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 ON BEHALF OF APPELLANT Crim.App. Dkt. No. 201400150 USCA Dkt. No. 15-0510/MC

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

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Statement of Statutory Jurisdiction

Because the convening authority approved a sentence that included a punitive discharge, the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) had jurisdiction under Article 66(b)(1), Uniform Code of Military Justice (UCMJ). 10 U.S.C. §866 (b)(1). This Court, therefore, has jurisdiction under Article 67, UCMJ. *Id.* §867.

Statement of the Case

A special court-martial, consisting of officer and enlisted members, found Lance Corporal (LCpl) Monifa Sterling, U.S. Marine Corps, contrary to her pleas, guilty of single

specifications for failing to go to her appointed place of duty and disrespect towards a superior commissioned officer, and four specifications of disobeying the lawful order of a noncommissioned officer in violation of Articles 86, 89 and 91, UCMJ, respectively. *See id.* §§886, 889, 891. This appeal involves one of the latter four specifications—specifically, for LCpl Sterling's refusal to remove Biblical quotations from her workspace.

On February 1, 2014, the members sentenced LCpl Sterling to a bad-conduct discharge and reduction to pay grade E-1. (J.A.120.) On April 2, 2014, the Convening Authority (CA) approved the sentence, and, except for the punitive discharge, ordered it executed. Special Court-Martial Order No. M14-07, Apr. 2, 2014. On February 26, 2015, the NMCCA affirmed the findings and the sentence as approved by the CA. *See United States v. Sterling*, No. 201400150, 2015 WL 832587 (N-M. Ct. Crim. App. Feb. 26, 2015). On October 28, 2015, this Court granted LCpl Sterling's petition for review.

Statement of Facts

1. LCpl Sterling's Posting of the Biblical Quotations, and Staff Sergeant Alexander's Order to Remove Them

This appeal concerns LCpl Sterling's placement of three slips of paper with a Biblical quotation at her workspace. In May 2013, LCpl Sterling was assigned to the Communications (S-6)

section of the 8th Communications Battalion, under the supervision of Staff Sergeant (SSgt) Alexander, her Staff Non-Commissioned Officer in Charge (SNCOIC). (J.A.020.) During that assignment, LCpl Sterling's duties required her to sit at a desk and use a computer to assist Marines experiencing problems with their Common Access Cards. (J.A.002.)

LCpl Sterling self-identifies as a Christian and as a "religious person." (J.A.090, 042, 045.) While working in the S-6 section, LCpl Sterling taped three small pieces of paper around her workspace, each containing the same printed quotation drawn from the Bible: "No weapon formed against me shall prosper." (J.A.043.)[1] LCpl Sterling regards the Bible "as a religious text," and she consciously drew the quotation from "scripture." (J.A.090.) In each instance, LCpl Sterling printed the quotation on one line of 8-1/2 x 11-inch paper, with the paper cut away so that only the printed text remained. (J.A.043-044.) Two of the quotations were printed in 28-point font, and the third was printed in a smaller font. (*Id.*)[2]

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[1] The quotation comes from Isaiah 54:17. *See, e.g.*, King James Bible ("No weapon that is formed against thee shall prosper."); American King James Version ("No weapon that is formed against you shall prosper.").

[2] During court-martial, the parties and the military judge referred to the "little slips of paper" on which the quotations were printed as "signs." (J.A.042-043.)

LCpl Sterling taped the smallest quotation above her computer screen, and she taped the other two on the side of her computer tower and along the top shelf of her incoming mailbox. (*Id*.) LCpl Sterling deliberately chose to tape three quotations around her workspace in order to represent the concept of the "trinity," *i.e.*, the Christian belief of three persons in one God. (J.A.042, 045.) She testified that she "did a trinity" to "have [the] protection of three around me" in response to difficulties she experienced at work. (*Id*.) The religious quotations were "a mental reminder" to her and were not intended to "send a message to anyone" else. (J.A.045.) As such, LCpl Sterling taped the quotations so that they were primarily visible only to her. (J.A.042-043, 045.)

Around May 20, 2013, SSgt Alexander saw the quotations and ordered LCpl Sterling to remove them. (J.A.021.) At the end of the day, when SSgt Alexander noticed that LCpl Sterling had not removed the quotations, she removed them herself and threw them in the trash. (*Id*.) The next day, upon discovering that LCpl Sterling had reposted the quotations, SSgt Alexander again ordered LCpl Sterling to remove them. (*Id*.) When LCpl Sterling declined, SSgt Alexander again removed the quotations herself. (J.A.021-022.)

LCpl Sterling testified that, during her exchange with SSgt Alexander over the quotations, she informed SSgt Alexander that

the quotations weren't "meant to antagonize her and it's religion." LCpl Sterling further testified that she asked SSgt Alexander "why now I had to remove ... my religion." (J.A.047.) According to LCpl Sterling, SSgt Alexander said that she wanted the quotations removed because she did not "like their tone." (J.A.047.) LCpl Sterling added that SSgt Alexander's exact order was to "take that S-H-I-T off your desk or remove it or take it down." (J.A.047.)

For her part, SSgt Alexander testified that her only reason for giving the order was that LCpl Sterling shared her desk with another junior Marine. (J.A.021.) But LCpl Sterling and another Marine who frequently visited the S-6 at the time, LCpl Vazquez-Rolon, testified that LCpl Sterling did not share a desk with anyone else in May 2013; she only started sharing a desk afterward, when she was transferring out of the S-6 and another Marine was transferring in. (J.A.031, 033, 041, 046.)[3] In any event, neither SSgt Alexander nor any other witness testified that any Marine was ever distracted, annoyed, or agitated by the quotations. Indeed, the only witnesses who testified on the

[3] SSgt Alexander never identified the Marine who purportedly shared LCpl Sterling's desk, and the Government did not call that Marine as a witness. Both LCpl Sterling and LCpl Vazquez-Rolon testified that LCpl Sterling shared her desk with another Marine named LCpl Martinez "[l]ater on," for about "three weeks in June," 2013—*i.e.*, after the events at issue here. (J.A.033, 041.)

subject—all of whom visited LCpl Sterling in her workspace in May 2013—stated that they were never distracted, annoyed, or agitated by anything on or around LCpl Sterling's desk during that time. (J.A.036, 030, 037.)[4]

2. The Military Judge's Verbal Ruling

At trial, LCpl Sterling moved to dismiss the specifications alleging that she willfully disobeyed SSgt Alexander's orders to remove the Biblical quotations. (J.A.086.) LCpl Sterling argued that SSgt Alexander's orders were unlawful because they violated her right to free exercise of religion and lacked a valid military purpose. (J.A.100, 108.) Among other things, LCpl Sterling invoked Department of Defense Instruction (DODI) 1300.17, Accommodation of Religious Practices within the Military Services, which cites the Religious Freedom Restoration Act (RFRA) and expressly incorporates RFRA's statutory language. (J.A.091; Appellate Exhibit (AE) XXXVI, J.A.207-215.)[5]

The military judge denied the motion to dismiss from the bench, issuing no written decision. (J.A.116.) The judge

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[4] The military judge prohibited LCpl Sterling from testifying whether she had received any comments about the quotations from others. (J.A.045.) He also prohibited LCpl Sterling from asking SSgt Alexander whether she had received any comments about them. (J.A.024.)

[5] On January 22, 2014, during LCpl Sterling's trial, the DOD revised DODI 1300.17 to expressly incorporate the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§2000bb *et seq.* LCpl Sterling brought her motion almost immediately after that change, on February 1, 2014.

acknowledged that the quotations "were biblical in nature" and contained "religious language." (*Id*.) But he concluded that the order was lawful because, in his view, LCpl Sterling's workspace "was shared by at least one other person," and "other service members" who "came to [LCpl Sterling's] workspace for assistance ... could have seen the signs." (*Id*.) The judge did not address the evidence establishing that LCpl Sterling did not share a desk at the time of the events, nor did he acknowledge the consistent testimony that the quotations did not bother those who came to LCpl Sterling's desk for assistance. Without reference to any authority, the military judge concluded that the orders "did not interfere with [LCpl Sterling's] private rights or personal affairs in anyway." (*Id*.) The military judge later instructed the court-martial members that, as a matter of law, SSgt Alexander's orders to remove the quotations were lawful. (J.A.117.)

The members convicted LCpl Sterling of disobeying SSgt Alexander's orders. (J.A.119.)[6]

[6] The members also convicted LCpl Sterling of several other charges not at issue in this petition (failing to go to her appointed place of duty, disrespect toward a superior commissioned officer, and two specifications of disobeying the lawful order of a noncommissioned officer) while acquitting her of one charge (making a false official statement). (J.A.119.)

3. The Decision of the Navy-Marine Corps Court of Criminal Appeals

LCpl Sterling appealed to the lower court, again arguing that SSgt Alexander's orders to remove the Biblical quotations were unlawful because they violated her right to free exercise of religion and lacked a valid military purpose. Among other things, she raised RFRA and DODI 1300.17 as potential defenses to the charges of which she was convicted.

The lower court affirmed LCpl Sterling's convictions and sentence, holding, in relevant part, that SSgt Alexander's orders were lawful. (J.A.004-007.) Turning first to whether the orders violated LCpl Sterling's religious freedom, the court stated that "to invoke the protection of the RFRA," LCpl Sterling "must first demonstrate that the act of placing the signs on her workstation is tantamount to a 'religious exercise.'" (J.A.005) (quoting 42 U.S.C. §2000cc-5 (7)(A)). The court acknowledged the "deference courts [must] pay to questions regarding the importance of religious exercises to belief systems." *Id.* But it nevertheless concluded that "the definition of a 'religious exercise' requires the practice be 'part of a system of religious belief.'" *Id.* (quoting 42 U.S.C. §2000cc-5(7)(A)). In the court's view, "[p]ersonal beliefs, grounded *solely* upon subjective ideas about religious practices, will not suffice because courts need some reference point to

assess whether the practice is indeed religious." *Id.* (quotation marks omitted).

The lower court acknowledged LCpl Sterling had "taped a biblical quotation in three places around her workstation, organized in a fashion to 'represent the trinity,'" and it acknowledged that LCpl Sterling had "invoke[d] religion" to explain the posting. *Id.* The court nonetheless held that there was "no evidence that posting [the] signs at her workstation was an 'exercise' of that religion in the sense that such action was 'part of a system of religious belief.'" *Id.* In the court's view, LCpl Sterling simply posted "what she believed to be personal reminders that those she considered adversaries could not harm her." *Id.* And the court concluded that her conduct did "not trigger the RFRA." *Id.* Accordingly, the court did not address whether the orders to remove the quotations substantially burdened LCpl Sterling's religious exercise, advanced a compelling governmental interest, or were the least restrictive means of advancing that interest.

The lower court next held that the orders had a valid military purpose. The court acknowledged the "meager findings of fact" by the military judge on this question. (J.A.006.) It nevertheless concluded that the orders were valid because the other Marine purportedly sharing LCpl Sterling's desk and other Marines coming to the desk "would be exposed to biblical

quotations in the military workplace." *Id.* The court added that the specific Biblical quotation in question—"no weapon formed against me shall prosper"—"could be interpreted as combative" and thus "could certainly undercut good order and discipline." (J.A.006-007.) In a footnote, the court conceded the "possible implication that [the] orders may have on [LCpl Sterling's] Free Exercise ... rights" but continued to uphold their lawfulness. (J.A.006 n.19.)

Summary of Argument

The lower court plainly erred in narrowing the protections of RFRA to religious exercises that play some pre-conceived role in a system of religious beliefs. RFRA limits any substantial burdens on religious exercise by the federal government, and it is plainly implicated by LCpl Sterling's religious expression in arranging three small slips of paper containing a Biblical quotation around her desk. It is undisputed that LCpl Sterling is a practicing Christian, and her Biblical quotations amounted to a form of prayer: She posted them to remind her of her faith and to bring her strength in the face of adversity. The NMCCA's contrary conclusion is baffling. It rests on an exceptionally narrow reading of RFRA, despite the Supreme Court's repeated reminder that RFRA provides very broad protection of religious rights. The lower court's requirement that religious expression and exercise is protected only if undertaken as part of an

established system of belief is both legally erroneous and factually mistaken. Even if RFRA contained such a requirement (and it emphatically does not), LCpl Sterling's religious exercise fits comfortably within the Christian tradition and thus easily satisfies that requirement.

SSgt Alexander's orders to remove the quotations substantially burdened LCpl Sterling's religious exercise, triggering the Government's burden to meet the strict scrutiny test. The orders put her in the untenable position of choosing between her faith and direct disciplinary action. The Supreme Court has not hesitated to recognize substantial burdens in similar situations. In *Burwell v. Hobby Lobby Stores*, Christian business owners experienced a substantial burden where government regulations forced them to choose between paying for abortifacients and facing ruinous government fines. And in *Holt v. Hobbs*, a Muslim prisoner's religious exercise was substantially burdened where he was forced to choose between shaving his beard or receiving severe prison discipline. The burden is equally direct and obvious here.

Nor can the Government satisfy strict scrutiny. Once a RFRA claimant establishes a substantial burden on her exercise of religion, the Government is obligated to demonstrate that its specific actions against the claimant further a compelling interest and are the least restrictive means of achieving that

objective. Neither requirement can be met here. The Supreme Court has held that generalized interests in enforcing federal criminal law, controlling drugs, or preserving order in prisons are too general to justify a substantial burden on the exercise of religion. The same is true of generalized interests in maintaining good order and discipline in the military. Otherwise, any anti-religious order—no matter how mistaken or misguided—would be enforceable in the name of promoting good order and discipline. Furthermore, there is no evidence that LCpl Sterling's modest effort at religious exercise caused or reasonably could have caused any disruption of military order. And even if the Government could establish a compelling interest, there were a number of alternative, narrower ways to achieve that interest without violating LCpl Sterling's religious rights. The Government's chosen course of action—requiring LCpl Sterling to take down the quotations completely and immediately and court-martialing her when she did not—does not suffice.

Moreover, even if the foregoing were not true, SSgt Alexander still lacked a valid military purpose for ordering LCpl Sterling to remove the Biblical quotes from her workspace. The lower court's conclusion that the quotations could have had a divisive impact on others who visited LCpl Sterling's desk was based on pure speculation. There is no evidence that LCpl

Sterling's modest religious observance had, or could have, any such effect. In fact, the only relevant evidence at trial *refuted* the court's conjecture. While military officers enjoy discretion to maintain good order and discipline, they are not entitled to trample on a service member's private rights unless necessary to that end. Here, there was no valid reason to infringe LCpl Sterling's religious liberties.

Standards of Review

This Court reviews legal questions, including the meaning and application of a federal statute, *de novo*. *See, e.g.*, *United States v. McElhaney*, 54 M.J. 120 (C.A.A.F. 2000). It reviews factual questions for clear error. *See, e.g.*, *United States v. Gallagher*, 66 M.J. 250, 253 (C.A.A.F. 2008).

Argument

I

THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 (RFRA) PROVIDES VERY BROAD PROTECTION FOR RELIGIOUS LIBERTY. LANCE CORPORAL STERLING'S POSTING OF A BIBLICAL QUOTATION AT HER WORKSPACE WAS A CORE EXERCISE OF RELIGION. STAFF SERGEANT ALEXANDER'S ORDERS TO REMOVE THE SIGNS SUBSTANTIALLY BURDENED LANCE CORPORAL STERLING'S RELIGIOUS EXERCISE. AND THE ORDER WAS NEITHER BASED ON A COMPELLING INTEREST NOR NARROWLY TAILORED.

The Religious Freedom Restoration Act of 1993 (RFRA) "provide[s] very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760 (2014). Those broad protections apply in the military context.

LCpl Sterling's discreet workspace display of Biblical quotations plainly constituted an "exercise of religion" within the statute's reach. SSgt Alexander's orders and this prosecution substantially burdened that religious exercise. And the Government cannot justify its actions under strict scrutiny.

A. RFRA Broadly Protects the Exercise of Religion, Including Within the Military.

RFRA was enacted in the wake of the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). *Smith* departed from the test developed and applied in earlier cases like *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which assessed whether a challenged action imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest. *See Hobby Lobby*, 134 S. Ct. at 2760; *Holt v. Hobbs*, 135 S. Ct. 853, 859-60 (2015). By contrast, *Smith* held that "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *Hobby Lobby*, 134 S. Ct. at 2761 (quotation marks omitted).

Congress responded to *Smith* with RFRA, which provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. §2000bb-1 (a). If the Government

substantially burdens a person's "exercise of religion" it must demonstrate that "application of the burden to the person" is (1) "in furtherance of a compelling governmental interest," and (2) "the least restrictive means of furthering that compelling governmental interest." *Id.* §2000bb-1 (b).

RFRA originally defined "exercise of religion" as "the exercise of religion under the First Amendment." *See Hobby Lobby*, 134 S. Ct. at 2761-62. In the Religious Land Use and Institutional Persons Act of 2000 (RLUIPA), however, Congress amended RFRA's definition of "exercise of religion" to incorporate RLUIPA's new definition of that term. *See Holt*, 135 S. Ct. at 860. Together, the two statutes define "exercise of religion" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc-5 (7)(A). This definition seemingly eliminated any possibility that religious expressions or observances that were not compelled or central to an organized religion would go unprotected as a result. And Congress specifically mandated that this concept "be construed in favor of a broad protection of religious exercise." *Id.* §2000cc-3 (g).

Consistent with Congress' instruction, the Supreme Court has emphasized the breadth of RFRA's protections. *See, e.g.*, *Hobby Lobby*, 134 S. Ct. at 2761 (RFRA "ensure[s] broad protection for religious liberty"); *id.* at 2762 n.5 (RFRA has

the "same broad meaning" of "exercise of religion" as RLUIPA); *id.* at 2767 ("RFRA was designed to provide very broad protection for religious liberty."). In fact, the Court has held that RFRA provides "even broader protection for religious liberty than was available" under pre-*Smith* decisions like *Sherbert* and *Yoder*. *Id.* at 2761 n.3. That is so, the Court explained, because RLUIPA's amendment of RFRA's definition of "exercise of religion" "deleted the prior reference to the First Amendment," *id.* at 2772, in "an obvious effort to effect a complete separation from First Amendment case law," *id.* at 2761-62.

Relatedly, RFRA does not turn on the centrality or rationality of a person's religious beliefs. The Supreme Court has held that "the federal courts have no business addressing ... whether the religious belief asserted in a RFRA case is reasonable." *Id.* at 2778. This statutory prohibition is rooted in the Court's pre-RFRA precedents. *See, e.g.*, *Smith*, 494 U.S. at 887 ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine ... the plausibility of a religious claim."); *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."); *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981) ("[R]eligious beliefs need not be

acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969); *United States v. Ballard*, 322 U.S. 78, 87 (1944). The courts' "narrow function" is to determine whether the asserted belief reflects "'an honest conviction'" by the person asserting it. *Hobby Lobby*, 134 S. Ct. at 2779 (quoting *Thomas*, 450 U.S. at 716); *see also id.* at 2774 n.28 ("To qualify for RFRA's protection, an asserted belief must be 'sincere.'"); *United States v. Quaintance*, 608 F.3d 717, 718-19 (10th Cir. 2010).

Congress has also made clear that RFRA applies to military actions. The plain text of RFRA applies to all federal "Government" conduct, which self-evidently includes the military. 42 U.S.C. §2000bb-1(a). Legislative history and case law reinforce the unmistakable import of the text. The House Judiciary Committee's report on RFRA states that "[p]ursuant to the Religious Freedom Restoration Act, the courts must review the claims of ... military personnel under the compelling governmental interest test." H.R. Rep. No. 103-88, at 8 (1993). The Senate Judiciary Committee's report likewise states "[u]nder the unitary standard set forth in the act, courts will review the free exercise claims of military personnel under the compelling governmental interest test." S. Rep. No. 103-111, at

12 (1993); *see also Rigdon v. Perry*, 962 F. Supp. 150, 161 (D.D.C. 1997) (applying RFRA within military context).

B. LCpl Sterling's Biblical Quotations Qualify as an "Exercise of Religion" Entitled to Protection Under RFRA.

LCpl Sterling's placement of Biblical quotations in a Trinity around her workspace was a core "exercise of religion" under RFRA. There is no dispute that LCpl Sterling is a religious Christian. Nor is there any dispute that the quotation on the slips of paper was drawn from the Bible. Both the military judge and the lower court so recognized. (J.A.116.) (military judge referring to quotations as "biblical in nature"); (J.A.006)(NMCCA referring to "expos[ure] to biblical quotations"). At trial, moreover, LCpl Sterling testified that she printed the Biblical quotations and posted them around her desk as "a mental reminder" of her religious beliefs. (J.A.045.) And she arranged them in "a trinity" to "have [the] protection of three around [her]." (J.A.042, 045.) They plainly constituted religious expression and religious exercise.

The lower court's cramped interpretation of the term "exercise of religion"—and its refusal even to apply RFRA on that basis—cannot be squared with the statute's text or the Supreme Court's interpretation of the law. The lower court narrowly construed "exercise of religion" to require that "the

practice be 'part of a system of religious belief,'" and held that "[p]ersonal beliefs, grounded *solely* upon subjective ideas about religious practices, 'will not suffice' because courts need some reference point to assess whether the practice is indeed religious." (J.A.005.) The lower court thus concluded, "exercise of religion" categorically does not extend, and RFRA categorically does not apply, to an "action subjectively believed by [a person] to be 'religious in nature.'" *Id*.

That reasoning is wholly antithetical to RFRA. It forces courts to make inquiries beyond their institutional competence and fraught with entanglement concerns. RFRA does not permit courts to second-guess the veracity or centrality of an individual's religious exercise. On the contrary, the law protects "*any* exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc-5 (7)(A) (emphasis added); *see Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) ("[T]he word 'any' has an expansive meaning, that is, one or some indiscriminately of whatever kind.") (quotations omitted). "And Congress mandated that this concept 'be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.'" *Hobby Lobby*, 134 S. Ct. at 2762 (quoting 42 U.S.C. §2000cc-3(g)).

In announcing its narrow definition, the lower court relied on a single pre-RFRA, pre-*Smith* decision, *Yoder*. But its reliance is flawed for multiple reasons. First, as explained, *Hobby Lobby* made clear that RFRA provides "even broader protection for religious liberty than was available" under pre-*Smith* decisions like *Yoder*. 134 S. Ct. at 2761 n.3. Thus it is methodologically incorrect to invoke *Yoder* to limit RFRA, as the lower court did.

Second, *Yoder* does not support the lower court's conclusions. *Yoder* simply noted that conduct rooted in "philosophical and personal" rather than "religious" beliefs is not entitled to First Amendment protection. 406 U.S. at 216. That observation is obvious, but irrelevant to this case. Of course beliefs must be "'rooted in religion'" to receive the protection of the Free Exercise Clause or RFRA; "[p]urely secular views do not suffice." *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 833 (1989) (quoting *Thomas*, 450 U.S. at 713). But LCpl Sterling was not court-martialed for posting quotations from *Leaves of Grass*; she was court-martialed for posting Biblical quotations. And her motivation for posting them was avowedly religious. Furthermore, the NMCCA's holding goes far beyond distinguishing "purely secular views" from actions expressly protected by RFRA and the Religion Clauses; it demands not just religiously-motivated conduct, but something

moored to an organized system of religion. Nothing in *Yoder* supports that test, which would inappropriately discriminate among religious beliefs and force courts to make inquiries and distinctions far beyond their institutional competence.

Third, it is simply incorrect that "courts need some reference point to assess whether the practice is indeed religious," which in turn requires determining whether a practice is "part of a system of religious belief." (J.A.005.) Again, RFRA protects "*any* exercise of religion." 42 U.S.C. §2000cc-5(7)(A) (emphasis added). And since long before (and after) RFRA, the Supreme Court has firmly rejected similar arguments by holding that courts are not required or even permitted to inquire about "the plausibility of a religious claim." *Smith*, 494 U.S. at 887; *Hobby Lobby*, 134 S. Ct. at 2779; *see also* pp. 14-15, *supra*. The only permissible inquiry is whether the asserted claim is sincere or a pretext for shrouding otherwise unlawful action in RFRA's protective cloak. *See Hobby Lobby*, 134 S. Ct. at 2774 n.28.

There can be little doubt that the lower court's unduly narrow view of RFRA was materially prejudicial to LCpl Sterling's substantial rights. Under a correct interpretation of that term, her conduct plainly constituted an "exercise of

religion" subject to RFRA.[7] There is no dispute that LCpl Sterling is a Christian and that her beliefs are sincere. When she posted the three small slips of paper containing the same Biblical quotation—"no weapon formed against me shall prosper"—in a Trinity around her workspace she was clearly exercising those beliefs. (J.A.042, 045.) There was thus nothing "[p]urely secular" about her conduct. *Frazee*, 489 U.S. at 833. To the contrary, the reliance that LCpl Sterling—a Christian—placed on an inspirational quotation drawn from the Bible—a Christian text—posted in the form of a Trinity—a Christian belief—is plainly "rooted in religion." *Thomas*, 450 U.S. at 713. By any reasonable measure, LCpl Sterling's actions were as much an "exercise of religion" as refusing to manufacture tank turrets, *see id.* at 714-15, or to shave a half-inch beard, *see Holt*, 135 S. Ct. at 859.

Indeed, even under the lower court's restrictive view, LCpl Sterling was exercising her beliefs within the Christian "system of religious belief." One does not need a theology degree to know that the Bible is the foundational religious text of

[7] LCpl Sterling preserved this issue at trial (J.A.100), and she provided to the military judge a copy of DODI 1300.17, which specifically references RFRA and provides the same definition of "exercise of religion" as RFRA (J.A.091; Appellate Exhibit XXXVI, J.A.207-215.). *See* pp. 6& n.5, *supra*. It is clear, moreover, that LCpl Sterling was entitled to assert her RFRA claim as a "defense in [her] judicial proceeding." 42 U.S.C. §2000bb-1.

Christianity, or that the concept of the Trinity—*i.e.*, three persons in one God—is a fundamental Christian belief.[8] Persons of all faiths, moreover, routinely seek comfort, inspiration, or assistance from the tenets of their faith. Certainly Christianity is no exception; indeed, the Bible frequently assures believers that they will be shielded from harm and exhorts them to beseech God for that protection. *See, e.g.*, 2 *Samuel* 22:4 (King James) ("I will call on the Lord, who is worthy to be praised: so shall I be saved from mine enemies."); *Psalms* 46:1 (King James) ("God is our refuge and strength, a very present help in trouble."); 2 *Thessalonians* 3:3 (King James) ("But the Lord is faithful, who shall establish you, and keep you from evil.").

Devout Christians regularly exercise their religion through religious expressions including posting Biblical verses, prayer cards, or crosses. The French scientist and philosopher Blaise Pascal, for instance, is famously known to have sewn into his coat a parchment recounting an intense mystical encounter with God. *See* Pascal, *Pensées and Other Writings*, Introduction xiii

[8] *See, e.g.*, Catechism of the Catholic Church §261 ("The mystery of the Most Holy Trinity is the central mystery of the Christian faith and of Christian life. God alone can make it known to us by revealing himself as Father, Son and Holy Spirit."); BGEA Staff, *Can you explain the Trinity to me?*, Billy Graham Evangelistic Association (June 1, 2004), http://perma.cc/2ng4-8mg5 (explaining that under the "doctrine of the Trinity," there are "three personal distinctions in [God's] complex nature").

(Honor Levi trans., Oxford World's Classics 2d ed. 1999). Stained glass windows and statues of the saints serve a similar purpose—to remind and inspire believers of God's power and protection. LCpl Sterling similarly relied on her Biblical quotation for spiritual comfort and inspiration, and in doing so invoked the protection of the Trinity. Her actions were a classic exercise of religion.

The lower court's contrary determination strains credulity. It noted that LCpl Sterling "never told [SSgt Alexander] that the signs had a religious connotation." (J.A.005.) In the court's view LCpl Sterling "was simply placing what she believed to be personal reminders that those she considered adversaries could not harm her." *Id.* As a threshold matter, SSgt Alexander's knowledge of the reasons for LCpl Sterling's conduct is immaterial. What matters under RFRA's statutory text and Supreme Court precedents is that LCpl Sterling was exercising her religion. Furthermore, to the extent the quotations were "personal reminders" to LCpl Sterling, the critical point is that the "reminders" were drawn from the central Christian religious text, placed in a formation reflecting a central Christian belief, designed to reassure LCpl Sterling of the divine protection that her Christian faith not just promises her but encourages her to invoke. Plainly her conduct was "part of

a system of religious belief" and plainly it was an exercise of religion.

C. The Government Substantially Burdened LCpl Sterling's Exercise of Religion.

SSgt Alexander's orders presented LCpl Sterling with an untenable choice under RFRA: Either she could follow the orders and cease her exercise of religion or face disciplinary action including court-martial. She chose to continue her exercise of religion, and she received a severe punishment for doing so. Whatever questions may be implicated by the balance of the RFRA analysis, that is about as straightforward a substantial burden as any court is likely to see.

The Supreme Court's recent decisions make this clear. In *Hobby Lobby*, business owners faced the choice to comply with a government regulation requiring them to pay for abortifacients or suffer ruinous government fines. *See* 134 S. Ct. at 2775-76. In *Holt*, a prisoner had the option either to shave his beard (against his religious tenets) or to face prison disciplinary action. *See* 135 S. Ct. at 861. In both cases the Court had no trouble concluding that the claimants "easily satisfied" their obligation to prove their religious exercise was substantially burdened by government action. *Id.* at 862; 134 S. Ct. 2777. *Holt* is particularly instructive because in both the prison and military contexts the government has an unusual degree of

control over the religious claimant and can impose discipline for non-compliance. Whatever those distinct contexts may suggest for the balance of the RFRA analysis, they make the substantial burden analysis straightforward.[9]

D. The Government Cannot Satisfy Strict Scrutiny.

After a RFRA claimant demonstrates a substantial burden on her sincere exercise of religion, the burden shifts to the Government to satisfy strict scrutiny. The Government must show that its actions were "in furtherance of a compelling governmental interest" *and* were "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb-1(b); *see Hobby Lobby*, 134 S. Ct. 2779. This is "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), and the Government's failure to satisfy either of the two requirements is fatal.

[9] The Supreme Court's pre-RFRA cases are similarly instructive. *See Sherbert*, 374 U.S. at 404 (concluding that an unemployment law's "pressure upon [a Seventh-day Adventist] to forego [abstaining from Saturday work] is unmistakable"); *Yoder*, 406 U.S. at 208, 218 (finding a "severe" and "inescapable" burden where a law "affirmatively compel[led]" Amish parents to send their children to high school, or else be "fined the sum of $5 each"); *Thomas*, 450 U.S. at 717-18 (holding that an unemployment law "put[ ] substantial pressure on [a Jehovah's Witness] to modify his behavior and to violate his beliefs" by helping to manufacture tanks); *United States v. Lee*, 455 U.S. 252, 257 (1982) (holding that a law "interfere[d] with ... free exercise rights" by compelling an Amish carpenter to participate in the social security system against his beliefs or face a $27,000 tax assessment).

1. The Government Cannot Establish a Compelling Governmental Interest Under RFRA.

The Government cannot rely on abstract, generalized interests to satisfy its burden under RFRA of demonstrating a compelling governmental interest. Instead, it must justify its "application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 430-31 (2006). Reviewing courts are therefore required to "'loo[k] beyond broadly formulated interests' and to 'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants.'" *Hobby Lobby*, 134 S. Ct. at 2779 (quoting *O Centro*, 546 U.S. at 431).

Any reliance by the Government on broad notions of maintaining good order and discipline is thus plainly insufficient. The Government must demonstrate that accommodating LCpl Sterling's specific exercise of religion would seriously undermine its ability to maintain order. It cannot meet that burden. The Biblical quotations were small and virtually imperceptible to passers-by and visitors to LCpl Sterling's desk. Indeed, the Government did not marshal a single witness—other than SSgt Alexander—who was bothered by the small religious displays. Nor can the Government justify LCpl

Sterling's punishment solely based on her failure to follow SSgt Alexander's orders to remove the quotations from her desk. LCpl Sterling has a right to exercise her religion; her refusal to forgo that right cannot nullify RFRA's statutory protections. Otherwise, no claimant could ever assert a RFRA claim as a "defense in a judicial proceeding." 42 U.S.C. §2000bb-1(c).

Here, too, the Supreme Court's recent decisions are instructive. In *O Centro*, the Government argued that it had a compelling interest in enforcing the Controlled Substances Act against a religious sect's sacramental use of a hallucinogenic tea because, in the Government's view, the Act "cannot function with its necessary rigor and comprehensiveness if subjected to judicial exemptions." 546 U.S. at 430. The Court was not persuaded: "The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *Id.* at 436. "RFRA operates," the Court explained, "by mandating consideration, under the compelling interest test, of exceptions to 'rule[s] of general applicability.'" *Id.* (quoting 42 U.S.C. §2000bb-1(a)). Just as the Government's general interest in preventing drug use was insufficient, an abstract interest in good order and discipline does not suffice.

Holt is also telling. There, the Arkansas Department of Corrections argued that its ban on inmate beards furthered

compelling interests in prison safety and security. "The no-beard policy," the Department argued, "prevents prisoners from hiding contraband" and "disguising their identities." 135 S. Ct. at 863-64. But again the Court was not persuaded. Despite the obvious need for order and security in prisons, *see Cutter v. Wilkinson*, 544 U.S. 709, 722-23, 725 n.13 (2005), the Court held that "the argument that this interest would be seriously compromised by allowing an inmate to grow a ½–inch beard is hard to take seriously." *Id.* at 863. It is similarly hard to take seriously the notion that LCpl Sterling's three small religious signs would compromise the mission accomplishment, discipline, morale, or welfare of the S-6 section Marines in the 8th Communications Battalion at Camp Lejeune.

2. There Were Many Less Restrictive Means of Achieving the Government's Interest.

Even if the broad notions of military order could satisfy RFRA's requirement of a compelling governmental interest, there were ample less restrictive means of achieving that objective here. "The least-restrictive-means standard" is "exceptionally demanding." *Hobby Lobby*, 134 S. Ct. at 2780. It requires the Government to show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y]." *Id.* "[I]f a less restrictive means is available for the Government to

achieve its goals, the Government must use it." *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 815 (2000).

There were many less restrictive alternatives available here. If the concern was that LCpl Sterling and another Marine shared the same workspace during the relevant period (as SSgt Alexander contended but others refuted), SSgt Alexander could have required LCpl Sterling to take her quotations down only once her shift was over and the other Marine occupied the workspace, while allowing them during LCpl Sterling's own shift. At a minimum, SSgt Alexander could (and should) have asked that other Marine—never identified—if the quotations in fact bothered him or her, rather than assuming that to be the case. Alternatively, if the concern was that other Marines might misunderstand the quotations as confrontational (as the lower court speculated), SSgt Alexander could have asked LCpl Sterling to include an annotation indicating their Biblical nature, allaying concerns that the quotations were simply a personal show of hostility.

If the concern was that other Marines might find the display distracting, SSgt Alexander could have required even smaller signs or that they be moved to ensure they were not visible to others. If the concern was that others might take issue with the Christian nature of the quotations (as the lower court further speculated), the government, of course, has no

legitimate interest in accommodating such concerns—there is no heckler's veto when it comes to protected religious exercise—but in all events, there were still less restrictive alternatives available, such as reducing the size or visibility of the quotes.

Any of these alternatives would have amply accommodated the Government's asserted compelling interest in good order and discipline in a less restrictive manner than the course of action it pursued—complete and permanent removal of the Biblical quotations and criminal prosecution for failure to do so. Even if these options are not the precise approach the Government would prefer, RFRA requires the Government to accommodate the exercise of religion when it can do so while still achieving its objectives. *See Holt*, 135 S. Ct. at 866 ("Courts must hold prisons to their statutory burden, and they must not assume a plausible, less restrictive alternative would be ineffective." (quotation marks omitted)); *Hobby Lobby*, 134 S. Ct. at 2781 ("RFRA . . . may in some circumstances require the Government to expend additional funds to accommodate citizens' religious beliefs."); *Playboy Entm't Grp.*, 529 U.S. at 813. That the Government would prefer to achieve its goal through more onerous means of its own choosing is not enough.

II

THE LOWER COURT HELD THAT ORDERS TO REMOVE THE BIBLICAL QUOTATIONS HAD A VALID MILITARY PURPOSE BECAUSE IT IS "NOT HARD TO IMAGINE" THAT POTENTIAL EXPOSURE TO THE QUOTATIONS "MAY RESULT" IN ADVERSE IMPACT TO GOOD ORDER AND DISCIPLINE, AND THE PARTICULAR QUOTATION "COULD BE" INTERPRETED AS COMBATIVE, DESPITE NO EVIDENCE THAT ANY MARINE WAS IN FACT DISTRACTED OR DISMAYED BY THE QUOTATIONS. SUCH SPECULATION DOES NOT SUPPORT A VALID MILITARY PURPOSE FOR THE ORDERS TO REMOVE THE BIBLICAL QUOTATIONS.

Even if LCpl Sterling's conduct was not protected under RFRA, SSgt Alexander's orders to remove the Biblical quotations lacked a valid military purpose and were thus unlawful. An order "may not ... interfere with private rights or personal affairs" without "a valid military purpose." *United States v. New*, 55 M.J. 95, 106 (C.A.A.F. 2001) (quoting Manual for Courts–Martial, United States pt. IV, ¶14c(2)(a)(iii) (1995 ed.) ("MCM")) (quotation marks omitted). An order has a "valid military purpose" if it "relate[s] to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the service." *Id.* (quoting MCM); *see also United States v. Washington*, 57 M.J. 394, 398 (C.A.A.F. 2002); *United States v. Hughey*, 46 M.J. 152, 154 (C.A.A.F. 1997).

The lower court acknowledged the "meager findings of fact" underlying the military judge's determination that SSgt Alexander's orders had a valid military purpose. Indeed, the military judge's only factual findings were that (1) LCpl Sterling's workspace "was shared by at least one other person"; (2) "other service members came to [her] workspace" and "could have seen the signs"; and (3) the specific quotation was "biblical in nature." (J.A.116.) From these sparse findings, the lower court leaped to the conclusion that other Marines "*would* be"—not could be—"exposed to biblical quotations." (J.A.006) (emphasis added). Even more speculatively, the lower court stated that "[i]t is not hard to imagine" the "divisive impact to good order and discipline" that "may result" from such exposure. *Id.* The conjecture continued: "The risk that such exposure could impact the morale or discipline of the command is not slight," *id.*, because the specific Biblical quotation "could be interpreted as combative." (J.A.007.)

The NMCCA's string of hypotheses—"not hard to imagine," "may result," "could impact," "not slight" risk, "could be interpreted"—does not support a determination of a valid military purpose. *See, e.g.*, *United States v. Collier*, 67 M.J. 347, 355 (C.A.A.F. 2009) (holding that appellate court may not affirm trial ruling based on speculation); *United States v. Boylan*, 49 M.J. 375, 378 (C.A.A.F. 1998); *Smith v. Vanderbush*,

47 M.J. 56, 63 (C.A.A.F. 1997). That is especially the case when the record does not contain a single piece of evidence suggesting that *any* Marine was ever distracted or dismayed by the quotations—or even saw them, for that matter. Indeed, every witness who addressed that subject unequivocally testified that they had never seen anything of a distracting or bothersome nature on LCpl Sterling's workspace.[10]

Furthermore, the lower court's speculation is internally inconsistent. In rejecting LCpl Sterling's claim that posting the quotations was an exercise of religion, the NMCCA proceeded on the premise that the quotations were not outwardly "religious"; thus, for example, the lower court faulted LCpl Sterling for failing to tell SSgt Alexander "that the signs had a religious connotation." (J.A.005.) But in rejecting LCpl Sterling's claim that the orders lacked a valid military purpose, the lower court proceeded on the premise that any Marine who saw the quotations would immediately identify them as

[10] Equally unsupported by the record is the NMCCA's belief that LCpl Sterling and SSgt Alexander were "locked in an antagonistic relationship" stemming from events predating the charged misconduct. (J.A.006.) To the contrary, SSgt Alexander testified that although she served as LCpl Sterling's drill instructor, SSgt Alexander did not remember LCpl Sterling from that time. (J.A.025.) The NMCCA also believed the supposedly "antagonistic relationship" was "surely visible to other Marines," J.A.006, but that is more sheer speculation. Not one "other Marine[]" testified that they observed an "antagonistic relationship" between LCpl Sterling and SSgt Alexander in the S-6 section.

"religious quotations"—specifically, Christian religious quotations, since the court expressed concerns about service members who do not "share that religion." (J.A.006.) Both premises—and the determinations based on them—cannot be correct.

In addition to the lack of record evidence and the internal inconsistency, the lower court's speculation cannot stand up to reality. The lower court suggested that "exposure" to the Biblical quotations "could impact the morale or discipline of the command" simply because the quotations were religious. *Id.* But military members are often more directly exposed to far more religious material every day. For example, federal law mandates that every ship in the Navy conduct nightly evening prayers "compelling" every sailor, regardless of religious affiliation and preference, to listen to a prayer. *See* Beverly J. Lesonik, *Tattoo, Tattoo. Stand by for the Evening Prayer*, U.S. Navy (July 29, 2014, 8:51 PM), http://perma.cc/uqq4-wfzb; 10 U.S.C. §6031 (b). Moreover, change of command and military retirement ceremonies routinely begin and end with a prayer from a chaplain. Indeed, the very existence and ubiquitous presence of military chaplains themselves expose service members to religion. The notion that walking by a desk with a Biblical quotation "could"—much less would—wreak havoc on good order and discipline is not plausible.

In the end, almost every sentence in the lower court's opinion supporting the validity of the orders to remove the quotations relies on conjecture. The lower court wrongly constructed a rationale for the military judge's ruling that the military judge himself did not articulate. In so doing, lower court engaged in improper speculation, unsupported by the record, to find that orders were necessary to support good order and discipline. That is not the stuff of appellate review or military justice. *See, e.g.*, 10 U.S.C. §866 (c) (Court of Criminal Appeals "may act only with respect to the findings ... as approved by the convening authority"). Because the orders lacked a valid military purpose, they were unlawful, and LCpl Sterling's convictions for disobeying those orders cannot stand.

Conclusion

The lower court adopted an unduly narrow construction of RFRA's broad protections and upheld LCpl Sterling's conviction based on speculation. Its decision should be reversed.

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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 Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on December 14, 2015.

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Certificate of Compliance

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STATUTORY APPENDIX

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42 U.S.C. § 2000bb
Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

42 U.S.C. § 2000bb-1
Free Exercise Of Religion Protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 U.S.C. § 2000bb-2
Definitions

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means religious exercise, as defined in section 2000cc–5 of this title.

42 U.S.C. § 2000bb-3
Applicability

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

42 U.S.C. § 2000bb-4
Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

42 U.S.C. § 2000cc-3
Rules of construction

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not

establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

42 U.S.C. § 2000cc-5
Definitions

In this chapter:

(1) Claimant

The term “claimant” means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term “demonstrates” means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term “Free Exercise Clause” means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term “government”—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc–2(b) and 2000cc–3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term “land use regulation” means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term “program or activity” means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term “religious exercise” includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.