



David Zwiebel, Esq.
 Director of Government Affairs
 General Counsel

September 19, 1991

**TESTIMONY OF DAVID ZWIEBEL, ESQ., DIRECTOR OF GOVERNMENT AFFAIRS
 AND GENERAL COUNSEL OF AGUDATH ISRAEL OF AMERICA,
 IN SUPPORT OF THE NOMINATION OF
 JUDGE CLARENCE THOMAS TO THE UNITED STATES SUPREME COURT**

Mr. Chairman and distinguished members of the Senate Judiciary Committee:

My name is David Zwiebel. I am the director of government affairs and general counsel for Agudath Israel of America, the nation's largest grassroots membership organization of Orthodox Jews, and I am here to convey Agudath Israel's support of the nomination of Judge Clarence Thomas to the United States Supreme Court.

Judge Thomas' credentials are most impressive, especially when one considers how much he has accomplished in such a relatively short span of time. By dint of his long and in many ways distinguished service as chairman of the Equal Employment Opportunity Commission, Judge Thomas gained outstanding experience in the field of civil rights -- a vital area of the Supreme Court's agenda. He is familiar with the legislative process, having served as a legislative aide to Senator John Danforth. He would bring to the high court personal knowledge of economic hardship and racial discrimination, having overcome his own circumstances of abject poverty through an unwavering commitment to hard work and personal excellence.

In addition, Judge Thomas has demonstrated that he is a man of intellectual independence. Most notable in this regard is his forthright rejection of the policies of racial preference espoused by most American black leaders as

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the best means of improving the plight of impoverished minorities in this country. Whether one agrees or disagrees with Judge Thomas' views on such controversial issues as quotas, race-norming and equal opportunity -- for the record, Agudath Israel happens to agree with those views -- it is impossible not to admire his courageous willingness to speak the truth as he sees it. That attribute of independence, perhaps more than any other, persuades Agudath Israel that Judge Thomas will ser^{ve} with distinction on the Supreme Court.

Yet another noteworthy attribute Agudath Israel believes Judge Thomas possesses is a clear yet compassionate understanding of how Supreme Court rulings, issued from the proverbial ivory towers of the Justices' chambers, affect real people in their daily lives across the length and breadth of this great nation. To illustrate this point, I would like to share with you a striking aspect of Judge Thomas' record as EEOC chairman, one which to the best of my knowledge has not received attention during these hearings. I refer specifically to an issue in which Agudath Israel and its constituents have a great stake: the legal obligation to accommodate the rights of religious minorities in the workplace.

In March 1986, by a vote of 5-4, the Supreme Court ruled that the First Amendment's guarantee of the free exercise of religion did not protect Air Force Captain S. Simcha Goldman's right to wear a yarmulke (an unobtrusive head covering worn by observant Jews) in the face of an Air Force regulation that proscribed the wearing of headgear indoors. Goldman v. Weinberger, 475 U.S. 503 (1986). In the weeks thereafter, and no doubt as a direct outgrowth

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of the publicity generated by the Court's ruling, Agudath Israel and several other Jewish groups received a number of phone calls from observant Jewish employees who were being told by their private sector employers that they could no longer wear their yarmulkes on the job. Among various other steps taken at that time, we contacted the EEOC to inform the agency of this troubling development. Judge Thomas -- then Chairman Thomas -- took a personal interest in the matter and issued an EEOC policy memorandum stating clearly that the holding in the Goldman case was limited to the specific context of the military; and that the religious accommodation provisions governing private employment, embodied in Title VII and its accompanying regulations, remained in full force and effect. Armed with this memo, we were quickly able to help resolve the problems that had arisen.

In issuing a policy statement to dispel some of the confusion surrounding the Supreme Court's 1986 Goldman decision, Judge Thomas followed the course he had taken a year earlier when similar confusion surrounded the Court's decision in Estate of Thornton v. Caldor, 472 U.S. 703 (1985). In that case, the high court ruled unconstitutional a Connecticut statute requiring employers, absolutely and without qualification, to allow their employees time off for Sabbath observance. In the aftermath of the Court's ruling, Judge [Chairman] Thomas issued an EEOC memorandum making clear that the discredited Connecticut statute was not to be confused with less absolute statutes requiring reasonable accommodation of an employee's Sabbath observances; and that the Sabbath observance provisions of Title VII continued to retain their vitality.

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Thus, as chairman of the EEOC, Judge Thomas twice recognized that the rights of religious minorities in the workforce were being threatened as a result of inaccurate public perceptions surrounding rulings of the Supreme Court, and twice took the initiative to dispel the misperceptions and protect religious freedom. This, we submit, demonstrates not only Judge Thomas' commitment to the principle of religious liberty -- itself no small cause for celebration, especially in the aftermath of the Supreme Court's ruling last year in Employment Division v. Smith, 110 S.Ct. 1595 (1990), which severely curtailed First Amendment protection for the free exercise of religion -- but also his sensitivity to the potential power of a Supreme Court ruling and its ability profoundly to affect the everyday lives of Americans in contexts far-removed from the one in which the ruling is issued. That sensitivity is an essential attribute of good judging, especially at the Supreme Court level, and will stand Judge Thomas in good stead if he is confirmed and assumes his seat on the high court.

In sum, Agudath Israel of America's review of Judge Thomas' record and resume leads us to conclude that he possesses the basic qualities of an outstanding jurist, perhaps even in abundance. He deserves this Committee's positive recommendation and eventual confirmation by the full Senate.

Thank you very much.