

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES**

UNITED STATES,

Appellee,

v.

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

Appellant.

BRIEF OF THE STATE OF OKLAHOMA  
AS *AMICUS CURIAE* IN SUPPORT  
OF APPELLANT

Crim.App. Dkt. No. 201400150

USCA Dkt. No. 15-0510/MC

**TO THE HONORABLE JUDGES OF THE UNITED STATES  
COURT OF APPEALS FOR THE ARMED FORCES**

The State of Oklahoma, by and through its Attorney General and pursuant to Rules 26(a)(3) of this Court, respectfully submits this brief as *amicus curiae* in support of granting Appellant Monifa J. Sterling's Petition for Grant of Review.

**Argument**

The Court of Criminal Appeals for the U.S. Navy-Marine Corps erred by refusing to afford Appellant the protections of the Religious Freedom Restoration Act (RFRA) through an overly narrow interpretation of what constitutes "religious exercise." Its failure to recognize the breath of protection offered by RFRA and similar state statutes jeopardizes the religious protections intended by Congress. Such precedent can have severe

consequences to people of faith in the Marines, including those that are citizens of Oklahoma.

The court below failed to recognize that RFRA provides greater protection to people of faith than the First Amendment, and that the Free Exercise Clause and its jurisprudence provides only the Constitutional floor for religious liberty, while Congress has provided for much more. For example, the court below erroneously stated that RFRA "codified" the Free Exercise Clause, relying exclusively on pre-RFRA Free Exercise cases in arriving at its decision. See slip op. 7-9. This is in direct contravention to Congress's intent that, as the Supreme Court has recognized, RFRA "provide greater protection for religious exercise than is available under the First Amendment." *Holt v. Hobbs*, 135 S. Ct. 853, 859-60 (2015) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760-2761 (2014)).

As a result of this misapprehension of congressional intent, the court below appears to have taken the overly narrow view that "religious exercise" for the purpose of RFRA includes only those practices which a court can objectively locate in a systematic set of rituals or beliefs, completely discounting the adherent's subjective and personal reasons for the practice. But such an inquiry violates even the narrow protections of the First Amendment, in which courts are warned not to "question . . . the validity of particular litigants' interpretations of

[their] creeds" or to "say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953). "It is not the court's place to question where a plaintiff 'draws lines' in his religious practice." *A.A. ex re. Betenbaugh v. Needville Ind. Sch. Dist.*, 701 F. Supp. 2d 863, 876 (S.D. Tex. 2009) (quoting *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 715 (1981)). Rather, even under the First Amendment, a practice is protected as religious exercise so long as it is "rooted in religion" and not "purely secular." *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 833 (1989).

Moreover, to determine how RFRA provides an even broader understanding of religious exercise, this Court should look beyond First Amendment jurisprudence to the text of RFRA, its interpretation in case law, and the text and interpretation of state statutes that were passed with the same intent and motivation as RFRA. Because state and federal RFRA's "were all enacted in response to *Smith* and were animated in their common history, language and purpose by the same spirit of religious freedom," courts consider the decisions of one in interpreting the other. *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 258-59 (5th Cir. 2010) (quoting *Barr v. City of Sinton*, 295 S.W.3d 287, 299 (Tex. 2009)).

Under the federal RFRA, "the 'exercise of religion' involves not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons." *Hobby Lobby*, 134 S. Ct. at 2770. Similarly, the people of the State of Oklahoma, in passing the Oklahoma Religious Freedom Act (ORFA), have subjected to strict scrutiny all government actions that "inhibit or curtail religiously motivated practice." OKLA. STAT. tit. 51, § 252(7). Thus, the common intent of state and federal RFRAs was to protect acts or practices that are "religiously motivated" or "engaged in for religious reasons."

Applied to the facts of this case, it is clear that Congress intended that the Appellant's actions be covered by RFRA. There can be no question that LCpl Sterling's placement of the Biblical quotes around her desk was, at *least* partially, "religiously motivated" and done "for religious reasons." The insinuation of the court below that her SSgt was unaware of their religious nature or that religion was invoked only as a post-hac justification (slip op. 9) is belied by the fact that their forcible removal was purportedly justified precisely because everyone recognizes them to be religious and thereby "divisive" (slip op. 10).

The quotes are "biblical in nature." Slip op. 10. They are significant to LCpl Sterling because, through her faith, she

believes in the absolute truth of the Bible. It would be of little comfort to her that a man in Palestine 3,000 years ago said "no weapon formed against [her] shall prosper" unless she believed, by faith, that this man was a prophet and this promise had personal application to her life. Isaiah 54:17. Even if these were merely "personal reminders" of that truth (slip op. 9), she only believes that truth and seeks to reminder herself of it because of her faith. Her acts thus were for "religious reasons" or "religiously motivated" and within the purview of RFRA. Indeed, the Bible itself encourages similar acts, commanding the people of God to write His words "on the doorposts of your house and on your gates." Deuteronomy 6:9.

*Amicus curiae* encourages this Court to grant review of this case. Absent such review, members of the Marines Corps, including many Oklahoma citizens, will be deprived of the religious freedom protections intended by Congress in RFRA. If the Court does grant such review, the State of Oklahoma intends to provide a more fulsome brief explaining the text and precedent of state and federal RFRAs to aid this Court in interpreting RFRA and resolving this case.

Date: June 5, 2015

Respectfully submitted,

/s/ Mithun Mansinghani

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### Certificate of Filing and Service

I certify that the foregoing was electronically delivered to this Court, and that a copy was electronically delivered to counsel for Appellee, Brian K. Keller and Colonel Mark Jamison, and to counsel for Appellant, Paul D. Clement, George W. Hicks, Hiram S. Sasser, Michael D. Berry, and Tierny M. Carlos on June 5, 2015.

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### Certificate of Compliance

1. This brief complies with the type-volume limitations of Rule 26(d) because it does not exceed half of the page limit permitted for appellants (25 pages).
2. This supplement complies with the typeface and style requirements of Rule 37 because this supplement has been prepared in a mono-spaced typeface using Microsoft Word 2013 with Courier New, 12-point font, 10 characters per inch.

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