate [p510] such practices in the face of its view that they would detract from the uniformity sought by the dress regulations. The Air Force has drawn the line essentially between religious apparel that is visible and that which is not, and we hold that those portions of the regulations challenged here reasonably and evenhandedly regulate dress in the interest of the military's perceived need for uniformity. The First Amendment therefore does not prohibit them from being applied to petitioner, even though their effect is to restrict the wearing of the headgear required by his religious beliefs.

The judgment of the Court of Appeals is

*Affirmed.*