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RELIGIOUS DISCRIMINATION OR EFFECTIVE LAW ENFORCEMENT? THE APPEAL OF A MUSLIM POLICE OFFICER TO WEAR HER KHMAR ON-DUTY AWAITS DECISION BY FEDERAL JUDGES: KIMBERLIE WEBB v. CITY OF PHILADELPHIA, CIVIL ACTION NO. 07-3081 (MARCH 14, 2008)¹

I. Introduction

The United States Constitution protects a fundamental liberty by prohibiting laws that infringe upon the free exercise of religion.³ There are other safeguards to protect religious freedom, such as Title VII of the Civil Rights Act of 1966,⁴ which provides that it is unlawful employment practice for an employer to discriminate based on religion against any employee.⁵ But there is also the countervailing need to ensure that an individual's freedom of religion does not infringe upon the rights of others. This struggle for balance is especially prominent in the workplace where employers are facing problems trying to accommodate religion without creating an undue burden on them.⁶ Claims of *2 religious discrimination filed with federal, state and local agencies have doubled over the past 15 years and rose 15% during 2007 to 4,515, a record.⁷

A current example of this is a case in Philadelphia's Federal Appellate Court: *Webb v. City of Philadelphia*, Action No. No. 07-3081, March 14, 2008.⁸ The District Court case was heard in June of 2007.⁹ In *Webb*, the United States District Court in the Eastern District of Pennsylvania chose to uphold the Philadelphia Police Directive 78¹⁰ above Title VII in an opinion written by Chief Justice Bartle. This balancing of religious freedoms for employees without causing undue hardship for employers was precisely the problem at hand when Kimberlie Webb, a Philadelphia police officer, wanted to wear her Islamic headscarf, the khimar,¹¹ during her shifts as a patrol officer.¹²

*3 This article will outline Chief Justice Bartle's opinion and the issues on appeal as garnered from appellate briefs shared by counsel.¹³ While the case has been heard by a panel of 3rd Circuit judges, an opinion is expected within ninety days of the appeal (sometime in December of 2008).¹⁴ This article will also make a prediction on the outcome of the case based on Judge Bartle's trial opinion, opinions in prominent cases dealing with religion in the workplace, and the strength of the arguments presented in the appellate briefs by both parties.

II. Statement of the Case & Procedural History

District Court

The issue before the District Court in *Webb* was whether or not the Plaintiff had suffered religious discrimination by Defendant under Title VII and also whether Plaintiff was a victim of retaliation and hostile work environment also under Title VII.¹⁵ Events leading up to this case began in 2003 when Plaintiff requested permission from her supervisor to wear a khimar out of religious necessity; at this time she had been employed by the City of Philadelphia as a police officer for eight years.¹⁶ While

a khimar may vary in amount of coverage, Plaintiff wore hers covering her hair, forehead, sides of her head, neck, shoulder and chest but leaving her face visible; she intended to wear it underneath her police hat while tucking the lower portion of the khimar inside of her police uniform.¹⁷ Plaintiff's supervisor, a police captain, denied her written request based on Philadelphia Police Department Directive 78, which stipulates the requirements of a police uniform.¹⁸ Directive 78 indicates no authorization for the wearing of religious garb.¹⁹

*4 Plaintiff proceeded by filing a complaint with the Equal Opportunity Employment Commission (EEOC).²⁰ After filing the complaint, Plaintiff decided to wear her khimar to work despite her supervisor's denial of her request.²¹ When Plaintiff refused to take off her khimar, she was not permitted to work but once she complied with uniform requirements Plaintiff was allowed to return to duty.²² The EEOC eventually issued Plaintiff a "right to sue" letter and Plaintiff filed her complaint in District court in 2005 based on Title VII.²³

From Plaintiff's personal perspective, not wearing the khimar in public made her "feel naked" and "want to cover."²⁴ Legally, her claim in District Court stated that the city's refusal to allow her to wear her khimar while in her uniform and on duty constitutes religious discrimination under Title VII. On the side of Defendant, the police department was concerned that going against Directive 78 would possibly endanger other officers and the general public, causing an "undue burden" on the city of Philadelphia.²⁵ In his testimony, Police Commissioner Johnson explained that Directive 78 reflects the principle that the police department is a para-military organization where personal preferences must be placed below the goal of the policing mission; this includes the utmost *5 cooperation by police officers.²⁶ According to him, uniforms and uniformity within those uniforms promotes cooperation among officers.²⁷ In turn, the uniforms portray a sense of authority to the public and place emphasis on the hierarchical structure of the police force.²⁸ Taking away this uniformity would cause an undue hardship.²⁹ The undue hardship, as defined in Title VII states:

An employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an undue hardship on the employers' legitimate business interests. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.³⁰

The authorized uniform does not include religious apparel and the directive also stipulates grooming requirements.

These arguments were heard by the District Court and Judge Bartle granted Defendant's motion for summary judgment on both counts and entered judgment in favor of Defendant and against Plaintiff on both counts.³¹ Judge Bartle opined that Defendant established compelling, nondiscriminatory reasons for Directive 78 and demonstrated as a matter of law that an undue hardship would be suffered if required to accommodate the wearing of a khimar by Plaintiff.³²

***6 Appellate Court**

In September 2008, Plaintiff appealed the decision and her argument was heard by three appellate judges on the 3rd Circuit Federal Court of Appeals.³³ The judges will release the decision in thirty to ninety days from the date of the argument.³⁴ Her claim on appeal was altered from what was heard by the District Court. There were two main arguments set forth by Plaintiff. First, the trial court erred in failing to construe all inferences against the nonmoving party when they granted Defendant's motion for summary judgment. Second, factual disputes mandate this case be remanded for further consideration.³⁵ On appeal, Plaintiff has raised a claim of fundamental liberty rights, pertaining to her first amendment right to exercise her freedom of religion by wearing her khimar on duty while in uniform.³⁶

In response, Defendant argued a constitutional claim cannot be raised at the appellate level unless it has already been raised at the trial level. Defendant stated that regardless of the procedural error, there has been no Constitutional violation.³⁷ Since the opinion has not yet been published, it is unknown at this time if the 3-judge panel will use their judicial discretion in allowing this claim to be heard.

Despite failing to raise a specific Free Exercise of Religion claim in District Court, Plaintiff pointed out that Constitutional rights are not waivable.³⁸ This is for two reasons. First, Plaintiff asserts that these claims were raised via Title VII.³⁹ The reasoning is that Title VII and the First Amendment are inextricably connected, because Title VII arose based on protecting First Amendment rights. *7 Second, denying a petitioner the right to argue this claim would be to deprive her of a fundamental right of all litigants: to assert disagreement with the trial court.⁴⁰

The Federal Rules of Civil Procedure (FRCP) state in Rule 18 that parties have broad discretion to state as many claims as necessary at trial level, which would have been the ideal time and place to raise a first amendment claim against Defendant.⁴¹ Plaintiff did not raise her constitutional claim at that level. There are separate rules for preserving claims for appeal. Although the Federal Rules state that parties must preserve each claim, there is a method for preserving a claim of error via Rule 51. This gives the judge the opportunity to entertain an issue sidebar, and then summarize it for the parties and finally, make a ruling on it.

In support of the Constitutional claim being heard, Webb's attorney, Jeff **Pollock** of **Fox Rothschild** LLP, said that the Constitutional claims were, in fact, part of the case since they were raised in her 2003 letter to her supervisor requesting permission to wear her khimar.⁴² Additionally, his argument still stands that Constitutional claims can never be waived, regardless of when they are raised.

Often, in the interest of forwarding justice, a judge might overlook procedural errors and remedy them so that claims may be heard. Exceptions may be made where injustice would otherwise result, or where proper resolution of the issue is beyond doubt, but the general rule is that an issue must be presented to, considered by, and decided by the trial court before it will be reviewed by an appellate court.⁴³ Most likely a judge would not consider issues heard for the first time on appeal, but this remains to be seen.

***8 III. The Court's Analysis**

The issues raised by Plaintiff on appeal include improperly granting summary judgment and the existence of factual disputes, urging the 3rd Circuit to closely examine Judge Bartle's opinion. However, the standards for the Philadelphia Police Department's mission of public safety have not changed, maintaining Directive 78 as the basis of uniform requirements. Also, case law post-*Webb* provides reinforcement for the District Court's ruling.⁴⁴ However, Plaintiff's appellate brief sets forth strong arguments for reverse and remand.

Claim 1: Improper Granting of Summary Judgment

Plaintiff's major claim in District Court fell under Title VII, a federal code that prohibits an employer from discriminating an employee based on religion.⁴⁵ This statute defines religion to "include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." The operative phrase is "reasonably accommodate." Plaintiff argues that within this claim there is a First Amendment claim and also an indivisible sex discrimination claim, since only women wear a khimar.⁴⁶ While the circuit judges might point out that the original issue was Title VII, Plaintiff argues that also automatically encompasses sex discrimination since only women wear a khimar. If men are entitled to accommodation for certain things, women should be entitled to equal and equivalent accommodation.

At trial Judge Bartle set forth a clear test for establishing a prima facie case of religious discrimination: "(1) she holds a sincere religious belief that conflicts *9 with a job requirement; (2) she informed her employer of the conflict; and (3) she was disciplined for failing to comply with the conflicting requirement."⁴⁷ The facts showed that each of these requirements were satisfied, which shifts the burden to Defendant to demonstrate "that it made good faith efforts to accommodate, or that the

requested accommodation would work an undue hardship.”⁴⁸ The undue hardship is more difficult to show, but case law holds that an undue hardship exists if it creates more than a de minimus cost to the employer.⁴⁹

Less compelling employment settings have fulfilled this requirement. For example, a public school teacher was not allowed to wear a khimar in order to maintain religious neutrality in *United States v. Board of Education*.⁵⁰ While religious neutrality is important for the separation of church and state, it is not necessarily a safety issue since it is not dealing with law enforcement and the dangers accompanying the duties of a police officer.⁵¹ The opinion goes on to name other public employment settings that require religious neutrality to prevent undue hardships for the employer.

A more factually similar example dealing with law enforcement occurs in *Goldman v. Weinberger*.⁵² In this case, an Orthodox Jewish Air Force officer was not permitted to wear his yarmulke while in his uniform. The court cited the overall end goal of the Air Force mission, and the means of reaching it was maintaining uniformity.⁵³ The deference to military needs has been in the case at bar transferred to police enforcement needs.

***10** However, the dissent in *Goldman* believes that the Air Force officer had a compelling First Amendment argument, which would give Plaintiff in the case at bar more support. The dissent argued that the Air Force did not put forth a credible reason for why wearing a yarmulke interferes with the Air Force's interests concerning discipline and uniformity.⁵⁴ But even based on the dissent's analysis, if the police department is intent on reaching the end goal of an image of uniformity, Plaintiff might still have a problem based on the factual differences between a yarmulke and a khimar, concerning size, obtrusiveness, etc.

A case that provides the most support for Defendant also deals with local police enforcement, although there was no religious discrimination issue at hand. In *Kelley v. Johnson*,⁵⁵ a regulation set forth by the New York Police Department restricting hair length of officers was held not to be unconstitutional, showing the court's placement of importance on uniformity of police officers.⁵⁶ The dissent in *Kelley* argues against the premise of the end goal of uniformity. Justice Marshall's dissent detailed why uniformity is difficult to achieve based on hair styles and appearance alone and even brings in the right of one's appearance to be one of the most comprehensive rights available.

In both *Goldman* and *Kelley* the plaintiff was able to establish a first amendment claim, which may provide support for the 3rd circuit judge's to take Plaintiff's claim into consideration. To make a prediction on the outcome *Webb*, one can look to case precedent. In *Kelley*, the court was a split panel of 5-4 in 1975 over a haircut. Then in 1986, *Goldman* was another split court in the Court of Appeals going the other way, saying an Air Force officer cannot wear a yarmulke. The ***11** following year, Congress reacted by saying that people should not have to choose between honoring their God and their country; both options should be feasible.

In District Court, Plaintiff successfully raised only Title VII claims. But the reasoning of each court gave deference to the government despite the claim and setting. Judge Bartle cites what exactly the “undue burden” would mean for the city of Philadelphia:

[P]rohibiting religious symbols and attire helps to prevent any divisiveness on the basis of religion both within the force itself and when it encounters the diverse population of Philadelphia. Like the Garb Statute, Police Directive 78 is designed to maintain religious neutrality, but in this case in a para-military organization for the good not only of the police officers themselves but also of the public in general.⁵⁷

There is another case dealing with law enforcement and the first amendment that Plaintiff's appellate brief cites for support. In *Fraternal Order of Police v. City of Newark*,⁵⁸ the court found a violation of the First Amendment occurred because Muslim police officers were not allowed to grow beards for religious reasons; but, those with medical (secular) reasons were permitted. Defendant argued that *Webb* is different based on the fact that there are no exceptions for the police officers of Philadelphia for wearing religious garb or symbols while in uniform and on duty.⁵⁹

The District court concluded that if Defendant were to accommodate the wearing of a khimar, it would cause undue burden.⁶⁰ The Judge opined that Defendant established as a matter of law a non-discriminatory and compelling reason that wearing the khimar on duty while in uniform *12 creates an undue burden.⁶¹ Defendant's motion for summary judgment of the count of discrimination under Title VII was granted.⁶²

Plaintiff also indicated that New York, Chicago and Washington, D.C., allow “breakaway” khimars, which have snaps or Velcro and do not hinder officers in police actions.⁶³ In every place where khimars, yarmulkes and other religious symbols have been allowed (NY, Chicago, DC) it has been discretionary to allow it. The year after *Goldman* was issued, Congress reacted that presumptive by statute the military must allow symbols unless it interferes with job function.⁶⁴

While Defendant has argued that the City of Philadelphia should not have to wait for something bad to happen to prove an undue burden exists, it is unacceptable to assume that because the public might be uncomfortable with a woman in a khimar that she should not be allowed to wear it. At that rate, the Police Department may never have become desegregated.

Claim 2: Existence of Factual Disputes

While the judge's opinion was supported by precedential law and clear legal standards that were met by the Defendant, the Plaintiff had additional claims that were simply unable to be supported by evidence. These claims entailed that her supervisors favored Christian officers.⁶⁵ But she was unable to provide material evidence and did not use live witnesses instead. It is also noted that Plaintiff's supervisor was Muslim as well, which might have compelled the judge to believe it less likely she would be discriminated against since Plaintiff and supervisor shared the same *13 religion.⁶⁶ These factors led to summary judgment granted for Defendant on Plaintiff's second claim under Title VII.⁶⁷

In terms of the evidence she was unable to provide, the District Court could have called in live witnesses to testify.

IV. Conclusion

The decision in the District Court follows the trend of deference toward the government when religion seems to create an undue burden on an employer. Whether the prior cases have been based on Constitutional claims of freedom to exercise religion in the workplace or cases heard under Title VII, stare decisis most likely led Judge Bartle to prevent an undue burden from being placed on the government. However, based on the increasing number of complaints filed over the need to accommodate religion in the work place and the strength of Plaintiff's appellate brief, the 3rd Circuit has a difficult decision to make.

The intensity of the dissents on aforementioned prominent cases and the high importance of Constitutional rights make it possible that the 3rd Circuit will reverse and remand the case rather than an outright reversal. This might happen if Plaintiff proves a failure to construe all of facts and circumstances in favor of the non-moving party, which is required for summary judgment motions to be granted.

The procedural issues that plagued Plaintiff in the District Court could possibly be remedied. The Federal Rules of Civil Procedure were created with the hope of advancing justice. If Plaintiff did not conduct her case to procedural perfection, it would be putting form over substance to punish her for that. The country has *14 changed and moved forward and many major cities are allowing religious symbols to be worn by police officers.

In conclusion, it seems like the best outcome would be for the 3rd Circuit to reverse and remand so that the procedural problems cited by Plaintiff can be resolved. This will best serve the interest of justice, especially given the extreme importance of protecting Constitutional rights. Both Plaintiff and Defendant set forth compelling arguments in their appellate briefs, and the 3rd Circuit faces a difficult decision in addressing the trend of increasing complaints of accommodating religion in the workplace. The City of Philadelphia has a right to protect its citizens and members of its police department, but not at the expense of Kimberlie Webb's First Amendment rights.

Footnotes

- 1 *Webb v. City of Philadelphia*, Appeals No. 07-3081 (3d Cir. Mar. 14, 2008).
- a1 New Developments Staff Writer, Rutgers Journal of Law & Religion; J.D. Candidate May 2010, Rutgers School of Law-Camden.
- 3 U.S. CONST. amend. I. The first amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- 4 42 U.S.C. § 2000(e) (1964), available at <http://www.eeoc.gov/policy/vii.html>.
- 5 *Morrison-Tiffin v. Hampton*, 117 N.C. App. 494 (1995)(observing that the right to be free from retaliation for protesting discrimination is created by Title VII of the Civil Rights Acts of 1964, not the Equal Protection Clause.)
- 6 Phred Dvorak, *Religious-Bias Filings Up*, WALL STREET JOURNAL, October 16, 2008, available at <http://online.wsj.com/article/SB122411562348138619.html?mod=article-outset-box>. In addition to discussing the statistical increase in religion-based employment complaints, this article more specifically focuses on a meatpacking plant's firing of 200 Muslim Somali workers for walking off the job over prayer-break disputes.
- 7 *Id.*
- 8 *Webb*, Appeals No. 07-3081, *supra* note 1.
- 9 *Webb v. City of Philadelphia*, Action No. 05-5238, 2007 WL 1866763 (D. Pa. June 27, 2007). Not reported in F.Supp.2d.
- 10 *Id.* (explaining that Directive 78, “describes in detail the approved uniform for Philadelphia police officers. Nothing in the directive authorizes the wearing of religious symbols or clothing as part of the uniform.”)
- 11 Dr. Rashad Khalifa, *The Glorious Koran: An Authorized English Version, Translated from the Original*, available at <http://www.submission.org/dress.html>. “Khimar’ is an Arabic word that can be found in the Quran in 24:31. While the first basic rule of Dress Code for the Muslim Women can be found in 7:26, the second rule of the dress code for women can be found in 24:31. Some Muslims quote verse 31 of sura 24 as containing the Hijab, or head cover, by pointing to the word, khomoorehenna, (from Khimar), forgetting that God already used the word Hijab, several times in the Quran. Those blessed by God can see that the use of the word “Khimar” in this verse is not for “Hijab” or for head cover. Those who quote this verse usually add (Head cover) (veil) after the word Khomoorehenna, and usually between because it is their addition to the verse not God's. Here is 24:31: “And tell the believing women to subdue their eyes, and maintain their chastity. They shall not reveal any parts of their bodies, except that which is necessary. They shall cover their chests, (with their Khimar) and shall not relax this code in the presence of other than their husbands, their fathers, the fathers of their husbands, their sons, the sons of their husbands, their brothers, the sons of their brothers, the sons of their sisters, other women, the male servants or employees whose sexual drive has been nullified, or the children who have not reached puberty. They shall not strike their feet when they walk in order to shake and reveal certain details of their bodies. All of you shall repent to GOD, O you believers, that you may succeed.” 24:31.

- 12 Jamal Abdul-Alim, *Head Games*, PHILADELPHIA WEEKLY ONLINE, September 17, 2008, available at <http://www.philadelphiaweekly.com/articles/17660/news>.
- 13 Telephone Interview with Jeff Pollock, Partner, Fox Rothschild LLP (Nov. 11, 2008). Pollock also provided copies of appellate briefs via email from both Plaintiff and Defendant since they have not yet been published.
- 14 Brief of Petitioner-Appellant, *Webb v. City of Philadelphia*, No. 07-3081 (3rd Cir. Mar. 14, 2008).
- 15 *Webb*, Action No. 05-5238.
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 19 Brief of Appellee, *Webb v. City of Philadelphia*, at 14 (No. 07-3081) (3rd Cir. Feb. 28, 2008).
- 20 42 U.S.C. § 2000(e) (1964). The EEOC states that under Title VII: Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices.
- 21 *Webb*, Action No. 05-5238.
- 22 *Id.*
- 23 42 U.S.C. § 2000(e) (1964). The important text of the Civil Rights Act of 1964 is as follows: “An Act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.” *Id.*
- 24 Jamal Abdul-Alim, *Head Games*, PHILADELPHIA WEEKLY ONLINE, Sept. 17, 2008, available at <http://www.philadelphiaweekly.com/articles/17660/news>. These statements were taken outside of the courtroom after her appeal to the 3rd Circuit.
- 25 42 U.S.C. § 2000(e) (1964).
- 26 *Webb*, Action No. 05-5238.
- 27 *Id.*

28 *Id.*

29 *Id.*

30 42 U.S.C. § 2000(e).

31 *Webb*, Action No. 05-5238.

32 *Id.*

33 Brief of Appellee, *supra* note 19, at 14.

34 Jamal Abdul-Alim, *Head Games*, PHILADELPHIA WEEKLY ONLINE, Sep. 17, 2008, available at <http://www.philadelphiaweekly.com/articles/17660/news>

35 Brief of Appellee, *supra* note 19.

36 Brief of Petitioner-Appellant, *supra* note 14.

37 *Id.*

38 *See* Telephone Interview with Jeff Pollock, *supra* note 13.

39 Brief of Petitioner-Appellant, *supra* note 14.

40 *Id.*

41 Fed. R. Civ. P. 18.

42 Kitty Caparella, *Has a Cop the Right to a Muslim Headcover?*, PHILADELPHIA DAILY NEWS, Sep. 10, 2008, available at http://www.philly.com/philly/hp/news_update/20080910_Has_cop_a_right_to_Muslim_headcover_.html.

43 157 A.L.R. Fed. 581 (Originally published in 1999).

44 *Dodd v. Septa*, 2008 WL 2902618 (E.D. Pa.), 104 Fair Empl.Prac.Cas. (BNA) 43 (holding that a police officer's claim of employment discrimination held sufficient evidence for a prima facie case under Title VII.) This case, however, is distinguished from the case at bar because in *Dodd* the plaintiff did not request complete exemption from the dress code but rather a minor deviation.

45 42 U.S.C. § 2000e-2(a)(1). This statute defines religion to “include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's

or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.”

46 Brief of Petitioner-Appellant, *supra* note 14.

47 *Webb v. City of Philadelphia*, Action No. 05-5238, 2007 WL 1866763 (E.D. Pa. June 27, 2007) (citing *Shelton v. Univ. of Medicine & Dentistry of New Jersey*, 223 F.3d 220, 224 (3d Cir. 2000)).

48 *Id.*

49 432 U.S. 63, 84, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977) (defining “cost” as not just economic.)

50 *United States v. Board of Education*, 911 F.2d 882 (3d Cir.1990).

51 *Id.*

52 *Goldman v. Weinberger*, 475 U.S. 503 (1988) (holding that when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to professional judgment of military authorities concerning relative importance of particular military interest).

53 *Id.*

54 *Id.*

55 *Kelley v. Johnson*, 425 U.S. 238 (1976).

56 *Id.* The judge reasoned that “The overwhelming majority of state and local police of the present day are uniformed. This fact 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.

57 *Webb v. City of Philadelphia*, Action No. 05-5238, 2007 WL 1866763 (E.D. Pa. June 27, 2007).

58 *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir.1999).

59 *Webb v. City of Philadelphia*, Action No. 05-5238, 2007 WL 1866763 (E.D. Pa. June 27, 2007).

60 *Id.*

61 *Id.*

62 Federal Rules of Civil Procedure Rule 56 states that a summary judgment by a defending party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

63 Brief of Petitioner-Appellant, supra note 14.

64 *Id.*

65 *Webb v. City of Philadelphia*, Action No. 05-5238, 2007 WL 1866763 (E.D. Pa. June 27, 2007).

66 *Id.*

67 *Id.*

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