

No. 22-5234

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JASKIRAT SINGH, AEKASH SINGH, MILAAP SINGH CHAHAL,
Plaintiffs–Appellants,

v.

DAVID H. BERGER, ET AL.,
Defendants–Appellees.

Appeal from the United States District Court
for the District of Columbia
Honorable Richard J. Leon
(1:22-cv-01004-RJL)

**MOTION FOR LEAVE TO PARTICIPATE AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS–APPELLANTS’ OPENING
BRIEF ON THE MERITS**

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DISCLOSURE STATEMENT

Amici Jewish Coalition for Religious Liberty (JCRL), Anti-Defamation League (ADL), and Interfaith Alliance state that each of them does not have a parent corporation and does not issue stock. *See* Fed. R. App. P. 26.1; D.C. Cir. R. 26.1.

Proposed *amici curiae* the JCRL, ADL, and Interfaith Alliance respectfully submit this Motion for Leave to Participate as *Amici Curiae* in Support of Plaintiffs–Appellants’ Emergency Motion Pending Appeal, or in the Alternative, to Expedite Appeal. Plaintiffs–Appellants consented to the request of the above three organizations to file a brief as *amici*. The government has not responded to the inquiries of *amici*’s counsel and has taken no position on the *amici*’s consent request, so this motion for the Court’s leave is necessary. *See* D.C. Cir. R. 29(b).

I. The *Amici* have an interest in the outcome of this matter.

The Jewish Coalition for Religious Liberty (JCRL) is a non-denominational organization of Jewish communal and lay leaders seeking to protect the ability of all Americans to freely practice their faith. The Anti-Defamation League is committed to ending the defamation of the Jewish people and securing just and inclusive treatment for all religious groups. The Interfaith Alliance’s mission is to protect religious freedom for all Americans regardless of their faith or belief. These three organizations will provide examples of people from various minority groups throughout history who have contributed in significant ways as members of the U.S. military, despite earlier

warnings that their admission would diminish the military's objectives and capabilities. *Amici* doubt the Marine Corps' justifications for the policies at issue here and believe that accepting arguments for broad military deference would be detrimental to the core missions of the *amici* organizations. As such, *amici* have a significant interest in the outcome of this case.

II. The forthcoming amicus brief will provide helpful context to the issue at stake

The forthcoming amicus brief will assist the Court in evaluating the appropriate degree of deference to be afforded to the military's articulated rationales for denying religious accommodations here. The Marine Corps claims that "courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest," citing *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). But even great deference does not mean absolute deference. *Amici* will explain the legal defects of granting excessive deference to the military with respect to religious accommodations, identify particular challenges that *amici* and other religious groups besides Sikhs will likely encounter as a consequence of such excessive deference, and contextualize the history of how the U.S.

military's denial of accommodations to other minority groups have been overcome and disproven, casting doubt on the degree of deference that should be extended to the military here. The *amici* are well-positioned to provide such context, as they have been at the forefront of advancing the freedom of various religious groups to participate in the military and other segments of society while honoring the tenets of faith.

The brief will argue that overly broad deference to the Marine Corps' justifications for denying religious accommodations during Basic Training would leave no room for a showing by Plaintiffs that accommodations could be granted while still furthering the stated goals of the Marines. Siding with the nearly *carte blanche* deference asked for by the Marine Corps against the evidence-based arguments of the Sikh recruits—who are in fact permitted to wear their articles of faith once admitted into the Corps following Basic Training—would render the Religious Freedom and Restoration Act (RFRA) ineffectual. The brief will also provide examples (not detailed in the Plaintiffs' brief) showing that arguments deployed by the Marines in this case are highly similar to discriminatory arguments used in the past to exclude other minorities—arguments that courts and legislatures have rejected because they disregarded Americans' constitutional liberties. *See, e.g.*, 10 U.S.C. §

774(a) (1987) (in which Congress responded to the ruling in *Goldberg v. Weinberger*—when the Air Force succeeded in banning a Jewish member from wearing his yarmulke because of uniform requirements and goals of teamwork and “*esprit de corps*”—by passing a provision in the National Defense Authorization Act allowing “member[s] of the armed forces [to wear] an item of religious apparel while wearing the uniform of the member’s armed force.”). These examples will help demonstrate the logical flaws of the Marine Corps’ denying accommodations to Plaintiffs in this case—void of any proof that Sikh articles of faith actually detract from “unit cohesion” and other military goals.

For these reasons, the *amici* request that the Court grant this motion and accept their forthcoming amicus brief.

October 11, 2022

Respectfully submitted,

/s/David S. Petron
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CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of Fed. R. App. P. 27(d)(2)(A) because it has 728 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type-style requirements of Fed. R. App. P. 32(a)(6) because the motion has been prepared in a proportionately spaced typeface using Microsoft Office Word in 14-point Century Schoolbook font.

Dated: October 11, 2022.

Respectfully submitted,

/s/David S. Petron

David S. Petron

CERTIFICATE OF SERVICE

I, David S. Petron, hereby certify that on October 11, 2022, I served a true and correct copy of the brief on all parties of record via CM/ECF.

/s/David S. Petron

David S. Petron