No. 08-08 1438 MAY 18 2009

IN THE
Supreme Court of the United States

HARVEY LEROY SOSSAMON, III,

Petitioner,

v.

TEXAS ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5, provides an express private right of action to "obtain appropriate relief against a government," *id.* § 2000cc-2. The statute defines "government" to include state and local governmental entities and any "official of [such] an entity." *Id.* § 2000cc-5(4) (A). The Fifth Circuit held, in conflict with the decisions of other courts, that the Constitution prohibits Congress from authorizing damages claims against states, or against state officials in their individual or personal capacities, for violations of the statute. The question presented is:

Whether states and state officials may be subject to suit for damages for violations of the Religious Land Use and Institutionalized Persons Act?

PARTIES TO THE PROCEEDINGS

Petitioner is Harvey Leroy Sossamon, III, an inmate in the Robertson Unit of the Texas Department of Criminal Justice.

Respondents are the State of Texas; Christina Melton Crain, Chair, Texas Criminal Justice Board; Cathy Clement, Assistant Director, Texas Department of Criminal Justice, Correctional Institution Division Region VI; Brad Livingston, Executive Director, Texas Department of Criminal Justice; Doug Dretke, Executive Director, Correctional Institutional Division; Reverend R.G. Murphy, Texas Department of Criminal Justice, Correctional Institutional Division Region VI Chaplaincy Regional Program Admin.; Senior Warden Robert Eason, French M. Robertson Unit, Texas Department of Criminal Justice, Correctional Institutional Division; Assistant Warden Stacy L. Jackson, French M. Robertson Unit, Texas Department of Criminal Justice, Correctional Institutional Division; Chaplain Paul J. Klien, French M. Robertson Unit, Texas Department of Criminal Justice, Correctional Institutional Division.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Harvey Leroy Sossamon, III respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 560 F.3d 316 (5th Cir. 2009). The district court's opinion (Pet. App. 36a-57a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on February 17, 2009. Pet. App. 35a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

I. Constitutional Provisions

The Eleventh Amendment to the United States Constitution, U.S. CONST. amend. XI, provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Spending Clause of the United States Constitution, U.S. CONST. art. I, § 8, cl. 1, provides, in relevant part:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States . . . .

II. Statutory Provisions

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5 (2000), provides, in relevant part:

> **Section 2000cc-1. Protection of religious exercise of institutionalized persons**
>
> (a) General rule
>
> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person --
>
> (1) is in furtherance of a compelling government interest; and
>
> (2) is the least restrictive means of furthering that compelling interest.
>
> (b) Scope of application
>
> This section applies in any case in which —

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

Section 2000cc-2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

* * * * *

Section 2000cc-5. Definitions

In this chapter:

* * * * *

(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 . . . .

STATEMENT OF THE CASE

Petitioner, a prison inmate, brought this suit against the State of Texas and state prison officials in their individual and official capacities, seeking monetary damages for violations of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5 (2000). In acknowledged conflict with the decisions of other federal courts, the Fifth Circuit held that although RLUIPA's statutory text supported damages claims against states and state officials, the Eleventh Amendment and Spending Clause foreclosed such relief.

1. RLUIPA is a civil rights law designed to protect against religious discrimination, unequal religious accommodations, and unjustified infringement of the free exercise of religion. Section 3 of the Act applies to any state prison that "receives federal financial assistance." *id.* § 2000cc-1(b), and directs that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," *id.* § 2000cc-1(a), unless the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means" of furthering that interest, *id.* §§ 2000cc-1(a)(1) and (2). "[R]eligious exercise" is defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id.* § 2000cc-5(7)(A).

Congress enacted RLUIPA's institutionalized persons provision in response to substantial evidence collected during three years of hearings that persons institutionalized in state facilities face "'frivolous or

arbitrary' barriers" to their religious exercise. *Cutter v. Wilkinson*, 544 U.S. 709, 716 (2005) (citation omitted); *see also* H.R. Rep. No. 106-219, at 9-10 (1999) (describing prison's taping of confession between priest and penitent); *Joint Statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000*, 146 Cong. Rec. S7774, S7775 (daily ed. July 27, 2000) (*Joint Stmn.*) (summarizing findings); *Protecting Religious Liberty After Boerne v. Flores: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong., 1st Sess., Pt. 3, at 41 (1998) (discussing discriminatory accommodations).

Based on its investigation, Congress found that, "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *Joint Stmn.*, 146 Cong. Rec. at S7775. Concerned that federal funding not contribute to such frivolous, unreasoned, or discriminatory impositions on religious exercise, Congress invoked its Spending Clause authority, U.S. CONST., art. I, § 8, cl. 1, to require the application of RLUIPA's heightened statutory protection for religious exercise whenever a substantial burden on religious exercise "is imposed in a program or activity that receives Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1).

To ensure effective enforcement of the Act, Congress created an express private right of action, providing that a "person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government."

42 U.S.C. § 2000cc-2(a). The term "government," in turn, is broadly defined to include:

> (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.

Id. § 2000cc-5.

2. Petitioner is an inmate at the Robertson Unit of the Texas Department of Criminal Justice Correction Institutions Division. In 2006, he filed suit in the U.S. District Court for the Western District of Texas against the State of Texas and various prison officials in their individual and official capacities alleging, among other things, violations of RLUIPA. Pet. App. 4a-5a.[1] More specifically, petitioner challenged respondents' policy forbidding prisoners who were in confinement for disciplinary infractions from leaving their cells to attend religious services, even though such inmates were allowed to leave their cells "to attend work, to eat, to shower, to have medical lay-ins, to attend educational classes, to

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[1] Petitioner also brought claims for violations of the Texas Religious Freedom Restoration Act and under 42 U.S.C. § 1983 for violations of his First, Eighth, and Fourteenth Amendment rights. Pet. App. 4a-5a. The district court dismissed those claims, Pet. App. 56a-57a, and they are not at issue here.

use the law library, and to participate in other secular activities." Pet. App. 3a.

In addition, even when not on cell restriction, petitioner and other inmates were prohibited from using the prison chapel for religious services under any circumstances. Pet. App. 5a-6a. Instead, petitioner and other inmates were relegated to attending worship services in a "multi-purpose room," Pet. App. 39a, that lacked "Christian symbols or furnishings, such as an altar and cross, which have special significance and meaning to Christians." Pet. App. 2a-3a (internal quotation marks omitted). Petitioner was thus prevented from engaging in basic aspects of Christian worship, such as kneeling at an altar or receiving Holy Communion in view of a cross. Pet. App. 3a. Moreover, during Sunday assembly and Bible study, loud noise from the nearby prison yard disrupted services in the multi-purpose room. Pet. App. 3a.

While respondents alleged that the prohibition was for security reasons, the prison nonetheless allowed inmates to use the chapel for non-religious purposes, including "weekend-long marriage training sessions (with outside visitors), sex education, and parties for GED graduates." Pet. App. 30a. Prisoners were also allowed to use the chaplain's office at night to make phone calls, but nonetheless could not enter the area to pray or worship. Pet. App. 8a.

Petitioner's complaint sought declaratory and injunctive relief, as well as compensatory and punitive damages. Pet. App. 5a.

The District Court granted respondents' motion for summary judgment, holding that Texas's sovereign immunity barred damages claims against the state or its officers in their official capacities, and that, in any event, petitioner's RLUIPA claims failed on the merits. Pet. App. 57a.

4. The Fifth Circuit affirmed in part and reversed in part. Pet. App. 35a.

a. As an initial matter, the court dismissed as moot petitioner's claims for injunctive relief relating to the cell-restriction policy based on the State's representation that it had abandoned the policy statewide while the appeal was pending. Pet. App. 12a.

With respect to petitioner's chapel-access claims, the Fifth Circuit reversed the grant of summary judgment. The court held that "RLUIPA unambiguously creates a private right of action for injunctive and declaratory relief." Pet. App. 14a. The court next determined that there were genuine issues of material fact concerning whether petitioner's rights under RLUIPA had been violated. Pet. App. 32a. The court held that "there can be no serious dispute" that petitioner's desire for access to the chapel was motivated by genuine religious belief, Pet. App. 26a, and that a jury could reasonably find that barring petitioner from the chapel imposed a "substantial burden" on his religious exercise. Pet. App. 30a. The court further ruled that the prison's willingness to let the chapel be used for a variety of secular activities called into serious question whether the chapel-prohibition advanced a genuinely compelling governmental interest by the least restrictive means. Pet. App. 32a.

Accordingly, the court remanded for further proceedings on petitioner's claims for injunctive relief on the chapel-access claim. Pet. App. 35a.

b. With respect to petitioner's request for damages on his cell-restriction and chapel-access claims, the Fifth Circuit affirmed, reasoning that RLUIPA provides no cause of action for damages against any of the defendants. Pet. App. 24a.

The court accepted that RLUIPA provides an express cause of action for "appropriate relief" against states and state officials in their official and personal capacities, Pet. App. 16a-17a, and noted that "appropriate relief" ordinarily includes damages. Pet. App. 16a n.26. Referring to this Court's decision in *Franklin v. Gwinnett County Pub. Schools*, 503 U.S. 60 (1992), the Fifth Circuit explained that "the Supreme Court has instructed us to 'presume the availability of all appropriate remedies unless Congress has clearly indicated otherwise' or given guidance by a 'clear indication of its purpose with respect to remedies.'" Pet. App. 16a n.26 (quoting *Smith v. Allen*, 502 F.3d 1255, 1270 (11th Cir. 2007) (citing *Franklin*, 503 US. 68-69)).[2] And, the court of

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[2] In *Franklin*, this Court held that the implied private right of action under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 to 1688 – a federal Spending Clause statute that prohibits sex discrimination in federally funded education programs – affords injured plaintiffs all "appropriate relief," including damages. 503 U.S. at 76. In *Barnes v. Gorman*, 536 U.S. 181 (2002), the Court elaborated that "appropriate relief" under Spending Clause legislation extends to "not only those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in

appeals noted, "[t]here is no clear or express indication in RLUIPA that damages are unrecoverable." Pet. App. 16a n.26.

Despite RLUIPA's "plain language," Pet. App. 16a, and this Court's precedents, Pet. App. 17a & n.30, 20a, the court of appeals held that damages were constitutionally unavailable. The court first held that Congress lacked the constitutional power to authorize RLUIPA damages claims against state officials in their individual capacities because the officials did not personally accept federal funding and thus, in the court of appeals' view, they did not fall within Congress's legislative jurisdiction under the Spending Clause. Pet. App. 20a. RLUIPA, the court reasoned, was enacted pursuant to Congress's Spending Clause power and, as a result, "only the grant recipient – the state – may be liable for its violation." Pet. App. 17a. Although Congress may attach funding conditions that require recipient governments to regulate third parties, the court of appeals held, Congress has no constitutional authority under the Spending Clause to regulate directly the conduct of non-recipients. Pet. App. 18a-20a.

The court acknowledged that its holding conflicted with the decisions of other courts, noting that there is a "split in the district courts," Pet. App. 16a, on the question and that "[a] number of circuits

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suits for breach of contract," including "compensatory damages and injunction." *Id.* at 187.

appear to have assumed that an individual-capacity cause of action for damages exists." Pet. App. 15a.

With respect to the State and state officials in their official capacities, the court of appeals held that compensatory relief was "barred by Texas's sovereign immunity." Pet. App. 20a. The Court recognized that Congress may require a state to waive its sovereign immunity as a condition of receiving federal funds, but explained that whether RLUIPA provides states sufficiently clear notice of their liability for damages is the subject of "a circuit split." Pet. App. 21a (citing *Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004), and *Madison v. Virginia*, 474 F.3d 118 (4th Cir. 2006)). Siding with the Fourth Circuit, and rejecting the view of the Eleventh, the court concluded that "RLUIPA is clear enough to create a right for damages on the cause-of-action analysis, but not clear enough to do so in a manner that abrogates state sovereign immunity from suits for monetary relief." Pet. App. 23a.

REASONS FOR GRANTING THE WRIT

This Court's review of the court of appeals' decision holding that RLUIPA does not authorize an award of compensatory damages against state defendants is warranted. The Fifth Circuit held, in acknowledged conflict with the rulings of other courts, that the Constitution compels judicial disregard of RLUIPA's textual authorization of compensatory damages. The constitutional implications of that ruling, which effectively declares unconstitutional a key enforcement provision of a federal civil rights law, merit this Court's review in their own right. The necessity of such review is

compounded by the divergent rulings of lower courts, which leave both states and individuals facing uncertainty and disparity in the enforcement of a single national law based on nothing more than accidents of geography.[3]

I. Courts Are Divided Over The Availability Of Compensatory Damages Against State Defendants Under RLUIPA.

There is no dispute that RLUIPA authorizes suits against state governments, state officials, and individuals acting under color of state law. 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4) . And RLUIPA expressly authorizes courts to award "appropriate relief" against such defendants. *Id.* § 2000cc-2. Congress, moreover, enacted RLUIPA's "appropriate relief" provision against the backdrop of this Court's specific holding in *Franklin v. Gwinnett County Pub. Schools*, 503 U.S. 60 (1992), that "appropriate relief" includes compensatory damages, *id.* at 66-68. For that reason, courts broadly agree that, as a textual matter, RLUIPA authorizes suits for monetary damages against states and state officials in their official and individual capacities. Nonetheless, the federal courts are divided in multiple respects over whether Congress constitutionally authorized such relief in

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[3] Because the decision below draws into question the constitutionality of an Act of Congress, and the United States has not participated as a party in this case thus far, a copy of this petition has been served upon the Solicitor General of the United States as required by Rule 29.4(b) of the Rules of this Court. *See also* 28 U.S.C. § 2403(a).

light of the constraints of the Eleventh Amendment and the Spending Clause. This Court's review is necessary to restore uniformity to the law and to uphold RLUIPA's constitutionality.

A. Courts Are Divided Over Whether The Eleventh Amendment Precludes Damages Awards Under RLUIPA Against States And State Officials In Their Official Capacities.

"[A]bsent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169 (1985).[4] Congress may, however, condition receipt of federal funds upon a state's waiver of that sovereign immunity so long as Congress makes the condition clear. *See, e.g.*, *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 247 (1985).

As both the Fourth and Eleventh Circuits have recognized, and the Fifth Circuit in this case acknowledged, Pet. App. 21a, "[t]o put it mildly, 'there is a division of authority' on th[e] question" whether RLUIPA makes sufficiently clear to the states that acceptance of federal funding for state prisons will render them subject to suits for monetary damages. *Smith v. Allen*, 502 F.3d 1255, 1270 (11th Cir. 2007) (quoting *Madison v. Virginia*, 474 F.3d

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[4] "This bar remains in effect when State officials are sued for damages in their official capacity" because "a judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents." *Id.* (citations omitted).

118, 130 n.3 (4th Cir. 2006)); *see also Cardinal v. Metrish*, No. 08-1652, 2009 WL 1098759, at *3 (6th Cir. Apr. 24, 2009) ("There is . . . no consensus among the other Circuits as to whether a State's acceptance of federal prison funds constitutes a waiver of its sovereign immunity as to RLUIPA claims for damages.").

The Eleventh Circuit held in *Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004), that a state waives its sovereign immunity to private suits under RLUIPA by accepting federal funds. *Id.* at 1305-06. In *Smith v. Allen*, 502 F.3d 1255, *reh'g denied*, 277 Fed. Appx. 979 (11th Cir. 2008), the Eleventh Circuit held that the waiver of sovereign immunity in RLUIPA includes suits for money damages. Tracking this Court's decision in *Franklin*, the court of appeals held that "the phrase 'appropriate relief' in section 3 of RLUIPA is broad enough to encompass the right to monetary damages in the event a plaintiff establishes a violation of the statute." 502 F.3d at 1270. As in *Franklin*, the Eleventh Circuit concluded that, "where Congress had not given any guidance or clear indication of its purpose with respect to remedies, federal courts should presume the availability of all appropriate remedies" – including monetary damages. 502 F.3d at 1270 (citing *Franklin*, 503 U.S. at 68-69). "We assume," the Eleventh Circuit explained, "that, when Congress [enacted RLUIPA], it was aware of *Franklin*'s presumption in favor of making all appropriate remedies available to the prevailing party." *Smith*, 502 F.3d at 1271. Accordingly, because Congress "expressed no intent to the contrary," the court concluded that RLUIPA must be construed to authorize "monetary as well as

injunctive relief." *Id.* at 1270-71. Accordingly, in contradistinction to the Fifth Circuit's decision here, the Eleventh Circuit concluded that "the Eleventh Amendment will not shield the state (and [its] agents) from an official capacity action for damages under RLUIPA." *Id.* at 1276 n.12.

In contrast, the Fourth Circuit – like the Fifth Circuit in this case – has held that states do not waive their sovereign immunity to RLUIPA suits for monetary damages by accepting federal funds for their prisons. In *Madison v. Virginia*, the Fourth Circuit acknowledged that, "[w]ith respect to sovereign immunity . . . Congress unambiguously conditioned federal funds on a State's consent to suit." 474 F.3d at 122. The Fourth Circuit nevertheless concluded that the Eleventh Amendment bars claims for monetary relief because "that condition does not clearly and unequivocally indicate that the waiver extends to *money damages.*" *Id.* at 122-23 (emphasis added).

The Sixth Circuit has now joined suit. In *Cardinal v. Metrish*, that court rejected an inmate's contention that Michigan, by accepting federal prison funds, had waived its sovereign immunity from RLUIPA claims for money damages. The court acknowledged the contrary holding of the Eleventh Circuit but opted to follow the decisions of the Fourth and Fifth Circuits, holding that, "because RLUIPA's 'appropriate relief' language does not clearly and unequivocally indicate that the waiver extends to monetary damages, the Eleventh Amendment bars plaintiff's claim for monetary relief under RLUIPA." 2009 WL 1098759, at *5.

In sum, had petitioner's claim arisen a few states to the east, the outcome of his case would have been the opposite of the Fifth Circuit's decision here and he would have been permitted to pursue his claim for damages against the states and state officials in their official capacities. By the same token, state governments in Alabama, Georgia, and Florida face liability for damages that their counterparts to the west and north do not.

B. Courts Are Also Divided Over Whether RULIPA Constitutionally Authorizes Damages Suits Against State Officials In Their Individual Capacities.

1. Federal courts are likewise divided over whether RLUIPA authorizes, and the Spending Clause permits, suits for monetary damages against state officials in their individual capacities. *See, e.g.*, *Mayfield v. Tex. Dep't of Crim. Justice*, 529 F.3d 599, 605 n.8 (5th Cir. 2008) ("Whether RLUIPA contemplates damages actions against officers in their individual capacity has also created disagreements amongst courts."); *Madison*, 474 F.3d at 130 n.3 (acknowledging disagreement).

The Fifth Circuit in this case accepted that the text of RLUIPA naturally provides for damages claims against officials acting in their individual capacities, Pet. App. 15a-16a, because "appropriate relief" includes damages and "government" includes state officials and individuals acting under color of law. In designing those provisions, the court of appeals recognized, Congress copied the textual design of 42 U.S.C. § 1983, which provides for damage claims against state officials in their

individual capacities. *See* Pet. App. 17a.[5] Nonetheless, the Fifth Circuit refused to give effect to Congress's direction because, in its view, Congress lacks the constitutional authority under the Spending Clause to authorize such relief. Pet. App. 19a-20a. The Eleventh Circuit has reached the same conclusion. *See Smith*, 502 F.3d at 1273 (declining to construe RLUIPA to provide a personal-capacity cause of action for damages because "Congress cannot use its Spending Power to subject a non-recipient of federal funds, including a state official acting [in] his or her individual capacity, to private liability for monetary damages").

As the Fifth Circuit acknowledged, however, "[a] number of circuits appear to have assumed that an individual-capacity cause of action for damages exists because the courts have conducted, or on remand have required that the district court conduct, a qualified immunity analysis" or have applied restrictions on damages under the Prison Litigation Reform Act — analyses that would be "unnecessary" if a private right of action against defendants in their individual capacities for damages were not available. Pet. App. 15a-16a & n.23 (collecting cases); *see also Koger v. Bryan*, 523 F.3d 789 (7th Cir. 2008) (ordering entry of summary judgment against prison officials sued for damages in their individual capacities under RLUIPA); *Salahuddin v. Goord*, 467

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[5] Indeed, if anything Congress provided even more explicitly in RLUIPA that state officials were subject to suit, as Section 1983 merely refers to "any person" acting under color of law, without expressly referring to state officials.

F.3d 263 (2d Cir. 2006) (reversing grant of qualified immunity on RLUIPA claims); *Ahmed v. Furlong*, 435 F.3d 1196 (10th Cir. 2006) (remanding for qualified immunity analysis).[6] Thus, in practice the availability of RLUIPA damages against government defendants in their individual capacities varies widely from circuit to circuit.

The district courts are also deeply divided over the availability of individual-capacity damages under RLUIPA. *See Lovelace v. Lee*, 472 F.3d 174, 196 n.7 (4th Cir. 2006) (collecting cases). In *Agrawal v. Briley*, No. 02 C 6807, 2006 WL 3523750, at *13 (N.D. Ill. Dec. 6, 2006), for example, the court expressly held that "RLUIPA's remedial provision, creating a private cause of action for 'appropriate relief against a government,' authorizes individual-capacity claims for monetary damages." *See also, e.g., Orafan v. Goord*, No. 00CV2022, 2003 WL 21972735, at *9 (N.D.N.Y. Aug. 11, 2003) (holding that the "plain language of the statute" "[c]learly . . . contemplates individual liability" for damages); *Farnsworth v. Baxter*, No. 03-2950-B/V, 2007 WL 2793364 at *2 (W.D. Tenn. Sept. 26, 2007) (same). By contrast, other district courts have held that RLUIPA does not authorize suits for damages against officials in their individual capacities. *See, e.g., Cromer v. Braman*, No. 1:07-cv-009, 2009 WL 806919, at *8 (W.D. Mich.

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[6] *See also Walker v. Iowa Dep't of Corr.*, 298 Fed. Appx. 535 (8th Cir. 2008); *Figel v. Overton*, 263 Fed. Appx. 456 (6th Cir. 2008); *Haley v. Donovan*, 250 Fed. Appx. 202 (9th Cir. 2007); *Sefeldeen v. Alameida*, 238 Fed. Appx. 204 (9th Cir. 2007).

Mar. 25, 2009); *Morris-El v. Menei*, No. Civ.A. 00-200J, 2006 WL 1455592, at *3 (W.D. Pa. May 22, 2006).

2. This wide-ranging conflict reflects a broader confusion and division in the lower courts over the scope of Congress's power under the Spending Clause. The Fifth and Eleventh Circuits have adopted a narrow interpretation of Congress's Spending Clause authority, refusing to recognize the Spending Clause as a source of authority for the enactment of positive law reaching the conduct of third parties. Instead, those courts view the Spending Clause as limiting Congress to attaching conditions to a "contract" that may bind only the recipients of federal funding. *See* Pet. App. 17a ("Spending Clause legislation is not legislation in its operation; instead it operates like a contract."); *Smith*, 502 F.3d at 1274 (concluding that in light of "the limited reach of Congress' Spending Power," the Spending Clause "cannot be used to subject individual defendants, such as state employees, to individual liability in a private cause of action"); *see also United States v. Morgan*, 230 F.3d 1067, 1073 (8th Cir. 2000) (Bye, J., specially concurring) ("While Congress may disburse funds under this grant of power, Congress may not make laws.").

By contrast, other circuits have recognized Congress's affirmative legislative and regulatory power under the Spending Clause. In *Westside Mothers v. Haveman*, 289 F.3d 852, 857-60 (6th Cir. 2002), for example, the Sixth Circuit rejected the assertion that Medicaid Act rights could not be enforced under 42 U.S.C. § 1983 because, as Spending Clause legislation, the Act was merely a

"contract" and not "law" within the meaning of Section 1983. *Id.* at 858. The Sixth Circuit explained that, while "the term 'contract'" has been used "metaphorically, to illuminate certain aspects of the relationship formed between a state and the federal government," that does not mean that Spending Clause legislation "is *only* a contract." *Id.* (emphasis in original); *see also Antrican v. Odom*, 290 F.3d 178, 188 (4th Cir. 2002) (rejecting argument that claims under Medicaid Act fell outside of *Ex parte Young* exception to sovereign immunity because "the Medicaid Act, as Spending Clause legislation, is not 'supreme' law" but merely a contract); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040-41 (8th Cir. 2002) (rejecting same argument with respect to the Child Welfare Act).

Members of this Court, too, have acknowledged the disputed status of Spending Clause legislation. *See Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 683 (2003) (Thomas, J., concurring) (questioning whether private causes of action are permissible under the Medicaid Act because the "contract analogy raises serious questions as to whether third parties may sue to enforce Spending Clause legislation – through pre-emption or otherwise"); *Barnes v. Gorman*, 536 U.S. 181, 191 (2002) (Souter, J., concurring) (noting that "the contract-law analogy may fail to give such helpfully clear answers to other questions that may be raised

by actions for private recovery under Spending Clause legislation").[7]

The decision in this case gives concrete effect to that divergence in court views on a critically important and frequently recurring question of constitutional law. This Court's review is needed to bring stability and uniformity to the law and to the enforcement of federal statutes nationwide.

II. This Court's Review Is Warranted Both To Resolve The Circuit Conflict And To Review The Fifth Circuit's Partial Invalidation Of An Act Of Congress.

The Fifth Circuit's decision warrants review both because it exacerbates long-standing divisions among the federal courts and because it effectively declares unconstitutional a provision of an important federal civil rights statute.

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[7] That same uncertainty is reflected in academic literature. *Compare* David E. Engdahl, *The Spending Power*, 44 DUKE L.J. 1 (1994) (arguing that under the Spending Clause, Congress is limited to attaching conditions to federal funding and may not enact positive law), *and* Richard W. Garnett, *The New Federalism, the Spending Power, and Federal Criminal Law*, 89 CORNELL L. REV. 1 (2003) (arguing that Congress may not use its Spending Power to enact criminal laws that apply to non-recipients of federal funding), *with* Samuel R. Bagenstos, *Spending Clause Litigation in the Roberts Court*, 58 DUKE L.J. 345 (2008) (disputing assertion that Congress lacks authority to enact positive law under the Spending Clause)

A. Review Is Warranted To Resolve The Division Of Authority Over The Availability Of RLUIPA Damages Claims Against State Defendants.

1. The division of authority over the scope of RLUIPA's express cause of action is widespread and mature. The multiple conflicting decisions have given significant attention to the question presented, yet have reached flatly contradictory conclusions.

The conflict is also entrenched, capable of resolution only by this Court. The Eleventh Circuit has twice denied rehearing en banc in cases conflicting with the Fifth Circuit's decision, *Smith v. Allen*, 277 Fed. Appx. 979 (11th Cir. 2008) (order denying rehearing); *Benning v. Georgia*, 129 Fed. Appx. 603 (11th Cir. 2005) (same), and reaffirmed its position recently, *see Hathcock v. Cohen*, 287 Fed. Appx. 793, 798 n.6 (11th Cir. 2008). The Fifth Circuit, for its part, reached its decision fully cognizant of the contrary authority, and has already applied its decision in subsequent cases. *See Garner v. Morales*, No. 07-41015, 2009 WL 577755, at *2 (5th Cir. Mar. 6, 2009) (unpublished); *Smithback v. Crain*, No. 07-10274, 2009 WL 552227, at *2 (5th Cir. Mar. 5, 2009) (unpublished).

Thus delaying review will only exacerbate, not eliminate, the circuit conflict. The critical analytical debate has already been fully ventilated, with much of the division turning on debates over the meaning of *this Court*'s precedent. Courts in future cases will simply pick a side without further analysis, as the Sixth Circuit recently did. *See, e.g., Cardinal v. Metrish*, No. 08-1562, 2009 WL 1098759 at *2-*3 (6th

Cir. Apr. 24, 2009). Only this Court can bring the needed clarity to its precedent and provide stabilizing direction to the lower courts.

2. As this Court's review four years ago in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), reflected, constitutional and interpretive questions arising under RLUIPA are important both to states and institutionalized persons, and the issues recur with great frequency. As the extensive division in lower courts illustrates, the constitutionally permissible scope of RLUIPA's remedial provision regularly arises in prisoner litigation. That is not surprising because RLUIPA affects inmates throughout the country, many of whom, Congress found, face precisely the kind of "frivolous or arbitrary" barriers to religious exercise that RLUIPA was designed to address. *Cutter*, 544 U.S. at 716 (citation omitted).

Furthermore, the availability of monetary damages under RLUIPA is vital to remedying and deterring violations of the rights Congress intended the statute to provide, not simply to inmates, but also to religious groups facing discriminatory land use practices. *See* 42 U.S.C. § 2000cc.[8] Without a damages remedy, there is a high risk of under-enforcement: as this case illustrates, officials often may avoid liability altogether by complying with the statute once sued. *See* Pet. App. 12a-13a; *see also*,

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[8] *Cf., e.g., Moxley v. Town of Walkersville*, 601 F. Supp. 2d 648, 658-60 (D. Md. 2009) (relying on *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007), to find no personal-capacity liability for defendants in land use case).

e.g., *Cardinal*, 2009 WL 1098759, at *2 (finding inmate's claims arising from transfer to prison that did not provide kosher meals moot in light of policy modification and the unavailability of damages remedy); *Watts v. Dir. of Corr.*, No. CV F-03-5365, 2006 WL 2320524, at *7 (E.D. Cal. Aug. 10, 2006) (RLUIPA claim moot in light of a prison's policy modification allowing plaintiff to wear his hair long); *Boles v. Neet*, 402 F. Supp. 2d 1237, 1241 (D. Colo. 2005) (RLUIPA claim moot after prison modified its policy to allow inmates to wear religious garb during transport outside of prison); Derek L. Gaubatz, *RLUIPA at Four: Evaluating the Success and Constitutionality of RLUIPA's Prisoner Provisions*, 28 HARV. J.L. & PUB. POL'Y 501 (2005).

Moreover, even if the Fifth Circuit were right on the merits, review would still be warranted because states and prison officials across the country continue to be subject to suit for damages under RLUIPA, *see supra* at 12-19 & n.6, bearing a burden that – if the Fifth Circuit is correct – the Constitution forbids Congress to impose upon them.

3. This case presents an appropriate vehicle for resolving the question presented. The Fifth Circuit's opinion below squarely addressed the question. And its answer was outcome determinative with respect to petitioner's claims for damages and to petitioner's cell-restriction challenge in its entirety. *See* Pet. App. 12a, 24a.

B. Review Is Also Warranted Because The Court of Appeals Partially Invalidated An Act Of Congress.

This Court's prompt review is particularly warranted because the Fifth Circuit's decision had the effect of declaring unconstitutional RLUIPA's widely acknowledged textual authorization of compensatory damages.

The court of appeals accepted that RLUIPA's express cause of action reaches states and state officials in their official and individual capacities, Pet. App. 17a, 20a, as has the Eleventh Circuit, *Smith v. Allen*, 502 F.3d 1255, 1270-71 (11th Cir. 2007). Moreover, the Fifth Circuit accepted, as this Court and the Eleventh Circuit have held, that the phrase "appropriate relief" includes damages remedies. *See* Pet. App. 16a-17a; *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 66-68 (1992); *Smith*, 502 F.3d at 1269-71. Nonetheless, both the Fifth and Eleventh Circuits have held that giving the statute its plain meaning would violate the Constitution. *See* Pet. App. 20a; *Smith*, 502 F.3d at 1272-75. As a result, for purposes of this Court's certiorari jurisdiction, the Fifth Circuit's decision in this case, like the Eleventh Circuit's before it, reflects the constitutional nullification of an important provision of an Act of Congress.[9]

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[9] To be sure, the court cast its decision in statutory construction terms, purporting to construe "appropriate relief" narrowly "to avoid the constitutional concerns that an alternative reading would entail." Pet. App. 20a. But while constitutional avoidance principles allow courts to construe a

This Court has consistently granted certiorari to review decisions declaring federal statutes unconstitutional, even when those statutes have far less frequent application than RLUIPA. *See, e.g.*, *United States v. Stevens*, __ S. Ct. __, 2009 WL 1034613 (Apr. 20, 2009); *United States v. Morrison*, 529 U.S. 598 (2000); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569 (1998); *Clinton v. City of New York*, 524 U.S. 417 (1998); *see also* STERN & GRESSMAN, SUPREME COURT PRACTICE 264 (9th ed. 2007) ("Where the decision below holds a federal statute unconstitutional . . . certiorari is usually granted because of the obvious importance of the case."). It should do so again here.

III. Review Is Warranted Because The Court Of Appeals' Decision Conflicts With The Decisions Of This Court.

Review is also warranted because the court of appeals' decision is wrong, based on a misunderstanding of this Court's decisions and the scope of Congress's constitutional powers.

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statute to avoid constitutional difficulties, *see Solid Waste Agency v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001), those principles do not permit courts to go so far as to give a statute an untenable construction simply to avoid a constitutional holding. *See Salinas v. United States*, 522 U.S. 52, 60 (1997) (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996)); *Am. Communications Ass'n v. Douds*, 339 U.S. 382, 407 (1950). Nor should this Court's traditional review of the invalidation of an Act of Congress be avoided by recasting in statutory construction terms what is, at its heart, a constitutional holding.

A. The Eleventh Amendment Does Not Bar RLUIPA Suits For Damages Against States And State Officials In Their Official Capacities.

The Fifth Circuit rightly recognized that Congress clearly conditioned receipt of federal prison funding on a state's waiver of sovereign immunity to RLUIPA suits for "appropriate relief." Pet. App. 14a-15a. *See also Madison v. Virginia*, 474 F.3d 118, 131 (4th Cir. 2006) ("RLUIPA unambiguously conditions federal prison funds on a State's consent to suit."). The court was likewise correct in concluding that states were on notice that "appropriate relief" includes declaratory and injunctive relief. *Id.* The court fundamentally departed from this Court's precedent, however, in deciding that states were not on notice that "appropriate relief" included money damages.

1. In *Barnes v. Gorman*, 536 U.S. 181 (2002), this Court recognized that states have ample notice that the receipt of federal funds binds them to comply with the substantive conditions attached to the funding or face damages liability. *Barnes* addressed the remedies available for violations of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 to 12165, which statutorily authorizes recovery of the same remedies provided under Section 505 the Rehabilitation Act of 1973, 29 U.S.C. § 794a. *See* ADA, 42 U.S.C. § 12133. The Rehabilitation Act, in turn, incorporates the remedies available under a Spending Clause statute, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7. *See* Rehabilitation Act, 29 U.S.C. § 794a(a)(2). Title VI does not include an express cause of action (much

less any enumerated list of remedies). However, the Court had previously found an implied private right of action under Title VI. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979). And in *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992), the Court had

> recognized "the traditional presumption in favor of any appropriate relief for violation of a federal right," and held that since this presumption applies to suits under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, monetary damages were available.

Barnes, 536 U.S. at 185 (quoting *Franklin*, 503 U.S. at 73).

The Court in *Barnes* concluded that the same was true of Title VI, *id.*, then turned to the central question in that case and this one: what constitutes the "appropriate relief" to which states are subject, explaining that "a remedy is 'appropriate relief,' only if the funding recipient is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature." 536 U.S. at 187 (emphasis in original). Critically, the Court then held that

> A funding recipient is generally on notice that it is subject *not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract.*

Id. (emphasis added, citations omitted). This includes, the Court specifically noted, "compensatory damages." *Id.*

The Fifth Circuit's decision is irreconcilable with *Barnes*, which establishes that Texas was on notice that its acceptance of federal prison funds subjected it "to those remedies traditionally available in suits for breach of contract," including "compensatory damages." *Barnes*, 536 U.S. at 187. Thus, even if RLUIPA, like Title VI and Title IX, said nothing about available remedies, Texas would be on notice that accepting funds would subject it to suit for damages under RLUIPA. But Texas had even greater forewarning here because Congress expressly provided in the text of RLUIPA that "appropriate relief" was available, employing a phrase that has a settled meaning in this Court's Spending Clause decisions that has included compensatory damages since the Court's decision almost two decades ago in *Franklin*.

2. The Fourth, Fifth, and Sixth Circuits thus have erred in construing *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981), and *Lane v. Pena*, 518 U.S. 187 (1996), as requiring Congress to spell out damages remedies in explicit terms. *Pennhurst* requires that the consequences of accepting federal funding must be clear, 451 U.S. at 17, but *Barnes* and *Franklin* both held that the availability of compensatory damages *is* clear.

Nor is anything in *Lane* to the contrary. There, this Court considered two provisions of the Rehabilitation Act. The first, Section 504(a), prohibits disability discrimination in any federally funded program or under "any program or activity conducted by any Executive agency." 29 U.S.C. § 794(a). However, a separate provision, Section 505(a)(2), establishes the available remedies for a

violation of the latter requirement, providing that the remedies available under Title VI (which, as noted above, include money damages), "shall be available to any person aggrieved by . . . any . . . *Federal provider of [financial] assistance*." 29 U.S.C. § 794a(a)(2) (emphasis added). This Court held that, although the federal defendant before it (the Merchant Marine Academy) was subject to Section 504(a) as an "Executive agency," it was not subject to suit for damages because it did not fall within the narrower term "Federal provider" in Section 505(a)(2)'s remedial provision waiving the federal government's sovereign immunity. 518 U.S. at 192-93.

Lane is thus inapposite here. Texas – a "government" by common understanding and under RLUIPA's express definition – falls squarely within the terms of RLUIPA's remedial provision. And in *Lane*, the Court quite plainly proceeded on the understanding that if the Merchant Marine Academy counted as a "Federal provider" under the Rehabilitation Act (as Texas counts as a "government" under RLUIPA), then Congress would have waived its sovereign immunity to suits for damages by subjecting it to the "appropriate relief" available for suits under Title VI. *See* 518 U.S. at 194-95.

To be sure, in *Lane*, this Court recognized that the otherwise settled meaning of "appropriate relief" could be altered by explicit contrary indications in the text of a statute that expressly addresses available remedies. 518 U.S. at 196-97. But there are no such counterindications in RLUIPA. To the contrary, everything in the statute confirms that

Congress intended the usual rule, including the presumption in favor of damages liability, to apply.

First, in authorizing "appropriate relief," Congress used language with a settled meaning in the Spending Clause context that gave states ample notice of the consequences of their actions. The Fifth Circuit thus was obliged to hew to that established meaning. *See Neder v. United States*, 527 U.S. 1, 21 (1999) (where terms have "accumulated settled meaning," a "court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms") (internal quotation marks omitted).

Second, where Congress intended RLUIPA to depart from that traditional understanding, it did so expressly. In Section 2000cc-2(f), Congress limited the relief available when the federal government brings suit, allowing the United States to sue only "for injunctive or declaratory relief to enforce compliance with this chapter." Had Congress intended the same scope for private suits, it presumably would have used the same language.

Finally, to the extent a state accepted funding in the hope that courts might subsequently give the statute an especially narrow construction, that expectation would have been entirely unreasonable, for Congress provided that the statute "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." 42 U.S.C. § 2000cc-3(g).[10]

B. Congress Did Not Exceed Its Constitutional Authority By Imposing Personal Liability On State Officials Who Violate RLUIPA.

The Fifth Circuit also erred in holding that Congress lacks the constitutional power to impose personal liability on state officials.

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[10] RLUIPA also falls within the scope of 42 U.S.C. § 2000d-7(a), which provides that:

> (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of . . . the provisions of any [] Federal statute prohibiting discrimination by recipients of Federal financial assistance.
>
> (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation.

As a statute forbidding religious discrimination by recipients of federal funds, RLUIPA qualifies as a statute triggering a waiver of state sovereign immunity under this provision. *See Sisney v. Reisch*, 533 F. Supp. 2d 952, 971-72 (D.S.D. 2008), *appeal docketed* Apr. 22, 2008. Although petitioner did not cite to this provision in the lower courts, the Fourth Circuit decision upon which the court of appeals relied discussed the applicability of Section 2000d-7 in detail. *See Madison v. Virginia*, 474 F.3d 118, 132-33 (4th Cir. 2006); Pet. App. 21a-24a.

1. Congress has ample authority under the Spending Clause, supplemented by the Necessary and Proper Clause, to make state officials liable for conduct that interferes with the implementation of valid conditions on federal financing and with the effective implementation of a federal spending program.

Although this Court has sometimes analogized Spending Clause legislation to a contract, the Court has also made clear that the analogy is only partial. *See, e.g.*, *Barnes*, 536 U.S. at 186 (noting that the Court has been "careful not to imply that *all* contract-law rules apply to Spending Clause legislation" (internal citations omitted)). Indeed, this Court has repeatedly recognized that Spending Clause legislation is not simply a contract provision, but rather has the force and status of federal law. *See, e.g.*, *Bennett v. Ky. Dep't of Ed.*, 470 U.S. 656, 669 (1985) ("Unlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy."); *Blum v. Bacon*, 457 U.S. 132, 145-46 (1982) (invalidating under the Supremacy Clause certain provisions of state law that conflicted with federal regulations promulgated under a federal spending program); *Carleson v. Remillard*, 406 U.S. 598, 600, 604 (1972) (same); *Townsend v. Swank,* 404 U.S. 282, 285 (1971) (same).

In enacting positive law under its Spending Power, Congress is not limited to appropriating money, or even to attaching conditions on federal funding. Instead, it may enact any law that is "necessary and proper for carrying into Execution" its

Spending Clause authority. U.S. CONST. art. I, § 8, cl. 18; *see, e.g.*, *Sabri v. United States*, 541 U.S. 600, 605 (2004); *New York v. United States*, 505 U.S. 144, 158-59 (1992). Since *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), this Court has recognized that the Necessary and Proper Clause confers on Congress broad power to ensure the efficacy of the exercise of its enumerated powers: "If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect." *Id.*

The Necessary and Proper power thus provides Congress authority to remove impediments to the proper and effective exercise of its enumerated powers. Congress's power to regulate commerce, for example, is not limited to regulating only individuals engaged directly in commerce, but also those whose actions might impede commerce or Congress's regulatory regime. *See, e.g.*, *United States v. Coombs*, 37 U.S. 72, 78 (1838) (noting that "[a]ny offence which thus interferes with, obstructs, or prevents such commerce and navigation . . . may be punished by congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers"). Likewise, this Court has held that Congress's power "'to establish post-offices and post-roads'" encompasses the power to regulate individual conduct that interferes with postal services, including the power to "'punish those who steal letters.'" *McCulloch*, 17 U.S. at 417.

So, too, Congress has authority under the Spending Clause not only to spend money on

programs that advance the public welfare, but also to regulate third parties who may impede the effective operation of those programs. Thus, in *Sabri v. United States*, this Court upheld against a Spending Clause challenge a federal statute, 18 U.S.C. § 666(a)(2), that criminalizes bribery of state and local officials of agencies that accept federal funding. 541 U.S. at 610. Although the state officials in *Sabri,* like the individual defendants here, were not "parties to the contract" between the United States and the governmental funding recipient, this Court concluded, without a single dissent, that Congress had the authority to directly regulate individual officials' conduct and to impose personal – indeed, criminal – liability upon those officials who violate those federal limitations. "Congress," the Court emphasized, "does not have to sit by and accept the risk of operations thwarted by local and state improbity." 541 U.S. at 605. Because subjecting state officials to criminal liability for bribery connected to a federal funding program was a rational means to "protect spending objects," this Court rejected Sabri's constitutional challenge. *Id.* at 608.

The same analysis should apply here. Congress acted within its Spending Clause powers when it subjected to personal liability state officials whose personal conduct thwarts Congress's enforcement of civil rights and defeats express conditions and terms imposed on the operation of federally funded prisons. The personal liability provisions of the statute rationally further not only Congress's general interest in ensuring compliance with valid funding requirements, but also Congress's more specific

interest in ensuring the efficacy of the federal funds spent in part to facilitate the rehabilitation of state prisoners. *See, e.g.*, *Cutter v. Wilkinson*, 423 F.3d 579, 587 (6th Cir.) (noting that a "prison's compliance with RLUIPA still satisfies one of the statute's main purposes, which is to allow inmates greater freedom of religion in order to promote their rehabilitation"), *rev'd on other grounds*, 544 U.S. 709 (2005).

2. The Fifth Circuit further erred in assuming that Section 2000cc-2(a) of RLUIPA was enacted solely under Congress's Spending Clause authority. *See* H. REP. NO. 106-219, at 27 (1999) (invoking powers under the Spending Clause, Commerce Clause, and Fourteenth Amendment). In particular, Congress had ample authority to apply RLUIPA to state actors pursuant to its power to enforce the requirements of the Fourteenth Amendment. *See, e.g.*, Frank T. Santoro, *Section Five of the Fourteenth Amendment and the Religious Land Use and Institutionalized Persons Act*, 24 Whittier L. Rev. 493 (2002).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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