

No. 16-814

IN THE
Supreme Court of the United States

MONIFA J. STERLING,
Lance Corporal (E-3), U.S. Marine Corps,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Armed Forces**

**BRIEF AMICUS CURIAE OF
FOUNDATION FOR MORAL LAW
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

Amicus Curiae Foundation for Moral Law (“the Foundation”), is a national public-interest organization based in Montgomery, Alabama, dedicated to the defense of religious liberty and the strict interpretation of the Constitution as written and intended by its Framers.

The Foundation believes a strong military is vital to the security of the United States. The Foundation’s Founder and President Emeritus is a graduate of the United States Military Academy and a Vietnam veteran. The Foundation’s Senior Counsel is a retired United States Air Force Judge Advocate.

The Foundation believes military men and women and their dependents are entitled to free exercise of religion, a right endowed by the Creator and secured by the Constitution they have sworn to defend. Furthermore, soldiers serve best when their spiritual needs are met, which best occurs in an environment conducive to religious liberty.

¹ Pursuant to Rule 37.2, counsel of record for all parties received notice of intent to file this brief at least ten days before the due date. Pursuant to Rule 37.3, all parties have consented to the filing of this brief. Pursuant to Rule 37.6, no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

INTRODUCTION

Printed on the first page of a Bible distributed to American troops in World War II is a letter from President Franklin Roosevelt stating:

As Commander-in-Chief I take pleasure in commending the reading of the Bible to all who serve in the armed forces of the United States. Throughout the centuries men of many faiths and diverse origins have found in the Sacred Book words of wisdom, counsel and inspiration. It is a foundation of strength and now, as always, an aid in attaining the highest aspirations of the human soul.²

See Appendix 1 for a photograph of this presidential inscription page in a World War II Soldier's Bible.

Far from punishing soldiers for displaying Bible verses, President Roosevelt considered the provision of the scriptures to the armed forces a necessary morale builder and a source of the blessing of God upon the nation's military efforts. "Now is the first time in our history," wrote a contemporary historian, "that the government itself has made the Bible a part of its general issue to servicemen." Harold R. Willoughby, *Soldiers' Bibles through Three Centuries* 39 (Univ. of Chicago Press: 1944).

² Quoted in John Meinhold, *The Christian Faith was not Unconstitutional during World War II*, CHRISTIANITY TODAY (Sept. 2, 2013), <https://goo.gl/XuMnmq>.

During World War II, the armed services distributed millions of government-issue Bibles, Testaments, and scripture selections in three versions: Jewish, Catholic, and Protestant. *Id.* Yet 70 years later, a soldier has been court-martialed in part for not removing a single Bible verse from her desk.

SUMMARY OF ARGUMENT

When Lance Corporal Monifa J. Sterling enlisted in the United States Marine Corps, she did not forfeit the rights guaranteed to her by the Constitution she took an oath to defend.

Religious liberty is the first right guaranteed by the Bill of Rights to the United States Constitution. Religious liberty is also the foremost right because God is the source of all human rights and our relationship to God transcends all human relationships. As Justice Douglas stated for the Court in *Zorach v. Clauson*, 343 U.S. 306, 313 (1952): “We are a religious people whose institutions presuppose a Supreme Being.” And as he further elaborated in *McGowan v. Maryland*, 366 U.S. 420, 562 (1961) (dissenting opinion):

The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator, which government must respect.

It defies the imagination to conceive of a military necessity that cannot accommodate a small sign on LCpl Sterling's desk that simply says, without attribution to Isaiah 54:17, "No weapon formed against me shall prosper."

Besides providing redress for LCpl Sterling, this Court should also grant certiorari to protect the religious freedom of 1.3 million active duty American military personnel and their families, 800,000 members of the National Guard and Reserve, and 765,000 full-time-equivalent civilian employees.³ As the Foundation will demonstrate, cases of discrimination against religious persons in the military are widespread and increasing. Commanders and supervisors, uncertain what to permit and what to prohibit, are looking to this Court for guidance.

Lower courts are also looking to this Court for direction. But the conflict exists in other areas as well. In 2013, Congress, many of whose members were displeased with discrimination against and repression of religious persons in the armed forces, attached a rider to the 2014 DOD appropriation bill requiring the armed forces to accommodate religious practices except in cases of military necessity where a compelling interest cannot be achieved by less restrictive means. Congress passed the appropriation bill with this rider,⁴ and the Department of Defense

³ Release No. NR-046-16, *Department of Defense (DoD) Releases Fiscal Year 2017 President's Budget Proposal*, U.S. DEPT OF DEFENSE (Feb. 9, 2016), <https://goo.gl/6vq1pv>.

⁴ The Administration opposed this rider and lobbied against it, but the President signed the appropriations bill into law rather than veto it in its entirety.

has implemented it by modifying DOD Instruction No. 1300.17, incorporating changes effective January 22, 2014. Congress and the Administration have been split as to the application of the First Amendment to military personnel.

The Foundation will argue that the Government and the courts should give high deference to the religious person who claims the burden on free exercise is substantial. When government officials tell a Marine that the burden is not substantial, government comes close to telling the Marine what her religious beliefs really are. This involves dissecting her religious beliefs, determining what they are and how central or important they are, thereby fostering the excessive entanglement the Establishment Clause forbids.

Because the lower courts erroneously ruled that LCpl Sterling had failed to prove that her religious liberty was substantially burdened, they failed to address the more basic issue, which is whether the Government had a compelling interest, or any interest at all, in ordering LCpl Sterling to remove Bible verses (and earlier, other religious items) from her desk, and if so, whether Government in the person of SSgt Alexander used the least restrictive means of achieving that interest.

LCpl Sterling has presented this Court with an opportunity to rule decisively that military personnel are entitled to enjoy the religious freedom they fight and risk their lives to defend.

ARGUMENT**I. The Court should grant certiorari because this case affects the religious liberty of all military personnel.**

Just as the case of Rosa Parks was not just about one person who refused to give up her seat on a Montgomery bus, so the case of Monifa J. Sterling is not just about one Marine who refused to remove a Bible verse from her work space.

Instead, this case affects about 1.3 million United States active duty service personnel stationed at military installations throughout the United States and across the globe, as well as reservists, persons in the guard, and civilian military employees, and their families—none of whom have surrendered their First Amendment right to free exercise of religion. This case also implicates the definition of “substantial burden” that will be applied in federal settings outside the military, a matter on which the circuits are split.

The suppression of the religious liberty of military personnel has become increasingly common. Many of those situations, like the *Sterling* case, involve censorship of religious expression. For example:

In 2011 a chaplain distributed to his subordinate chaplains an insightful article about the “Don’t Ask, Don’t Tell” policy. His senior chaplain, offended by the article, told him the distribution was improper and that his just-approved assignment to Germany

was cancelled because he “needed an assignment with more supervision.”⁵

In 2012 an assistant chaplain was threatened for sharing her Biblical beliefs concerning homosexuality on her personal Facebook account. The following Monday, her commander asked her to remove the post because it created a “hostile and antagonistic” environment.⁶

On July 25, 2013, an Air Force senior master sergeant’s commander asked him whether he agreed with her that religious objections to same-sex marriage constitute discrimination. When he declined to answer, she relieved him of his duties as first sergeant and banned him from the facilities at Lackland AFB, TX. Air Force officials threatened the SMSgt with disciplinary action. However, after he retained an attorney the Air Force reversed itself, cleared the SMSgt, and awarded him the Meritorious Service Medal.⁷

⁵ Tony Perkins & Jerry Boykin, *A Clear and Present Danger: The Threat to Religious Liberty in the Military*, at 2, FAMILY RESEARCH COUNCIL (June 16, 2015), <https://goo.gl/5ThrvG>.

⁶ Perkins & Boykin, *Threat to Religious Liberty*, *supra* n.5, at 9; Maggie Garrett et al., *Clear and Present Falsehoods: The Real State of Religious Freedom in the Military*, at 21-22, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE (Dec. 9, 2014), <https://goo.gl/KIsTXs>; Billy Hallowell, *Army Chaplain Assistant Reportedly Threatened with Reduction in Pay and Rank Over Facebook Post Calling Homosexuality a Sin*, THEBLAZE (August 6, 2013), <https://goo.gl/kXoY8B>.

⁷ Perkins & Boykin, *Threat to Religious Liberty*, *supra* n.5, at 10; Garrett, *The Real State of Religious Freedom*, *supra* n. 6, at 31-32; Todd Starnes, *Airmen Punished for Objecting to Gay Marriage*, FOX NEWS, <https://goo.gl/UMqoNs>; Ken Klukowski, *Christian Airman Punished by Lesbian Commander Faces*

On March 11, 2014, a U.S. Air Force cadet “voluntarily” removed a Bible verse, Galatians 2:20, from a whiteboard outside his room in a U.S. Air Force Academy dorm, as a result of a complaint by the Military Religious Freedom Foundation. While many other students posted scripture (from the Bible and the Qur’an) on their whiteboards following the removal, this cadet was the only one asked to remove his message.⁸

On November 27, 2014, a chaplain was given a letter of reprimand him for explaining during a suicide prevention lecture that his faith had saved him from suicide.⁹

In March 2016, a retired Air Force veteran, Oscar Rodriguez Jr., delivered a speech at a flag-folding ceremony for a retiring service member who had specifically requested his participation, including religious references. While delivering his speech,

Possible Court Martial, BREITBART (Sept. 6, 2013), <https://goo.gl/1Ppnsj>.

⁸ Perkins & Boykin, *Threat to Religious Liberty*, *supra* n.5, at 13; Garrett, *The Real State of Religious Freedom*, *supra* n. 6, at 40; Billy Hallowell, *Some Air Force Cadets So Angry Over What Happened With Bible Verses on Campus They Have Staged a “Revolt,”* THEBLAZE (March 12, 2014), <https://goo.gl/4JZjx5>; Ken Klukowski, *Air Force: Christians’ Religious Speech Not Legally Protected Right*, BREITBART (March 16, 2014), <https://goo.gl/xZ791x>.

⁹ Perkins & Boykin, *Threat to Religious Liberty*, *supra* n.5, at 14-15; Michelle Tan, *Chaplain Under Fire for Comments during Training*, ARMY TIMES (December 10, 2014), <https://goo.gl/3DYu8c>; Rowan Scarborough, *Army Chaplain Rebuked for Citing Christian Faith in Suicide Prevention Effort*, WASHINGTON TIMES (Jan. 1, 2015), <https://goo.gl/6l6C8D>.

Rodriguez was physically removed from the ceremony by Air Force personnel allegedly acting in an official capacity.¹⁰

Out of concern over escalating conflicts between military policies and the religious freedom of military personnel, the National Association of Evangelicals, an organization composed of over 40 denominations representing approximately 45,000 churches, issued a formal statement on religious freedom in the military, stating in part:

Religious men and women need not shed or hide their religious beliefs upon entering the military....¹¹

The Military Religious Freedom Foundation, ostensibly established to protect religious liberty, militantly works to suppress and intimidate religious expression. Its founder, Mikey Weinstein, has stated: “We would love to see hundreds of prosecutions to stop this outrage of fundamentalist religious persecution.”¹² Weinstein added that the sharing of one’s religious faith with another “is a version of being spiritually raped and you are being spiritually

¹⁰ Bradford Richardson, *Air Force vet dragged from flag-folding ceremony for speech referencing “God”*, WASHINGTON TIMES (June 20, 2016), <https://goo.gl/GjbLrL>; Stephen Losey, *Air Force: Talking about God at Retirement Ceremonies Does Not Violate Policy*, AIR FORCE TIMES (June 22, 2016), <https://goo.gl/TpNR9v>.

¹¹ National Association of Evangelicals, *Religious Freedom for Soldiers and Military Chaplains* (Feb. 7, 2006), at 12, <https://goo.gl/X9THIg>.

¹² Mikey Weinstein, quoted by Todd Starnes, *Pentagon: Religious Proselytizing Is Not Permitted*, FOX NEWS (April 2013), <https://goo.gl/WXqvPv>.

raped by fundamentalist Christian religious predators.”¹³

The Chaplains Alliance for Religious Liberty was formed to combat these and similar attacks on the religious liberty of military personnel. Its website documents numerous instances of suppression of religious freedom.¹⁴

These instances demonstrate that LCpl Sterling’s case represents merely one instance of a pattern of religious persecution in the American armed forces.

LCpl Sterling’s case presents an excellent opportunity for this Court to clarify the rights of religious persons in the armed forces. The Court should grant her petition.

II. In addition to split court decisions under the Free Exercise Clause and the Religious Freedom Restoration Act (“RFRA”), Congress has split with the Department of Defense by ordering DoD to revise DoD Instruction No. 1300.17 to enhance protection of the religious freedom of military personnel.

Rather than duplicating the discussion of the circuit split set out in LCpl Sterling’s brief, the Foundation wishes to call the Court’s attention to a recent effort by Congress to protect the religious freedom of military personnel.

¹³ *Id.*

¹⁴ *See* ChaplainAlliance.org.

In December 2012, Congress included a provision (Sec. 533) in the National Defense Authorization Act for Fiscal Year 2013 that required heightened protection of free exercise rights for military personnel.

In response to the adoption of Section 533, the Department of Defense revised DOD Instruction No. 1300.17 on *Accommodation of Religious Practices Within the Military Services*. That revision became effective on January 22, 2014, during the court-martial in this case.¹⁵

As an example of the congressional concern for the religious rights of military personnel that is reflected in Section 533, Colorado Congressman Doug Lamborn has stated: “It is unacceptable to me that our men and women who defend our Constitution do not currently enjoy all the protections of the Constitution. Changes to internal regulations must be made in order for religious freedom to be fully protected for members of our military.”¹⁶

Congress’s adoption of an appropriations act provision that essentially forced the DoD to revise its

¹⁵ <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>. The CAAF acknowledged that LCpl Sterling submitted the current version of DoDI 1300.17 to the court during her trial, but it is unclear which version, if any, was used in deciding whether to court-martial LCpl and throughout the trial and appellate process. Petition for a Writ of Certiorari, App-8 to App-9.

¹⁶ Rep. Doug Lamborn, *Protecting Military Religious Freedom, Prohibiting Funding for the New START Treaty, and More NDAA Amendments* (May 22, 2014), <https://goo.gl/Rgbtz9>.

Instruction on religious liberty demonstrates that, besides the split in the courts, the legislative and executive branches are also split over the issue.

The Court should use this opportunity to clarify the religious liberty protections to which military personnel are entitled.

III. The Court of Appeals for the Armed Forces (CAAF) erred in ruling that LCpl Sterling had not demonstrated a prima facie case for relief for violation of her religious liberty.

LCpl Sterling has a valid claim under RFRA and DoDI 1300.17, but she also has a valid claim under the Free Exercise Clause of the First Amendment.¹⁷ Although RFRA and the DoD Instruction all speak about a “substantial burden,” no such language appears in the First Amendment which states that “Congress shall make no law ... prohibiting the free exercise [of religion].” The Free Exercise Clause does not say “substantially prohibiting” or “substantially burdening;” it simply says “no law ... prohibiting.”

Because the “substantial burden” language is taken from a court-created test in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), as modified in *Employment Division v. Smith*, 494 U.S. 872 (1990), it should be used sparingly if at all. As Justice Frankfurter reminded us in *Graves v. New York ex. rel. O’Keefe*,

¹⁷ The lower appeals court specifically stated that “the appellant argues that the order violated the appellant’s right to exercise her religion as guaranteed under the First Amendment to the Constitution.” Pet., App-56.

306 U.S. 466, 491-92 (1939) (concurring): “The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.”

A. The CAAF erred in holding that LCpl Sterling failed to meet her burden of showing that she placed the signs on her desk because of a sincere religious belief.

The CAAF first says: “Appellant has ... failed to identify the sincerely held religious belief that made placing the signs important to her exercise of religion or how the removal of the signs substantially burdened her exercise of religion in some other way.” Petition for a Writ of Certiorari, App-15. Later, however, the CAAF equivocates, stating that “the record does not clearly address whether Appellant’s conduct was based on a ‘sincerely held religious belief’ or motivated by animosity toward her chain of command.” *Id.*, App-19. Finally the CAAF grudgingly agrees to “assume arguendo that her conduct was based on a sincerely held religious belief.” *Id.*

1. LCpl Sterling’s sworn testimony

LCpl Sterling testified:

Q. Alright, could you specify as to what exactly they [the messages on LCpl Sterling’s desk] said?

A. There are a bible scripture; they’re from -- of a religious nature.

Q. Okay and are you a Christian?

A. Nondenominational, but yes.

Q. But you regard the bible as a religious text?

A. Yes.

Record of Trial of Monifa F. Sterling at Camp Lejeune, North Carolina (Nov. 12, 2013 to Feb. 1, 2014), at 270 (hereinafter "T").

During argument she stated:

Pretty much that's my argument is -- it's unlawful under the grounds of my religion. The DoD says that I'm allowed to practice my religion as long as it's within good order, discipline; I'm not bothering anybody, I'm not untidy. It's not -- we have already heard testimony that that's not the case. So I didn't just raise this an hour ago, I've been saying this for months.

T.280.

She also described how she arranged the three identical messages around her so she would be reminded by them and protected by them:

I did a trinity, because I'm a religious person. I did a trinity of these -- they weren't signs, they're like little slips of

paper, I'd rather call them. Little slips of paper maybe 28 point font, on 8 1/2 by 11 paper and I even clipped them up.

T.307-08. LCpl Sterling testimony that she regularly attends church, even when she has a migraine headache (T.274-75), is also consistent with a profession of a sincere religious belief.

2. The testimony of other witnesses

The testimony of other witnesses that LCpl Sterling was of good character tends to verify that her statement of religious belief was sincere. *See* T.195 (Cpl Green), T.218-20 (Sgt Smith), T.234 (LCpl Vazquez-Rolon), T.245-47 (1st Sgt Nicholson).

3. The willingness to risk discipline

LCpl Sterling risked disciplinary action by refusing to remove the Bible verses and increased the probability of punishment by replacing them after they were removed. “Moreover, the sincerity of appellants’ religious beliefs can best be illustrated by the very fact that they were willing to subject themselves to the criminal process of this state in order to vindicate their position.” *State v. Whisner*, 351 N.E.2d 750, 762 (Ohio 1976).

B. The government may not directly target religious beliefs as occurred in this case.

Petitioner and other amici explain that RFRA does not have an exhaustion requirement. Therefore, LCpl Sterling had no duty to request an

accommodation before engaging in an exercise of religion. She may also have been hesitant to make such a request or to tell SSgt Alexander the message was from the Bible because SSgt Alexander had previously showed hostility toward religion, telling LCpl Sterling to remove other items (including a Bible and a religious message on a desk calendar) in vulgar terms:

Q. Previously, when you were asked to remove other items that you've referred to, how was that request made?

A. Only the religious ones.

Q. How? What exactly did Staff Sergeant Alexander say to you?

A. Take that S-H-I-T off your desk or remove it or take it down.

Q. What was -- was her manner of asking or reasons for asking as stated by her different when she asked you to take down the signs that we've been talking about?

A. She asked me to remove them in the same nasty manner as the Bible. Same one.

T.312-13.

A complete ban is obviously a substantial burden. Indeed, such an act is a "prohibition" directly precluded by the Free Exercise Clause. The order to remove the Bible verses was directly aimed at

religion and was not based on a religiously-neutral general regulation. In the context of SSgt Alexander's previous order to "Take that ___ off your desk," the Bible verse ban demonstrated impermissible targeted hostility toward religion. See *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

C. The CAAF erred in its application of the substantial burden test.

Although the term "substantial burden" does appear in RFRA and in DoDI 1300.17, it does not appear in the First Amendment free exercise and free speech clauses. It should therefore be applied sparingly and with deference to the person who claims to be burdened.

The CAAF wisely avoided the "centrality" test which would require a court to analyze and dissect religious beliefs to determine what is central to a particular church's or individual's doctrine and practice and would therefore entangle government with religion. But the CAAF did embrace the substantiality test by which courts are to determine whether the burden a practice places on religion is "substantial." Determining whether a burden is substantial, however, requires analysis of the religious belief or exercise that is burdened, creating the same problems caused by the centrality test. Courts have neither the competence nor the jurisdiction to engage in this kind of analysis.

For instance, why did LCpl Sterling display the Bible verses on her desk in a trinitarian pattern? Did she believe God had commended her to do so—in the

Scriptures, in a vision, or in answer to prayer? Did she believe this was required by Deuteronomy 6:9, “And thou shalt write them upon the posts of thy house, and on thy gates”? Did she believe they gave her divine protection, especially when arranged as they were? Did she believe she needed those verses posted as a reassurance that God would protect her in adversity, or perhaps as a reminder to seek His guidance in dealing amicably and honorably with those with whom she was in conflict? Did she believe God would forsake her or discipline her if she failed to acknowledge Him in this way?

Surely, if she acted under any of these compulsions or motivations, prohibiting the messages would be a substantial burden upon her free exercise of religion.

In *Thomas v. Review Board*, 450 U.S. 707 (1981), this Court considered the case of a Jehovah’s Witness who refused to work on tank turrets in a foundry because he considered that work “unscriptural” even though the Jehovah’s Witnesses had no specific tenet forbidding such work. Indeed, a fellow Jehovah’s Witness who worked on tank turrets in the same foundry experienced no conflict with his religion in doing so. Additionally, Thomas was willing to work in the foundry refining steel that would ultimately be used for tank turrets. Analyzing that situation, this Court stated:

Thomas’ statements reveal no more than that he found work in the roll foundry sufficiently insulated from producing weapons. We see, therefore, that Thomas

drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because the believer admits he is “struggling” with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

Thomas, 450 U.S. at 715. “Particularly in this sensitive area,” the Court cautioned, “it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.”

Several decades earlier the Court expressed a similar sentiment:

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real to life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.

United States v. Ballard, 322 U.S. 78 (1944).

LCpl Sterling posted a religious message for religious reasons. She refused to follow an order to remove it, and she replaced it after SSgt Alexander removed it, all the while knowing that she faced

disciplinary action from a supervisor with whom she already had conflict. Her willingness to face disciplinary action is evidence that she considered the burden substantial, and the court should be hesitant to inquire further.

IV. The military benefits from affording its members the fullest possible free exercise of religion.

Almost all religions teach basic core values such as integrity, courage, obedience, and self-sacrifice, the values that make good soldiers. The military therefore benefits from allowing and enabling its members to fully and freely exercise their religious beliefs.

Furthermore, studies show that military personnel whose religious needs are met are less likely to commit suicide or to suffer from post-traumatic stress disorder (PTSD).

Research suggests that traumatic events such as often occur in military settings, frequently challenge one's beliefs about safety, self worth, and the meaning of life and faith.¹⁸ In war, the soldier may be both the victim and the perpetrator of trauma. He may find two core elements, such as patriotism and faith, at war within himself creating uncertainty about the right course of action. These experiences may lead to questioning of faith, guilt, self-blame,

¹⁸ U.S. Department of Veterans Affairs, PTSD: National Center for PTSD, *Spirituality and Trauma: Professionals Working Together*, <https://goo.gl/8mmAqf>.

and alienation from others and from God. He may even feel a disconnect from the values he was raised with and his actual war-zone experiences.¹⁹

When such trauma occurs, religious beliefs can temper anger, rage, and a desire for revenge by encouraging forgiveness, spiritual beliefs, and spiritual practices associated with religion.²⁰

Research also demonstrates that spirituality may improve post-trauma outcomes through: (1) reduction of unhealthy responses, (2) expanded social support by involvement in spiritual communities, (3) enhanced coping skills, (4) and engagement in prayer and meditation.²¹ Further, being part of a spiritual community may provide emotional, physical, or even financial support for the survivor in times of trouble.²² A researcher into how spirituality and religion might serve to mitigate the risk of suicidal behavior in Veteran populations notes that prayer, healing rituals, confession and other spiritual practices can reduce the impact of PTSD on the individual.²³

Following 9/11, researchers reported 90% of respondents reported turning to “prayer, religion, or spiritual feelings” as a coping mechanism.²⁴ In the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Marek S. Kopacz et al., *Understanding the Role of Chaplains in Veteran Suicide Prevention Efforts*, at 4, SAGE OPEN (Oct-Dec. 2014), <https://goo.gl/K9jkJS>.

²⁴ VA, *Spirituality and Trauma*, *supra* n.31.

military, as in society as a whole, people turn to religion for answers and solutions in time of crisis. Finding those answers and solutions helps them to resolve conflicts, become whole persons again, and for military personnel, to become better soldiers.

Allowing and encouraging free exercise of religion to the fullest extent possible is in the military's own best interest, as well as that of its personnel. When a religious accommodation is requested, the touchstone inquiry should be, not "Must we allow it?", but "Why can't we allow it?"

And there is absolutely no reason the Marines cannot accommodate LCpl Sterling's simple desire to have three strips of paper with Bible verses on her desk.

CONCLUSION

The government issued millions of Bibles to troops in World War II, all containing a message of inspiration from President Roosevelt. In this case, 70 years later, the government claims that a Bible verse posted at a military base workstation is a threat to good order. Unfortunately, as detailed in § I above, the religious freedom of military personnel is not as secure today as it ought to be.

The majority opinion of the CAAF is at odds with the opinions of many circuit courts, at odds with Congress, and at odds with the First Amendment. Additionally, as stated in § III, military morale and cohesion are enhanced when religious faith, an

underpinning of the soul in times of trauma, is respected and encouraged.

As General MacArthur told the cadets in his Farewell Address at West Point,

The soldier, above all other men, is required to practice the greatest act of religious training—sacrifice. In battle and in the face of danger and death, he discloses those divine attributes which his Maker gave when he created man in his own image. No physical courage and no brute instinct can take the place of the Divine help which alone can sustain him.²⁵

But how can soldiers be expected to sacrifice themselves as they charge into battle, if they are denied the religious expression that commands and justifies that sacrifice?

Because of the courage displayed by LCpl Sterling, this Court has an unprecedented opportunity to clarify the meaning of “substantial burden” and to ensure that the religious freedom of military personnel is fully protected by the Constitution they have sworn to defend.

The Foundation urges this Court to grant LCpl Sterling’s petition for a writ of certiorari.

²⁵ Douglas MacArthur, *Farewell Address*, United States Military Academy, West Point (May 12, 1962).

Respectfully submitted,

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App. 1

THE WHITE HOUSE
WASHINGTON

March 6, 1941

To the Members of the Army:

As Commander-in-Chief I take pleasure in commending the reading of the Bible to all who serve in the armed forces of the United States. Throughout the centuries men of many faiths and diverse origins have found in the Sacred Book words of wisdom, counsel and inspiration. It is a fountain of strength and now, as always, an aid in attaining the highest aspirations of the human soul.

Very sincerely yours,

