

# The Burger Court Opinion Writing Database

## *Goldman v. Weinberger*

475 U.S. 503 (1986)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

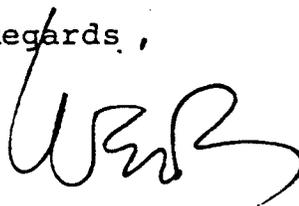
March 14, 1986

84-1097 - GOLDMAN v. WEINBERGER

Dear Bill:

I join.

Regards,



Copies to the Conference

Justice Rehnquist

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ER 100 10

*JK*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 27, 1986

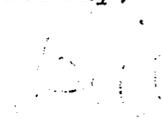
No. 84-1097

Goldman v. Weinberger

Dear Thurgood and Sandra,

We three are in dissent in the  
above. I'll try my hand at the dissent.

Sincerely,



Justice Marshall

Justice O'Connor

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 14, 1986

Goldman v. Weinberger, No. 84-1097

Dear Bill:

As you know from the memo I circulated earlier today, I will be sending around a dissent in Goldman in the near future. May I, however, presume to mention one concern I have with your opinion?

In reading it, I noticed some language which I believe might inadvertently, but deeply, offend our Jewish friends. That is the use on page 6 of the word "idiosyncracies" to describe the practice of wearing yarmulkes. Could I suggest that you replace "such idiosyncracies" with a less judgmental term like "such practices?"

Sincerely,

*Bill*

Justice Rehnquist

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 14, 1986

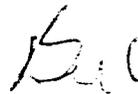
No. 84-1097

Goldman v. Weinberger, et al.

Dear Bill,

I shall be circulating a dissent in  
the above.

Sincerely,



Justice Rehnquist

Copies to the Conference

REHNQUIST

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: **FEB 21 1986**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[February —, 1986]

JUSTICE BRENNAN, dissenting

Simcha Goldman invokes this Court's protection of his First Amendment right to fulfill one of the traditional religious obligations of a male Orthodox Jew—to cover his head before an omnipresent God. The Court's response to Goldman's request is to abdicate its role as principal expositor of the Constitution and protector of individual liberties in favor of credulous deference to unsupported assertions of military necessity. I dissent.

### I

In ruling that Dr. Goldman's free exercise claim must yield to the paramount interests of the Air Force, the Court overlooks the sincere and serious nature of his constitutional claim. It suggests that a mere personal preference, rather than a First Amendment right, is at stake, by implying that the question before it is whether there is a "constitutional mandate . . . to make the Air Force a more 'humane' place." *Ante*, at 6. Dr. Goldman, however, never alleged a constitutional right to have a "pleasant" or "humane" experience in the Air Force, *id.*, he asserted a right to practice his faith. The Court also declares that "*nothing* in the First Amendment requires the military to accommodate [the wearing of yarmulkes] in the face of its view that they would detract from the uniformity sought by the dress regulations." *Id.*

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[February —, 1986]

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To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

6+7; 8-10 contain  
new material

From: Justice Brennan

Circulated: \_\_\_\_\_

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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[March —, 1986]

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STYLISTIC CHANGES THROUGHOUT  
SEE PAGES

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE ET AL.

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

[March —, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

Simcha Goldman invokes this Court's protection of his First Amendment right to fulfill one of the traditional religious obligations of a male Orthodox Jew—to cover his head before an omnipresent God. The Court's response to Goldman's request is to abdicate its role as principal expositor of the Constitution and protector of individual liberties in favor of credulous deference to unsupported assertions of military necessity. I dissent.

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To: The Chief Justice  
Justice White  
Justice Marshall  
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Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

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PPH 2

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE ET AL.

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

[March —, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

Simcha Goldman invokes this Court's protection of his First Amendment right to fulfill one of the traditional religious obligations of a male Orthodox Jew—to cover his head before an omnipresent God. The Court's response to Goldman's request is to abdicate its role as principal expositor of the Constitution and protector of individual liberties in favor of credulous deference to unsupported assertions of military necessity. I dissent.

I

In ruling that the paramount interests of the Air Force override Dr. Goldman's free exercise claim, the Court overlooks the sincere and serious nature of his constitutional claim. It suggests that the desirability of certain dress regulations, rather than a First Amendment right, is at issue. The Court declares that in selecting dress regulations, "military officials are under no constitutional mandate to abandon their considered professional judgment." *Ante*, at 6. If Dr. Goldman wanted to wear a hat to keep his head warm or to cover a bald spot I would join the majority. Mere personal preferences in dress are not constitutionally protected. The First Amendment, however, restrains the

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 27, 1986

84-1097 - Goldman v. Weinberger

Dear John,

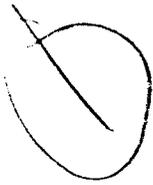
Please add my name to your concurring  
opinion.

Sincerely yours,



Justice Stevens

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 17, 1986

84-1097 - Goldman v. Weinberger

Dear Bill,

I agree.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 18, 1986

Re: No. 84-1097-Goldman v. Weinberger

Dear Bill:

I await the dissent.

Sincerely,

*T.M.*

T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 12, 1986

Re: No. 84-1097-Goldman v. Weinberger

Dear Bill:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 18, 1986

84-1097 Goldman v. Weinberger

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

Circulated: MAR 12 1986

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE BLACKMUN, dissenting.

I would reverse the judgment of the Court of Appeals, but for reasons somewhat different from those respectively enunciated by JUSTICE BRENNAN and JUSTICE O'CONNOR. I feel that the Air Force is justified in considering not only the costs of allowing Captain Goldman to cover his head indoors, but also the cumulative costs of accommodating constitutionally indistinguishable requests for religious exemptions. Because, however, the Government has failed to make any meaningful showing that either set of costs is significant, I dissent from the Court's rejection of Goldman's claim.

The Government concedes that Goldman wears his yarmulke out of sincere religious conviction. For Goldman, as for many other Jews, "a yarmulke is an expression of respect for God . . . intended to keep the wearer aware of God's presence." App. 156 (petitioner's deposition). If the Free Exercise Clause of the First Amendment means anything, it must mean that an individual's desire to follow his or her faith is not simply another personal preference, to be accommodated by government when convenience allows. Indeed, this Court has read the Clause, I believe correctly, to require that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U. S. 205, 215 (1972). In general, government "may justify an in-

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 18, 1986

84-1097 Goldman v. Weinberger

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 7, 1986

84-1097 Goldman v. Weinberger

Dear John:

I have joined Bill's opinion for the Court. Your concurring opinion is a fine supplement to the Court opinion. Please add my name to it.

Sincerely,

*Lewis*

Justice Stevens

lfp/ss

cc: The Conference

32 71-1 6 11

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
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Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE ET AL.

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

[February —, 1986]

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, 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 entered active service in the United States Air Force as a commissioned officer, in accordance with a requirement that participants in the scholarship program are required to serve

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 18, 1986

Re: 84-1097 - Goldman v. Weinberger

Dear Bill:

Thank you for your note concerning my use of the word "idiosyncrasies" in my circulating opinion. I think one of the reasons I used it was that the petitioner's brief itself on page 9 refers to "his slightly idiosyncratic apparel." But you may well be right that some orthodox Jews might be offended by the language, and so I am happy to substitute other language for the word "idiosyncrasies."

Sincerely,



Justice Brennan

STYLISTIC CHANGES THROUGHOUT

P.6

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: \_\_\_\_\_

Recirculated: FEB 21 1986

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

**S. SIMCHA GOLDMAN, PETITIONER v. CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE ET AL.**

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

[February —, 1986]

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 26, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 84-1097, Goldman v. Weinberger  
No. 85-5699 Wilson v. Schillinger

The Pennsylvania Bureau of Correction has a regulation that forbids male inmates from wearing hair extending below the top of their collars. Pa. Bureau Corr. Admin. Dir. 807 (1972). No such regulation applies to female inmates, and in one instance the regulation was not applied to an American Indian because of the mistaken belief by prison officials that the Bureau had granted Indians an exemption to accommodate their religious beliefs against the cutting of hair. Petitioner is an inmate at a Pennsylvania facility and a member of the Rastafarian religion, which has a doctrine forbidding its members from cutting their hair. Believing in this doctrine, petitioner refused to comply with D-807 while incarcerated at a facility located in Pittsburgh. He was thereupon placed in administrative segregation.

After exhausting administrative remedies, he sought an injunction and money damages against respondent officials of the Pittsburgh facility, arguing that enforcement of D-807 against him violates the Free Exercise and Equal Protection clauses. Respondents defended D-807 on the ground that long hair creates a risk to prison security by making it easier for inmates to conceal contraband, by creating health and sanitation problems, and by provoking homosexual activity. In St. Claire v. Cuyler, 634 F.2d 109 (1980), the CA3 had held that prison officials may restrict an inmate's First Amendment rights if they establish that exercise of those rights would pose a potential danger to prison security. The magistrate assigned to the case concluded that respondents had failed to satisfy their burden of proving that long hair would pose such a potential risk. He gave substantial weight to the fact that respondents had voluntarily (though mistakenly) granted an exemption to an American Indian, and to the inapplicability of the regulation to female inmates. He recommended that an

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[February —, 1986]

JUSTICE STEVENS, concurring.

Captain Goldman presents an especially attractive case for an exception from the uniform regulations that are applicable to all other Air Force personnel. His devotion to his faith is readily apparent. The yarmulke is a familiar and accepted sight.<sup>1</sup> In addition to its religious significance for the wearer, the yarmulke may evoke the deepest respect and admiration—the symbol of a distinguished tradition<sup>2</sup> and an el-

<sup>1</sup>Captain Goldman states in his brief:

“Yarmulkes are generally understood to be a form of religious observance. They are commonly seen and accepted in today’s society wherever Orthodox Jews are found. University campuses—particularly on the East Coast—have substantial numbers of young men who wear yarmulkes. On the streets of New York City, Los Angeles, Chicago, or Miami, yarmulkes are commonplace. They are increasingly visible in centers of commerce, including retail businesses, brokerage houses, and stock exchanges. Attorneys wearing yarmulkes can be found in the state and federal court-houses of New York, and attorneys wearing yarmulkes have been permitted to sit in the Bar Section of this Court and attend oral arguments.” Br. at 11.

<sup>2</sup>In dissenting from the Court of Appeals’ denial of rehearing en banc, Judge Starr was moved to describe the yarmulke as the “symbol of [a] faith whose roots are as deep and venerable as Western civilization itself” and the “symbol of a great faith from which Western morality and the Judaeo-Christian tradition have arisen.” 739 F. 2d 657, 658 (CA D. C. 1984) (Starr, J., dissenting).

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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Recirculated: FEB 28 1986

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE STEVENS, with whom JUSTICE WHITE joins,  
concurring.

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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r. 4

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
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[March —, 1986]

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: \_\_\_\_\_

Recirculated:       MAR 7 1986      

PROLOGIC CHANGES THROUGHOUT  
2/28/86

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE STEVENS, with whom JUSTICE WHITE joins,  
concurring.

Captain Goldman presents an especially attractive case for an exception from the uniform regulations that are applicable to all other Air Force personnel. His devotion to his faith is readily apparent. The yarmulke is a familiar and accepted sight.<sup>1</sup> In addition to its religious significance for the wearer, the yarmulke may evoke the deepest respect and admiration—the symbol of a distinguished tradition<sup>2</sup> and an el-

<sup>1</sup> Captain Goldman states in his brief:

“Yarmulkes are generally understood to be a form of religious observance. They are commonly seen and accepted in today’s society wherever Orthodox Jews are found. University campuses—particularly on the East Coast—have substantial numbers of young men who wear yarmulkes. On the streets of New York City, Los Angeles, Chicago, or Miami, yarmulkes are commonplace. They are increasingly visible in centers of commerce, including retail businesses, brokerage houses, and stock exchanges. Attorneys wearing yarmulkes can be found in the state and federal courthouses of New York, and attorneys wearing yarmulkes have been permitted to sit in the Bar Section of this Court and attend oral arguments.” Brief for Petitioner 11.

<sup>2</sup> In dissenting from the Court of Appeals’ denial of rehearing en banc, Judge Starr was moved to describe the yarmulke as the “symbol of [a] faith whose roots are as deep and venerable as Western civilization itself” and the “symbol of a great faith from which Western morality and the Judaeo-Christian tradition have arisen.” 238 U. S. App. D. C. 267, 268, 739 F. 2d 657, 658 (1984).

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
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Justice O'Connor

From: **Justice Stevens**

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MAR 10 1986

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE POWELL join, concurring.

Captain Goldman presents an especially attractive case for an exception from the uniform regulations that are applicable to all other Air Force personnel. His devotion to his faith is readily apparent. The yarmulke is a familiar and accepted sight.<sup>1</sup> In addition to its religious significance for the wearer, the yarmulke may evoke the deepest respect and admiration—the symbol of a distinguished tradition<sup>2</sup> and an el-

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

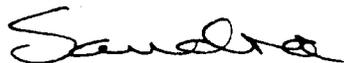
February 18, 1986

No. 84-1097 Goldman v. Weinberger

Dear Bill,

For the present I will wait for the  
additional writing in this case.

Sincerely,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE O'CONNOR, dissenting.

The issue posed in this case is whether, consistent with the Free Exercise Clause of the First Amendment, the Air Force may prohibit Captain Goldman, an Orthodox Jewish psychologist, from wearing a yarmulke while he is in uniform on duty inside a military hospital.

The Court rejects Captain Goldman's claim without even the slightest attempt to weigh his asserted right to the free exercise of his religion against the interest of the Air Force in uniformity of dress within the military hospital. No test for Free Exercise claims in the military context is even articulated, much less applied. It is entirely sufficient for the Court if the military perceives a need for uniformity.

JUSTICE STEVENS acknowledges that "Captain Goldman's military duties are performed in a setting in which a modest departure from the uniform regulation creates almost no danger of impairment of the Air Force's military mission." *Ante*, at 2 (STEVENS, J., concurring). Nevertheless, JUSTICE STEVENS is persuaded that a government regulation based on *any* "neutral, completely objective standard," *id.*, at 4, will survive a Free Exercise challenge.

In contrast, JUSTICE BRENNAN recognizes that the Court "overlooks the sincere and serious nature of [the] constitutional claim." *Ante*, at 1 (BRENNAN, J., dissenting). He properly notes that, even with respect to military rules and

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE O'CONNOR, dissenting.

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pp. 1

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W.  
WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE O'CONNOR, with whom JUSTICE MARSHALL joins,  
dissenting.

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P. 2

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Justice Stevens

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1097

S. SIMCHA GOLDMAN, PETITIONER *v.* CASPAR W. WEINBERGER, SECRETARY OF DEFENSE, ET AL.

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

[March —, 1986]

JUSTICE O'CONNOR, with whom JUSTICE MARSHALL joins, dissenting.

The issue posed in this case is whether, consistent with the Free Exercise Clause of the First Amendment, the Air Force may prohibit Captain Goldman, an Orthodox Jewish psychologist, from wearing a yarmulke while he is in uniform on duty inside a military hospital.

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