Summary of the legal question raised by *Sterling v. U.S.*

The case of *Sterling v. United States* centers around the question of how the Religious Freedom Restoration Act (RFRA) applies to members of the military and the American public. Various federal Courts of Appeal have considered this question and arrived at two different conclusions, creating a "circuit split."

RFRA states that the government cannot substantially burden a person's free exercise of religion unless the government 1) has a compelling interest in burdening the person's religious exercise and 2) it burdens the religious exercise in the least restrictive way possible. The question addressed in *Sterling v. United States* is how the courts should define a "substantial burden."

A minority of federal courts, including the Court of Appeals for the Armed Forces (CAAF), which heard the *Sterling* case in April 2016, say that the government is "substantially burdening" a person's religion *only* if they force the person to choose between fulfilling a government demand and obeying a requirement of their religion.

For example, if the government said a Catholic could not take communion, it would create a substantial burden on the person's religious exercise because it would force the person to choose between fulfilling a requirement of their religion (taking communion) and obeying the government (by not taking communion). Federal courts agree that, in this scenario, the government has substantially burdened religious exercise.

But according to the CAAF's interpretation of RFRA, the government is *not* substantially burdening a person's religious exercise if it prohibits an act that is religiously-motivated, but not required by their religion. For example, under the CAAF's interpretation, if the government bans donations to Catholic charities—an act many Catholics engage in for religious reasons, but which is not required by the Catholic faith—there is no substantial burden.

However, the majority of federal courts agree that the government is substantially burdening a person's First Amendment right to free exercise if they restrict any religiously-motivated behavior, regardless of whether the behavior is required by a religion or not.

Under the CAAF's view, the government should be given the authority to decide what religious acts are or are not required by religious tenets and doctrine. For example, the government would be permitted to decide whether wearing a yarmulke is required by the Jewish faith. Some would say it is required, but many practicing Jews forego wearing a yarmulke. If a court determines that wearing a yarmulke is merely optional, then it could rule that Jews who choose to wear a yarmulke do not have their religion substantially burdened if the government bans the wearing of yarmulkes.

First Liberty contends that the government should not be involved in determining what is and isn't required by specific faiths. Instead, the government should agree that limiting any religiously-motivated act constitutes a substantial burden, regardless of whether or not those acts are required by a particular religion. Otherwise, the government risks limiting the religious liberties of all Americans, including the nearly two million men and women who defend religious freedom in uniform.

If the Supreme Court agrees with First Liberty's stance on the substantial burden question, they government may still be able to limit religious activity under RFRA if it has a compelling governmental interest. Our position simply ensures that people of faith are granted full due process under RFRA. It does not guarantee the outcome of religious freedom cases.