

No. 07-3081

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

KIMBERLIE C. WEBB,
Appellant

v.

CITY OF PHILADELPHIA,
Appellee.

On Appeal from the United States District Court for the
Eastern District of Pennsylvania, Civil Action No. 05-5238.

**BRIEF IN SUPPORT OF REVERSAL OF *AMICI CURIAE* AMERICAN CIVIL
LIBERTIES UNION OF PENNSYLVANIA, AMERICAN CIVIL LIBERTIES UNION,
COUNCIL ON AMERICAN ISLAMIC RELATIONS, MAJLIS ASH'SHURA, AMERICAN
MUSLIM LAW ENFORCEMENT OFFICERS ASSOCIATION, ISLAMIC SOCIETY OF
NORTH AMERICA, MUSLIM PUBLIC AFFAIRS COUNCIL, MUSLIM ALLIANCE IN
NORTH AMERICA, MUSLIM AMERICAN SOCIETY FREEDOM FOUNDATION, AND
THE SIKH COALITION**

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United States Court of Appeals for the Third Circuit

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 07-3081

KIMBERLIE C. WEBB

v.

CITY OF PHILADELPHIA

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

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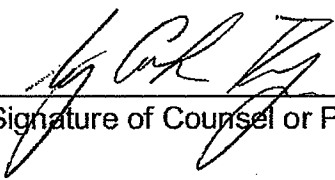
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3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding; please identify all such parties and specify the nature of the financial interest or interests:

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N/A



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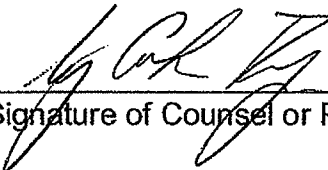
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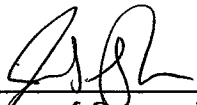
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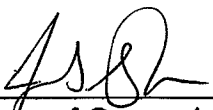
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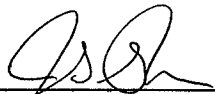
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Dated: 1/9/08

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT	7
ARGUMENT	9
I. THE DISTRICT COURT’S CONCLUSION THAT PERMITTING OFFICER WEBB TO COVER HER HAIR WOULD CREATE AN UNDUE BURDEN WAS NOT BASED ON THE RECORD, BUT ON OUTDATED ASSUMPTIONS.....	9
II. A WIDE VARIETY OF POLICE AND PUBLIC SAFETY ORGANIZATIONS ACROSS THE COUNTRY AND THE WORLD RECOGNIZE THAT RELIGIOUS FREEDOM IS FULLY COMPATIBLE WITH EFFECTIVE LAW ENFORCEMENT AND MILITARY DISCIPLINE.....	13
A. Domestic Police Departments	13
B. Correctional, Fire and Emergency, and Security Agencies	19
C. Armed Forces and Coast Guard	21
D. Foreign Police Services.....	27
CONCLUSION.....	32

TABLE OF AUTHORITIES

FEDERAL CASES

	Page
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	10
<i>Fraternal Order of Police v. Newark</i> , 170 F.3d 359 (3d Cir. 1999).....	9
<i>Goldman v. Weinberger</i> , 475 U.S. 503 (1988)	7, 8, 12
<i>Kelley v. Johnson</i> , 425 U.S. 238 (1976).....	<i>passim</i>

FEDERAL RULES & STATUTES

Fed. R. App. P. 29	1
Fed. R. Civ. P. 56	10
10 U.S.C. § 774	12, 22

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<i>The Question of Hijab: Suppression or Liberation?</i> , Institute of Islamic Information and Education, http://www.unh.edu/msa/iiie23.htm	7
James Barron, <i>Two Sikhs Win Back Jobs Lost by Wearing Turbans</i> , N.Y. Times, July 29, 2004	14
<i>Sikh to Sue Police Over Turban and Beard</i> , N.Y. Times, March 4, 2003.....	14
Sean Gardiner, <i>Sikh Files Bias Suit Against NYPD</i> , Newsday, June 11, 2002.....	14, 27
<i>Amric Singh on the Police Beat! Sikh Police Officer Begins Working for NYPD</i> , The Sikh Coalition, October 2004.....	14
American Muslim Law Enforcement Officers Association, http://www.amleoa.com/images/gallery/index.php	15

	Page
<i>U.S. Sues Newark, Claiming Bias on Police Beards,</i> N.Y. Times, May 17, 2000.....	14
Noreen S. Ahmed-Ullah, <i>Jews Hit Sheriff's Ban on Yarmulkes,</i> Chicago Tribune, July 4, 2004	15
<i>ADL Welcomes Cook County Sheriff's Reversal on Religious Head</i> <i>Covering Prohibition,</i> American Defamation League, July 8, 2002	16
<i>A New Door Opens for Sikhs: Turbans and Beards in Los Angeles</i> <i>Sheriffs Department,</i> SikhNet, July 26, 2004.....	16
Leroy D. Baca, <i>Letter to the Sikh Community of Los Angeles County,</i> April 2, 2002.....	17
<i>Wanted: Sikh Police Officers,</i> Sikh Sentinel, April 30, 2002	17
<i>Partial Transcript of Interview of Charles H. Ramsey,</i> video available at http://www.passionfortruth.tv.com/DC-Police-Chief.html)	17
<i>Policing a Faith: Detective Wants to Follow His Religious Tradition,</i> <i>but Metro Officials Wrongly Tell Him He Can't,</i> Las Vegas Sun, April 24, 2007	18
Adrienne Packer, <i>Judge Allows Beard Temporarily,</i> Las Vegas Review-Journal, Nov. 17, 2007	18
<i>At Cross Purposes,</i> Fort Worth Star-Telegram, Oct. 15, 2001	18
<i>Yuba City Police Chief Apologizes,</i> Sikh American Legal Defense and Education Fund, March 7, 2007	18
<i>Kirpan: the Sikh Sword,</i> The Sikh Coalition, http://www.sikhcoalition.org/InfoKirpan.asp	18
Gwinnett County, GA Police Directive Manual §305.05 (2004)	19

	Page
Lawrence, KS Police Dept. Policy Manual § 4.3.C. (2005)	19
<i>Metro Briefing New York: Albany: Religious Gear for Prison Guards,</i> N.Y. Times, May 10, 2007.....	19
Michele Morgan Bolton, <i>Agreement Ends Religious Discrimination</i> <i>Case: Muslim correction officer will be allowed to wear religious</i> <i>headgear on duty,</i> Albany Times Union, May 10, 2007	19
<i>CAIR: Correctional Officer Wins Right to Wear Beard; Another Muslim</i> <i>Worker Wins Settlement from Sprint Over Denial of Prayer Rights,</i> PR Newswire, Jan. 3, 2001	20
Mary Kate Burke, <i>Muslim Worker Sues N.Y. Department of</i> <i>Corrections Over Skullcap: Worker calls clothing “an extension of</i> <i>who I am,”</i> ABCNews.com, Oct. 6, 2006.....	20
Jo Becker, <i>Muslim Firefighter May Wear Scarf,</i> Washington Post, July 13, 2001	20
District of Columbia Fire and Emergency Medical Services Dept. Special Order No. 2001-48 (June 26, 2001)	20
Transportation Security Administration Management Directive No. 1100-73.2 (June 21, 2007).....	21
Dept. of Defense Directive, No. 1300.17 (Feb. 3, 1998).....	26
U.S. Coast Guard Office of Civil Rights Newsletter, Vol. 2, Number 1, January 2007	26
Maj. Michael J. Benjamin, <i>Justice, Justice Shall You Pursue: Legal</i> <i>Analysis of Religion Issues in the Army,</i> Department of the Army Pamphlet 27-50-312, Army Lawyer (Nov. 1998).....	26
133 Cong. Rec. E 1846 (daily ed. May 11, 1987).....	22, 23
133 Cong. Rec. 12,780 (daily ed. Sept. 22, 1987)	24, 25

	Page
H.R. Rep. No. 58, 100 th Cong., 1 st Sess., 1987, 1987 U.S.C.C.A.N. 1018, 1750.....	25
<i>Sikh Coalition Challenges NYPD on Rule Disallowing Turbans,</i> The Sikh Coalition, March 4, 2003,.....	27
Loretta Chao, <i>Allowed to Keep Beards, Turbans</i> <i>NYPD Will Reinstate Sikhs</i> , Newsday, July 29, 2004.....	28
Sarbjit Jajgal, <i>New Liaison Officer for South Asian Community,</i> Weekly Voice, March 31, 2000	28
<i>Briefing: Good Practice on the Headscarf in Europe,</i> Islamic Human Rights Commission, March 9, 2004.....	28, 30
<i>Hijab Option for London Policewomen</i> , Islam for Today, http://www.islamfortoday.com/police.htm	28
MPF Notice 28-01, July 11, 2001	29
<i>Address of Sir John Stevens at Sri Guru Singh Sabha,</i> Nov. 23, 2003	29
Nottinghamshire Police Race Equality Scheme, Annual Report 2005/06	29
Hampshire Police Procedure 14101 (2005)	29
Northumbria Police Dress Code Policy, http://www.northumbria.police.uk	30
Lorna Edwards, <i>Making Hijab Part of Victoria Police Uniform,</i> The Age, Nov. 27, 2004	30
The Hijab Shop, http://www.thehijabshop.com	30
<i>Sikhs Applaud West Australian Police Over Uniform Directive,</i>	

Panthic Weekly, Jan. 15, 2006 31

Amici urge reversal of the decision below, which granted summary judgment for the City of Philadelphia on Officer Kimberlie Webb's claim for religious accommodation, because both the factual and legal predicate for the district court's decision were unsound. *Amici* will not restate the arguments for reversal advanced by Appellant, but write separately to explain the district court's error in relying on outdated and faulty assumptions about the necessity of strict adherence to uniform codes, to the exclusion of religious accommodations, in modern police and military organizations. This brief is submitted with the consent of all parties pursuant to F. Rule App. P. 29(a).

INTEREST OF *AMICI*

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization with over 550,000 members dedicated to defending and preserving the principles embodied in the Bill of Rights and the nation's civil rights laws. Since its founding over 85 years ago, the ACLU has been involved in many of the leading cases involving questions of religious freedom, and has appeared before this Court, both as direct counsel and as *amicus curiae*, on numerous occasions. The ACLU of Pennsylvania is the state affiliate of the ACLU.

Through its Women's Rights Project and its Program on Freedom of Religion and Belief, the ACLU seeks to uphold the right of women to practice their religion freely – including wearing religious head coverings – in the workplace and in other settings. In particular, the ACLU has battled the misconception that women's religious practice of wearing headscarves and other head coverings threatens security or uniformity. As this case implicates the fundamental religious liberties of many women nationwide, its proper resolution is a matter of significant concern to the ACLU and its members throughout the country.

The Council on American Islamic Relations (CAIR) is a civil rights and advocacy organization whose mission is to enhance understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR's interest in this case stems from its firm conviction that people of faith should not be made to conceal their religious identity when they report to work. Permitting police officers of all faiths to wear religiously mandated clothing fosters an environment of tolerance, both among officers and within the communities they serve.

The Majlis Ash'Shura is a consultative body of Islamic leaders in Philadelphia and the Delaware Valley. The members of Majlis Ash'Shura

are dismayed by the unnecessary suffering of Officer Webb and her family while she struggles for her right to practice her religion. Philadelphia is a progressive city where Muslims participate in almost every profession including medicine, dentistry, politics and education. Philadelphia, home to the Majlis Ash'Shura and other Muslims, should recognize the diversity of its citizens and follow the examples of Newark, New Jersey and New York City in allowing Muslim police officers their inalienable right to exercise their faith openly.

The American Muslim Law Enforcement Officers Association (AMLEOA) is a nation-wide effort within the law enforcement community, dedicated to fostering respectful relationships between the American Muslim community, its attendant institutions, and the law enforcement agencies of the United States of America, and its Territories. AMLEOA fully supports Officer Webb's right to practice and express her religious obligations while performing her duties as a law enforcement officer in the City of Philadelphia. Officer Webb's ability to wear the internationally-recognized head covering, hijab, is essential to her religious observance as a Muslim female, and to her right as an American citizen to practice her religion in all spheres of life.

The Islamic Society Of North America (ISNA) is an association of Muslim organizations and individuals that provides a common platform for presenting Islam, supporting Muslim communities, developing educational, social and outreach programs and fostering good relations with other religious communities, civic and service organizations. The wearing of a headscarf (khimar or hijab) by Muslim women is a widely-observed religious practice based in the sincerely held belief that it is required by Islam. Uniforms, police or otherwise, are never completely identical, having to accommodate the diversity of human shapes, sizes, genders and physical abilities. ISNA believes it is possible to maintain a uniform without depriving officers of their right to religious freedom. In particular, ISNA believes that police uniforms should allow for the wearing of religious dress, including the headscarf by Muslim women who wish to do so.

The Muslim Public Affairs Council (MPAC) is a public service agency working for the civil rights of American Muslims, for the integration of Islam into American pluralism, and for a positive, constructive relationship between American Muslims and their elected representatives. MPAC was created in 1988 to promote a vibrant American Muslim community and enrich American society through exemplifying the Islamic values of Mercy, Justice, Peace, Human Dignity, Freedom, and Equality for

all. Over the past two decades, MPAC has built a reputation as a consistent and reliable resource for government and media, and is trusted by American Muslims as an authentic, experienced voice. MPAC is committed to civil rights of all working people and is opposed to all forms of employment based discrimination that serve as a hindrance to the integration of Muslims in America.

The Muslim Alliance In North America (MANA) is an alliance of Muslim organizations and individuals whose primary mission is to establish the presence of viable, healthy and dynamic Muslim communities, neighborhoods and institutions that meet the religious, social, economic and political needs of American Muslims. MANA encourages American Muslims to advocate actively for remedies to injustices and social ills impacting North Americans in general and Muslims in particular. MANA's interest in this case stems from its firm conviction that people of faith should not be made to conceal their religious identity when they report to work. Further, MANA believes that people of faith – including Muslim Americans – make their best, healthiest and most significant contributions to American society when they are not forced to endure an often uncomfortable and sometimes schizophrenic-like persona in order to accommodate the restrictions of their workplaces.

The Muslim American Society Freedom Foundation (MAS Freedom) is the civil and human rights advocacy component of the Muslim American Society, America's largest grassroots Islamic civic organization, with 50 chapters in 35 states in the U.S. The work of MAS Freedom focuses on protection of the civil and human rights of Muslims, and all U.S. citizens and residents, including advocacy for the protection of the right freely to express and practice religion in the public domain. Accordingly, MAS Freedom supports the right of Ms. Webb to wear appropriate Muslim head covering while serving as a uniformed officer in the Philadelphia police force.

The Sikh Coalition works to 1) defend civil rights and liberties for all people; 2) promote community empowerment and civic engagement within the Sikh community; and 3) educate the broader community about Sikhs in order to promote cultural understanding and create bridges across communities. The Sikh Coalition's interest in this case results from its firm belief that the bedrock American principle of respect for religious pluralism should not be undermined in the workplace by rules that prohibit religious practices which are wholly unrelated to an employee's ability to perform the job effectively.

SUMMARY OF ARGUMENT

Officer Webb lost in the court below because the district court accepted as both fact and law then-Police Commissioner Johnson's assertion that allowing Officer Webb to wear her hijab¹ underneath her hat and tucked into her shirt would create an undue hardship for the City by damaging the Police Department's culture of cooperation, esprit de corps, hierarchical structure, and authoritative and neutral image. Although the Commissioner's assertion was admittedly not based upon any investigation or experience or consultation with experts, the district court held that assertion was entitled to unquestioning deference under two Supreme Court cases in which the Court deferred to then-existing practice with regard to uniformity of dress. 6/27/07 Op. at 7-8 (citing *Goldman v. Weinberger*, 475 U.S. 503 (1988) and *Kelley v. Johnson*, 425 U.S. 238 (1976)).

¹ Many Muslim women wear a headscarf, also known as a hijab or khimar, in accordance with their religious beliefs that are based on their understanding of the Koran (Qur'an), the primary holy book of the Muslim religion, the *hadith* (or *ahadith*), oral traditions coming from the era of the Prophet Mohammed, and other religious texts and interpretations. The word hijab comes from the Arabic word "hajaba," which means to hide or screen from view or to cover. *The Question of Hijab: Suppression or Liberation?*, Institute of Islamic Information and Education, <http://www.unh.edu/msa/iiiie23.htm> (*Amici* Appendix (hereinafter "AA") at 01) (appendix cites in this brief refer to the source start page).

The district court's reliance upon *Goldman* and *Kelley* for the proposition that law enforcement requires complete uniformity of appearance was misplaced. In *Kelley v. Johnson*, while addressing a non-religious constitutional challenge to a police department's hair-length regulation, the Supreme Court held that the uniformity of dress policies of state and local police departments demonstrates "that similarity in appearance of police officers is desirable." 425 U.S. at 248. The factual predicate for the holding in *Kelley*, however, no longer holds true. Today, religious accommodations of the sort requested by Officer Webb are frequently granted by police, correctional, fire, emergency response, security, and military organizations across the county and the world, without resulting in any "hardship" to these organizations. Indeed, while the Supreme Court held in *Goldman v. Weinberger* that Goldman's request to wear a yarmulke on duty could not be accommodated without endangering the effectiveness of the Armed Forces, Congress expressly rejected that premise when it passed legislation to require accommodation of religious clothing that is does not actually interfere with the performance of military duties.

When viewed in the context of modern police and military practices – as opposed to police practices during the 1970s – the City's conclusory

assertion that permitting Officer Webb to wear her hijab would interfere with Departmental goals fails, as a matter of law, to establish the requisite hardship to rebut Officer Webb's claim for religious accommodation. *Amici* therefore urge this Court to reverse the grant of summary judgment and remand for trial on the question whether allowing Officer Webb to wear her religious head covering would, in fact, pose any threat to the efficient and effective administration of the Philadelphia Police Department.²

ARGUMENT

I. THE DISTRICT COURT'S CONCLUSION THAT PERMITTING OFFICER WEBB TO COVER HER HAIR WOULD CREATE AN UNDUE BURDEN WAS NOT BASED ON THE RECORD, BUT ON OUTDATED ASSUMPTIONS.

Once Officer Webb made out a *prima facie* case of religious discrimination under Title VII, the City was required to produce evidence that accommodating her religious practice would impose an undue hardship on the Police Department. In response, the City offered only the testimony of then-Commissioner Johnson that the Department's Directive 78 is

² *Amici* note that the Philadelphia Police Department actually permits scarves to be worn for fashion and warmth (i.e., secular reasons), but not for religious reasons – a constitutionally problematic paradigm similar to the situation warranting heightened review in *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (holding that City of Newark violated the First Amendment by refusing to permit beards for religious observance when they were permitted for health reasons). *Amici* will not repeat this argument here as it is thoroughly covered in Appellant's brief.

designed to further cooperation, foster esprit de corps, emphasize the hierarchical nature of the police force, and portray a sense of authority to the public, and that, in his opinion – uninformed by experience or investigation of any sort – allowing Officer Webb to cover her hair in a manner that identifies her as a Muslim would undermine those goals.³ 6/27/07 Op. at 4-5.

The court below recognized that this testimony alone did not suffice to warrant judgment as a matter of law; rather than requiring additional evidence from the City, however, the court looked to prior judicial opinions to provide the factual predicate for its grant of summary judgment to the City. *See* 6/27/07 Op. at 7-9.

Of particular concern to *amici* is the district court's reliance on *Kelley v. Johnson*, a case in which a policeman asserted, not a religious liberty or a

³ The district court characterized Commissioner Johnson's testimony as "undisputed" even though Officer Webb presented testimony that other uniformed officers had worn religious necklaces, lapel pins, and ash crosses to work without repercussion. Whether or not that testimony raised a question about the even-handedness of the enforcement of Directive 78 (the district court held it did not), it certainly raises a question whether, in fact, the presence of any religious ornamentation would harm the effectiveness of the Philadelphia Police force. It does not appear, from the record, that these lapses in the enforcement of Directive 78 caused any, much less undue, hardship for the Department. This sort of factual dispute should have been resolved in favor of the non-moving party at summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); Fed. R. Civ. P. 56.

Title VII claim, but a novel allegation that his department's hair-grooming standards violated his Fourteenth Amendment "liberty" interest in his own personal appearance. 425 U.S. at 240-241, 248. The Supreme Court concluded that the department's grooming regulation was not "so irrational that it may be branded 'arbitrary,' and therefore a deprivation of [plaintiff's] 'liberty' interest in freedom to choose his own hairstyle." *Id.* at 248. The court below acknowledged that the *Kelley* decision did not address the Title VII standard, but relied on the Court's "deference" to government policy to "inform [its] reasoning". 6/27/07 Op. at 8.

The district court found particular significance in the *Kelley* Court's observation that

[t]he overwhelming majority of state and local police of the present day are uniformed. This fact itself testifies to the recognition ... that similarity in appearance of police officers is desirable. This choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself.

6/27/07 Op. at 8 (quoting *Kelley*, 425 U.S. at 248).

The district court's reliance, more than thirty years later, on this passage from *Kelley* and its factual assertion that almost all police departments across the country find strict uniformity of appearance desirable in its officer corps, was in error. To the extent that was true in 1976, it is no longer true today insofar as exceptions for religiously-based exceptions to

strict uniformity are concerned. The district court made the same error in relying upon the *Goldman* Court's finding of a "compelling need for uniformity in the military." 6/27/07 Op. at 7. The district court did not acknowledge the fact, discussed more fully below, that Congress rejected the military's assertion that this 'compelling need for uniformity' was incompatible with religious clothing when it legislatively overruled the *Goldman* decision by adopting 10 U.S.C. § 774.

Had the district court considered the current status of police and military uniform policies across the country – as well as the relevant evidence placed into the record concerning the flexible and religiously sensitive uniform policies of the United States Army and the New York Department of Corrections – it would have appreciated the fact that religious accommodations of the sort requested by Officer Webb are frequently granted by police, correctional, fire, emergency response, security, and military organizations across the county and the world without sacrificing the degree of uniformity those organizations need to be effective. In this context, Commissioner Johnson's assertion that accommodation of religious observances through variations in uniform would jeopardize the effective functioning of the Police Department simply cannot be taken at face value.

II. A WIDE VARIETY OF POLICE AND PUBLIC SAFETY ORGANIZATIONS ACROSS THE COUNTRY AND THE WORLD RECOGNIZE THAT RELIGIOUS FREEDOM IS FULLY COMPATIBLE WITH EFFECTIVE LAW ENFORCEMENT AND MILITARY DISCIPLINE.

As many law enforcement and military agencies have found, accommodating the religious clothing needs of public servants who are also devout followers of faith generally imposes no hardship at all – let alone an *undue* hardship – on police departments and other similar paramilitary organizations. In fact, the strategic decisions undergirding the increased flexibility in the diverse range of uniform standards discussed below demonstrate that religious accommodation, and the attendant attraction of a diverse pool of uniformed officers that more adequately represents the citizenry being policed, actually serves to *increase* the effectiveness of public safety organizations such as the Philadelphia Police Department.

A. Domestic Police Departments

Among many others, police forces in the three largest metropolitan areas of the country – New York, Los Angeles, and Chicago – have made religious accommodations of the sort requested by Officer Webb. In July 2004, the New York City Police Department agreed to accommodate the requests of two Sikh traffic officers who sought to wear their religiously mandated turbans and beards while on uniformed duty. *See* James Barron,

Two Sikhs Win Back Jobs Lost by Wearing Turbans, N.Y. Times, July 29, 2004 (AA04). In commenting on the Sikh officers' request, a spokesman for the New York City Police Department emphasized its willingness to be flexible: "We try to work with our people to accommodate their special needs." *Sikh to Sue Police Over Turban and Beard*, N.Y. Times, March 4, 2003 (AA05). True to its word, the department agreed to waive its rule stating that all traffic agents "must wear a white vinyl eight-point hat properly fitted on the agent's head, without any articles visible" for the Sikh officers. Sean Gardiner, *Sikh Files Bias Suit Against NYPD*, Newsday, June 11, 2002 (AA06).⁴ In October 2004, one of the officers returned to work – wearing his turban and full beard – directing traffic near the busy Manhattan Bridge entrance, and did so without incident. *See Amric Singh on the Police Beat! Sikh Police Officer Begins Working for NYPD*, The Sikh Coalition, October 2004, <http://www.sikhcoalition.org/amricsingh.asp> (AA09). Indeed, the officer reported being treated well by his fellow officers, with whom he felt a sense of community. *Id.* The New York City Police Department's willingness to be flexible with its uniform policy apparently

⁴ The New York State Park Police also has implemented a process to allow officers who wear beards for religious reasons to seek exemptions from the Department's ordinary uniform policies. *U.S. Sues Newark, Claiming Bias on Police Beards*, N.Y. Times, May 17, 2000 (AA14).

has benefited officers of other religions as well, including Muslim women who have been photographed wearing a hijab while in uniform. *See* American Muslim Law Enforcement Officers Association, <http://www.amleoa.com/images/gallery/index.php> (middle photograph of second row) (AA12).

In the Chicago area, uniformed police officers have been wearing religious garb and accessories while on duty even longer than those in New York. In 1994, an African-American officer of the Chicago police force fought and won the right to wear religious earrings bearing the ankh, an ancient Egyptian symbol of life, while on duty. Noreen S. Ahmed-Ullah, *Jews Hit Sheriff's Ban on Yarmulkes*, Chicago Tribune, July 4, 2004 (AA15). Since then, the Chicago Police Department, as well as the neighboring Skokie Police Department, actively worked to accommodate the religious practices of their officers. *Id.* The Chicago Police Department has permitted several of its Jewish officers to wear yarmulkes. *Id.* And in the context of recruiting Muslim and Sikh police officers, a spokesman for the Chicago Police Department explained its policy as follows: "We make decisions case-by case. But if religious attire was the one thing barring someone from being a police officer, I can assure you there would be some flexibility in that decision." *Id.*

Following the lead of nearby Chicago and Skokie police departments, the police department of Cook County – the second-largest county in the United States – announced in early July 2002 that it would permit its Christian officers to wear ash crosses on their foreheads on Ash Wednesday while in uniform. *Id.* Shortly thereafter, the Cook County Police Department also agreed to permit its Jewish and Muslim uniformed officers to wear religiously mandated yarmulkes and hijabs while on duty. *ADL Welcomes Cook County Sheriff's Reversal on Religious Head Covering Prohibition*, American Defamation League, July 8, 2002, http://www.adl.org/PresRele/DiRaB_41/4129_32.htm (AA18).

Similarly, in the aftermath of September 11th terrorist attacks, the sheriff of the largest county in the nation – Los Angeles – announced that his police force would also employ a flexible uniform policy permitting accommodations for religious practices, and he personally invited Sikh Americans to join and serve as uniformed officers in beard and turban. *A New Door Opens for Sikhs: Turbans and Beards in Los Angeles Sheriffs Department*, SikhNet, July 26, 2004, <http://www.sikhnet.com/s/sikhsheriff> (AA19). Specifically, in an open letter to the Sikh Community, Sheriff Leroy Baca stated that “the articles of your faith, including the turban and beard, will not be an obstacle to serving in the Department as long as an

applicant is otherwise qualified.” Leroy D. Baca, *Letter to the Sikh Community of Los Angeles County*, April 2, 2002 (AA20). Sheriff Baca acknowledged the “rich tradition of [Sikhs] serving in the military and in police forces all over the world,” and noted that his force “would be proud to have Sikhs in uniform representing the Sheriff’s Department.” *Id.*

The nation’s capital also permits – and actively recruits – observant Sikhs to serve as uniformed police officers. *Wanted: Sikh Police Officers*, *Sikh Sentinel*, April 30, 2002, <http://www.sikhsentinel.com/sikhsentinel0205/police.html> (AA21). Charles Ramsey, the police chief of the District of Columbia from 1998-2006 – and the new police commissioner of Philadelphia – stated in a televised interview that he would “aggressively recruit” Sikhs to serve in the District’s police force and would “make accommodations” for turbans and beards worn in accordance with religious tenets. *Partial Transcript of Interview of Charles H. Ramsey*, video available at <http://www.passionfortruth.tv.com/DC-Police-Chief.html> (AA22). Chief Ramsey specifically noted that “[t]imes have changed now,” and that such accommodations were “way past due.” *Id.*

The use of flexible uniform policies has not been limited to the largest metropolises of the country; smaller cities and towns have joined their larger

counterparts in accommodating the religious practices of their uniformed corps. For example, officers serving in the police department for one of the nation's fastest growing cities, Las Vegas, are permitted to wear religious garb and paraphernalia while on uniformed duty. *See Policing a Faith: Detective Wants to Follow His Religious Tradition, but Metro Officials Wrongly Tell Him He Can't*, Las Vegas Sun, April 24, 2007 (officers can wear Christian pins on their uniforms) (AA24); Adrienne Packer, *Judge Allows Beard Temporarily*, Las Vegas Review-Journal, Nov. 17, 2007 (orthodox Jewish police officer temporarily permitted to wear beard on the job) (AA26). Similarly, the police department of Arlington, Texas has given its officers the option of wearing Christian rings and bracelets while in uniform. *At Cross Purposes*, Fort Worth Star-Telegram, Oct. 15, 2001 (AA28). And the police chief of Yuba City, California has stated that his police force "ha[s] no policy which precludes an employee of the Sikh faith from wearing a turban or beard (or possession of a kirpan⁵) during their employment" with the department. *Yuba City Police Chief Apologizes*, Sikh

⁵ A kirpan is a ceremonial sword or dagger that must be worn around a baptized Sikh's waist at all times, in accordance with *Sikh Rehat Maryada*, the Sikh code of conduct. A kirpan is one of the five "K" requirements of Sikhism, the others being *Kesh* (unshorn hair), *Kachhehra* (prescribed shorts), *Kanga* (comb tucked in the tied up hair) and *Karha* (steel bracelet). *See Kirpan: the Sikh Sword*, The Sikh Coalition, <http://www.sikhcoalition.org/InfoKirpan.asp> (AA31).

American Legal Defense and Education Fund, March 7, 2007, <http://www.saldef.org> (AA30). Finally, the police departments of Gwinnett County, Georgia and Lawrence, Kansas have memorialized their willingness to make religious accommodations into their written uniform policies. *See* Gwinnett County, GA Police Directive Manual §305.05 (2004) (permitting “the wearing of small crosses or Star of David etc.”) (AA32); Lawrence, KS Police Dept. Policy Manual § 4.3.C. (2005) (permitting the “wearing of a beard . . . when . . . necessary for an officer’s religious observation”) (AA34).

B. Correctional, Fire and Emergency, and Security Agencies

Flexibility in uniform standards for religious reasons is not limited to police forces; a wide variety of public safety organizations also permit their workers to wear religious garb and groom themselves in accordance with their specific religious tenets. For example, the New York State Department of Corrections recently announced that it would allow Abdus Samad Haqq, a devout Muslim correctional officer, to wear his kufi⁶ while on uniformed duty. *Metro Briefing New York: Albany: Religious Gear for Prison Guards,*

⁶ A kufi is a traditional knitted skullcap worn by Muslims as a sign of piety. *See, e.g.,* Michele Morgan Bolton, *Agreement Ends Religious Discrimination Case: Muslim correction officer will be allowed to wear religious headgear on duty*, Albany Times Union, May 10, 2007 (AA41).

N.Y. Times, May 10, 2007 (AA40).⁷ It bears noting that, for nearly 12 years prior to this announcement, Officer Haqq had worn his kufi while in uniform together without incident. Mary Kate Burke, *Muslim Worker Sues N.Y. Department of Corrections Over Skullcap: Worker calls clothing “an extension of who I am,”* ABCNews.com, Oct. 6, 2006 (AA44).

Firefighters have also been granted religious accommodations by their employers. In July 2001, the Montgomery County, Maryland Fire and Rescue Service “went out of its way” to accommodate one of its firefighters who wanted to wear her hijab while on duty. Jo Becker, *Muslim Firefighter May Wear Scarf*, Washington Post, July 13, 2001 (AA45). Although her employer had worried that the hijab might cause safety issues, the scarf was permitted after she showed her supervisors a Velcro feature that made it easy to rip away and replace with a fire-resistant hood and helmet when fighting fires. *Id.* Similarly, under the District of Columbia Fire and Emergency Medical Services Department Special Order No. 2001-48, issued on June 26, 2001, firefighters and paramedics in the nation’s capitol are permitted to

⁷ This announcement was not unprecedented. In 2001, the Virginia Department of Corrections agreed to permit a Muslim correctional officer to wear his religiously-mandated beard while on duty. *CAIR: Correctional Officer Wins Right to Wear Beard; Another Muslim Worker Wins Settlement from Sprint Over Denial of Prayer Rights*, PR Newswire, Jan. 3, 2001, <http://www.prnewswire.com> (AA43).

obtain religious exemptions to the department's grooming policy. *See* AA47.⁸

Federal security agencies also make religious accommodation a priority. For example, under §§ 4, 7.A(4) and 7.D(1) of Transportation Security Administration Management Directive No. 1100-73.2, promulgated on June 21, 2007, TSA security screeners are permitted to wear religiously-mandated clothing with their official uniforms. *See* American Federation of Government Employees, http://www.afge.org/Documents/2007_07_11_TSA1100732.pdf (AA48).

C. Armed Forces and Coast Guard

In addition, each of the United States Armed Forces – Army, Navy, Air Force, and Marines – permits religious exceptions to be made to its strict uniform policies. “[A] member of the armed forces may wear an item of religious apparel while wearing the uniform of the member’s armed force,”

⁸ Special Order No. 2001-48 provides in part as follows (emphasis added):

Effective immediately, all employees who object on a religious basis to any portion of the grooming regulations . . . may claim a religious exemption. Any employee who wishes to claim a religious exemption shall file a special report with his or her company officer or his or her immediate supervisor explaining the reason for the objection and identifying the particular portion of the regulation that is objectionable. Members *shall* thereafter be exempt from those specific portions, but shall be expected to comply with all other elements of the grooming policy.

provided that the religious item: (1) does not “interfere with the performance of the member’s military duties”; and (2) is “neat and conservative.” 10 U.S.C. § 774(a) and (b).

Section 774 codifies the Religious Apparel Amendment, which was a direct response to the Supreme Court’s holding in *Goldman*. 133 Cong. Rec. E 1846 (daily ed. May 11, 1987) (statement of Rep. Solarz, bill sponsor) (offering a “bill which would ensure that members of the Armed Forces will not be forced to choose between their sincere religious beliefs and a desire to serve their country” and referencing the *Goldman* case) (AA90).

Representative Solarz, the sponsor of the Amendment in the House, directly confronted the claim that allowing any variation in appearance would “threaten uniformity and reduce military cohesion” by listing numerous examples of individual expression allowed by the same Air Force regulations that forbade Captain Goldman’s yarmulke, including a story from Captain Goldman’s base:

In addition to cases of jewelry, there are numerous other examples of exceptions to uniformity. The 22d Bomb Wing, stationed at March Air Force Base in California – the same base as Simcha Goldman – set a record in 1981 for on-time takeoffs of airplanes. The crew chief of this operation wore a lucky green and white garter during every launch, with, obviously, no adverse effect on the mission at hand. If the military tolerates this type of superstition, it should tolerate a sincerely held religious belief.

Id.

Rep. Solarz also rebutted the contention that that religious identification, in particular, would have an adverse effect on morale by offering examples of military chaplains – including rabbis wearing yarmulkes – whose bravery had drawn commendation from military command figures up to and including the President. *Id.* Rep. Solarz concluded that “permitting the men and women of our armed forces to wear religious apparel that does not interfere with their duties will not lessen the effectiveness of our military.” *Id.* (also noting that other countries’ military forces find no inconsistency between individual religious expression and military service).

The sponsor of a similar bill in the Senate emphasized the benefits of religious accommodation and the lack of evidence that accommodating religious observance would reduce military effectiveness:

To the contrary, [the amendment] would strengthen morale by affirming that the military is a humane and tolerant institution....It is obvious that our services are made up of people from different faiths and ethnic backgrounds, and that diversity is America's greatest asset. It is no secret, nor should it be.... There must be a compelling and supportable argument justifying such a prohibition. None has been made.

* * *

Frankly, I would have to tell you that if that is what our military service is dependent upon, solely conformity in the uniform, we are in deep trouble. There is a lot more to discipline.

* * *

[D]iversity is a precious characteristic of the American being and let us salute it and let us say at the same time that uniformity in purpose, uniformity in understanding our roles in society, that is what is going to provide the kind of discipline, courage, and commitment that we need.

133 Cong. Rec. 12,780 at 26, 32, 33 (daily ed. Sept. 22, 1987) (statements of Sen. Lautenberg, bill sponsor) (AA93).

Other proponents emphasized the incongruity of asking those who fight to preserve our freedom to sacrifice their First Freedom:

The [amendment will] allow those young men and women in our armed services to in fact enjoy much of what it is that they are fighting for and that is an America whose tradition is not simply to tolerate diversity but to celebrate it, to [sanctify] it. That is why so many of our ancestors came here, for that and for opportunity of an economic kind. But they came to escape religious persecution and more to be able to worship as they choose.

* * *

Service to one's religion and service to one's country are not mutually exclusive. I question whether we can afford to preclude a certain group within our society from voluntary military service because of centuries-old legitimate religious beliefs concerning the wearing of certain religious apparel....This is a straightforward amendment that strengthens the right of freedom of religion in this country. Individuals in our Armed Forces should not be compelled to forsake the very freedoms they are in uniform to protect.

133 Cong. Rec. 12,780 at 31, 39 (daily ed. Sept. 22, 1987) (statements of Sens. Wilson and D'Amato) (AA93).

The Conference Subcommittee later issued a report that emphasized Congress's intent to provide broad protection for religious expression:

The conferees are concerned about reports that the implementing regulations may be written so narrowly as to exclude virtually all religious apparel.... The statute leaves the service Secretaries with discretion as to specific items of religious apparel, but the conferees emphasize that a regulation that would exclude virtually all religious apparel would be contrary to precedent and the purposes of this statute.

The conferees note that in drafting this section, the Congress has been extremely sensitive to the needs of the armed forces for uniformity, safety, good order, and discipline, and has carefully balanced those needs in light of the right of service members to freedom of religion, as well as the need to avoid governmental establishment of religion.

H.R. Rep. No. 58, 100th Cong., 1st Sess., 1987, 1987 U.S.C.C.A.N. 1018, 1750.

As a result, the Department of Defense has issued a sweeping directive that offers a remarkably broad range of religious accommodations to United States service men and women, including discretionary provisions for holy day worship, separate or supplemental rations, waivers of immunizations, religious training, and a process for appealing rejected requests to wear religious apparel while in uniform. Dept. of Defense

Directive, No. 1300.17, Feb. 3, 1998,

<http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>, (AA58).⁹

Nor was that the federal government's last word. On January 9, 2007, the United States Coast Guard aligned itself with the U.S. military services and announced that it would alter its uniform regulations "to include wearing religious headgear under certain conditions." U.S. Coast Guard Office of Civil Rights Newsletter, Vol. 2, Number 1, January 2007 (AA63).¹⁰

The Philadelphia Police Force's need for cohesiveness and adherence to hierarchy cannot possibly surpass that of the federal armed forces. If the Army, the Navy, the Air Force, the Marines, and the U.S. Coast Guard can

⁹ See generally Maj. Michael J. Benjamin, *Justice, Justice Shall You Pursue: Legal Analysis of Religion Issues in the Army*, Department of the Army Pamphlet 27-50-312, Army Lawyer (Nov. 1998) (recommending a process for adjudicating soldiers' requests for religious accommodation under an Army directive similar to DOD Directive No. 1300.17) (AA65).

¹⁰ To be permitted, religious headgear

must be black or match the hair color of the wearer, be of a style and size that it can be completely covered by, and not interfere with, the wearing or appearance of any uniform military headgear whether or not the uniform headgear is being worn. It cannot interfere with the proper wear or functioning or protective clothing or equipment, or bear writing, symbols, or pictures, including writing or images woven into the fabric. It may not be worn in place of uniform military uniform headgear when such uniform headgear is required according to Coast Guard uniform regulations.

Id.

accommodate religious clothing needs without disruption, the Philadelphia Police Force should be hard pressed to prove that accommodation of Officer Webb's request will result in an actual, undue burden on the Police Force.

D. Foreign Police Services

In the 30 years that have passed since the Supreme Court made its observation in *Kelley v. Johnson*, police departments across the country have grown increasingly accommodating of diverse religious practices that require minor deviations to uniform standards. *See supra* at II.A-C. While the strides made in this country have been impressive, they have been even more striking in some of the other major multicultural democracies of the world – Canada, the United Kingdom, Ireland, and Australia.

In Canada, the Mounted Police instituted a policy in 1990 allowing Sikhs to wear turbans, and have since developed uniform turban guidelines on length, color, fabric and appearance; other Canadian police departments also allow Sikhs to wear their turbans and beards while on duty. Sean Gardiner, *Sikh Files Bias Suit Against NYPD*, *Newsday*, June 11, 2002 (AA06); *see also Sikh Coalition Challenges NYPD on Rule Disallowing Turbans*, The Sikh Coalition, March 4, 2003, <http://www.sikhcoalition.org.amricsingh.asp> (including photographs of uniformed Canadian police officers in turbans and beards) (AA114); Loretta

Chao, *Allowed to Keep Beards, Turbans NYPD Will Reinstate Sikhs*,
Newsday, July 29, 2004 (noting that police dress codes in Canada allow
turbans under certain guidelines) (AA118). As noted by Toronto Police
Service Constable Gurpal Singh Sidhu, Liason Officer for the South and
West Asian Community, religious accommodation of Canadian police
officers is based on the understanding that “the police need to be reflective
of the community.” Sarbjit Japgal, *New Liaison Officer for South Asian
Community*, Weekly Voice, March 31, 2000 (AA120).

United Kingdom police forces are even more accommodating of
religious diversity than their Canadian counterparts. The city of London, the
English counties of Nottinghamshire and Hampshire, and the earldom of
Northumbria all permit its uniformed police officers to wear religious garb
in accordance with their beliefs, and each jurisdiction specifically permits
hijabs. In June 2003, the Metropolitan Police Force of London (MPF)
granted its Muslim policewomen the right to wear a headscarf while on
uniformed duty, and later gave them permission to wear an ankle length
gown as well. *Briefing: Good Practice on the Headscarf in Europe*, Islamic
Human Rights Commission, March 9, 2004,
<http://www.ihrc.org.uk/show.php?id=1030> (AA124); *see also Hijab Option
for London Policewomen*, Islam for Today,

<http://www.islamfortoday.com/police.htm> (including photographs of Muslim policewomen in MPF-issued hijabs) (AA129). The Metropolitan Police has also accepted the turban as part of the uniform for Sikh policemen. MPF Notice 28-01, July 11, 2001 (AA130). In an address to the London Sikh community, the Police Commissioner of the MPF explained his force's rationale for seeking out a diverse officer corps: "We need to work together with all of London's communities to create strong and positive partnerships that will tackle crime effectively. We also need a police service that properly reflects the people it serves." *Address of Sir John Stevens at Sri Guru Singh Sabha*, Nov. 23, 2003 (AA131).

In 2006, the Nottinghamshire Police announced that it was adopting recommendations "to design and include the Hijab as part of standard police officer uniform in order to attract female candidates from the Muslim community." Nottinghamshire Police Race Equality Scheme, Annual Report 2005/06 at 12 (including photograph of police uniform hijab) (AA136). As of March 2005, the Hampshire Police had uniform and dress standards that provided that "Staff, who for religious or cultural reasons wear specific items of clothing, *will* be accommodated within this procedure," Hampshire Police Procedure 14101 § 1.3 (emphasis added)

(AA155)¹¹, and specifically permitted the wearing of turbans and hijabs with the police uniform, *id.* §§ 3.4, 3.5.¹² Similarly, the earldom of Northumbria permits its police officers to “wear religious or cultural clothing providing that it is suitable for the purpose.” Northumbria Police Dress Code Policy, <http://www.northumbria.police.uk> (AA164).¹³

In neighboring Ireland, the Racial and Intercultural Office within the Garda – Ireland’s National Police Service, *see* <http://www.garda.ie> – announced several years ago that it would incorporate the headscarf as part of the police uniform to encourage Muslim women to join the force. *Good Practice on the Headscarf*, IHRC (AA124). In 2004, for similar recruitment reasons, the police force in Victoria, Australia – that nation’s most densely populated state – designed a special hijab for Muslim policewomen to wear while on uniformed duty. Lorna Edwards, *Making Hijab Part of Victoria*

¹¹ *See also id.* § 4.6 (“It is the responsibility of the first line supervisor to *ensure* the force can accommodate and provide appropriate uniform to comply with religious/cultural and/or medical requirements.”) (emphasis added).

¹² Section 3.5.14 also permits nose piercing “when worn as an indicator of marital status on cultural or religious grounds,” and § 3.5.20 permits long hair to be worn by male officers where “worn longer on cultural or religious grounds.”

¹³ The Northumbria Police does not permit its uniformed officers to wear long beards, “however the force will allow exceptions on the basis of religion. In these circumstances each case would be considered on its own merits to ensure there are no health and safety implications.” *Id.*

Police Uniform, The Age, Nov. 27, 2004, available at <http://www.thehijabshop.com/information/article1.php> (including photograph of specially-designed police hijab) (AA169). The Victoria police hijab is navy blue, to match the rest of the police uniform, lightweight, and attached by Velcro to enable its release in case of a physical scuffle. *Id.*

In January 2006, Western Australia – the largest state of the country, and one of the largest sub-national entities in the world – followed the lead of Victoria and began allowing its police officers to adapt their uniform and wear beards to meet their religious or cultural needs. *Sikhs Applaud West Australian Police Over Uniform Directive*, Panthic Weekly, Jan. 15, 2006, <http://www.panthic.org/news/123/ARTICLE/2175/2006-01-15.html> (AA180). The blue turbans and hijabs to be worn with the police uniform included the police badge and checkered hatband – a police symbol used in the U.K. and many of its former colonies. *Id.* Suresh Rajan, of the Western Australia Police Ethnic Advisory Committee, explained the police force’s rationale in accommodating diverse religious practices: “It makes the service far more relevant, as people from these communities can look at people in the police service representing them and feel some sort of affinity.” *Id.* The Multicultural and Ethnic Affairs Minister reiterated this

message: “It is very important that the composition of the police is more accurately representative of the composition of the community.” *Id.*

CONCLUSION

Officer Webb lost in the court below because the district court accepted without question Commissioner Johnson’s “unsupported” claim that a simple hijab, worn underneath a hat and tucked into a shirt, would create an undue hardship for the City by damaging the effectiveness of the Police Department. The experiences and policies of a wide variety of police and public safety organizations demonstrate that just the opposite is true: Accommodation of fundamental religious practices improves the morale and effectiveness of police corps by making the corps more representative of the community at large and by enabling individuals like Officer Webb to choose both to adhere to their closely held religious beliefs and to serve their communities as officers of the law. The district court’s judgment in favor of the City was improvidently granted, and should be reversed by this honorable Court.

Respectfully submitted,

Dated: January 9, 2008

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**CERTIFICATE OF COMPLIANCE WITH
FEDERAL AND LOCAL RULES OF APPELLATE PROCEDURE**

I, Fred Magaziner, hereby certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. The foregoing brief is in compliance with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B)(i) because, according to the word-counting feature of the word processor used in preparing this brief, it contains less than 7,000 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

3. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Microsoft Word using the proportionally spaced Times New Roman 14-point font.

4. In accordance with 3d Cir. Local Appellate Rule 31.1, the text of the electronic version of this brief sent via email to electronic_briefs@ca3.uscourts.gov and the text of the hard copies sent to the Clerk of Court via hand delivery are identical.

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Dated: January 9, 2007

CERTIFICATE OF SERVICE

I, Fred Magaziner, hereby certify that on this, the 9th day of January, 2008, I caused two (2) true and correct copies of the Brief of *Amici Curiae*, with accompanying appendix, to be served, by First Class U.S. Mail, postage prepaid, on the following counsel of record:

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