NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## WEISS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

No. 92–1482. Argued November 3, 1993—Decided January 19, 1994[1]

After courts-martial sentenced petitioners Weiss and Hernandez, United States Marines, on their pleas of guilty to offenses under the Uniform Code of Military Justice (UCMJ), their convictions were affirmed by the Navy-Marine Corps Court of Military Review in separate appeals. In affirming Weiss' conviction, the Court of Military Appeals rejected his contentions, first, that military trial and appellate judges have no authority to convict because the method of their appointment by the various Judge Advocates General under the UCMJ violates the Appointments Clause, U. S. Const., Art. II, §2, cl. 2, and, second, that such judges' lack of a fixed term of office violates the Fifth Amendment's Due Process Clause. Based on this decision, the court summarily affirmed Hernandez's conviction.

*Held:*

1. The current method of appointing military judges does not violate the Appointments Clause, which, *inter alia,* requires the President to appoint ``Officers of the United States'' with the advice and consent of the Senate. All of the military judges involved in these cases were already commissioned military officers when they were assigned to serve as judges, and thus they had already been appointed pursuant to the Clause. The position of military judge is not so different from other positions to which an officer may be assigned that Congress has by implication required a second appointment under the Clause before the officer may discharge judicial duties. The fact that the UCMJ requires military judges to possess certain

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[1]Together with *Hernandez* v. *United States,* also on certiorari to the same court.

qualifications, including membership in a state or federal bar, does not in itself indicate a congressional intent to create a separate office, since special qualifications are needed to fill a host of military positions. Moreover, the UCMJ's explicit and exclusive treatment of military judges as officers who must be ``detailed'' or ``assigned'' by a superior officer is quite different from Congress' treatment of a number of top-level positions in the military hierarchy, such as Chairman of the Joint Chiefs of Staff, for which a second appointment under the Clause is expressly required. Nor does the Clause by its own force require a second appointment. *Buckley* v. *Valeo,* 424 U. S. 1, and subsequent decisions simply do not speak to this question. The present case is also distinguishable from our decision in *Shoemaker* v. *United States,* 147 U. S. 282. Even assuming, *arguendo,* that the ``germaneness'' principle set forth in *Shoemaker*, *id.,* at 300–301, applies to the present situation, no second appointment is necessary because the role of military judge is ``germane'' to that of military officer: By contrast to civilian society, nonjudicial military officers play a significant part in the administration of military justice; and, by the same token, the position of military judge is less distinct from other military positions than the office of full-time civilian judge is from other offices in civilian society. Pp. 5–12.

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2. The lack of a fixed term of office for military judges does not violate the Due Process Clause. Neither *Mathews* v. *Eldridge,* 424 U. S. 319, nor *Medina* v. *California,* 505 U. S. ___, provides a due process analysis that is appropriate to the military context, in which judicial deference to Congress' determinations is at its apogee. Rather, the appropriate standard is that found in *Middendorf* v. *Henry,* 425 U. S. 25, 44: whether the factors militating in favor of fixed terms are so extraordinarily weighty as to overcome the balance struck by Congress. The historical fact that military judges in the Anglo-American system have never had tenure is a factor that must be weighed in this calculation. Moreover, the applicable provisions of the UCMJ, and corresponding regulations, sufficiently insulate military judges from the effects of command influence. Thus, since neither history nor current practice supports petitioners' assumption that a military judge who does not have a fixed term lacks the independence necessary to ensure impartiality, petitioners have fallen far short of satisfying the applicable standard. Pp. 13–18.

36 M. J. 224 and 37 M. J. 252, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined, and in which SCALIA and THOMAS, JJ., joined as to Parts I and II–A. SOUTER, J., filed a concurring opinion. GINSBURG, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined.