No. 22-30686

United States Court of Appeals for the Fifth Circuit

DAMON LANDOR,
Plaintiff-Appellant,
v.
LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:21-00733
Hon. Shelly D. Dick

MOTION OF PROFESSOR DOUGLAS LAYCOCK FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT

JOSHUA C. MCDANIEL
Counsel of Record
KELSEY M. FLORES
PARKER W. KNIGHT III
MATTHEW E. MYATT
HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC
6 Everett Street, Suite 5110
Cambridge, MA 02138
(617) 496-4383
jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

Under Federal Rule of Appellate Procedure 29(a)(2), Professor Douglas Laycock moves for leave to file a brief as amicus curiae in support of Plaintiff-Appellant and reversal of the district court's opinion. Professor Laycock is the Robert E. Scott Distinguished Professor of Law and Professor of Religious Studies at the University of Virginia and the Alice McKean Young Regents Chair in Law Emeritus at the University of Texas at Austin.

Although Appellant consented to proposed amicus's request to file an amicus brief, Appellees did not consent, making this motion necessary. *See* Fed. R. App. P. 29(a)(2). Professor Laycock's proposed amicus brief accompanies this motion.

I. Professor Laycock is a leading expert on remedies and religious freedom law.

Douglas Laycock is among the country's leading experts on both the law of remedies and the law of religious freedom.

In the field of remedies, he is co-reporter for the *Restatement (Third) of Torts: Remedies*. He has also written numerous publications and is the author (and now co-author) of a leading casebook. *See* Douglas Laycock & Richard L. Hasen, *Modern American Remedies: Cases and Materials* (Aspen 5th ed. 2019).

In the field of religious freedom, he has written extensively, and his body of scholarship and writings on religious liberty is now published in a five-volume collection. Douglas Laycock, *Religious Liberty* (Wm. B. Eerdmans Publishing 2010–18) (5 volumes). He has argued five of the most important religious freedom cases before the Supreme Court. *See Holt v. Hobbs*, 574 U.S. 352 (2015); *Town of Greece v. Galloway*, 572 U.S. 565 (2014); *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171 (2012); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). One of those, *Holt*, was the Supreme Court's first merits decision interpreting RLUIPA, the law at issue in this appeal.

II. Professor Laycock's proposed amicus brief would aid the Court's consideration of this case.

As a leading remedies expert and one of RLUIPA's chief architects, Professor Laycock can contribute in distinct ways to the Court's determination of the scope of RLUIPA's remedial powers. As his proposed amicus brief explains, RLUIPA's text, context, and legislative history all confirm that Congress intended to impose individual liability on government officials for religious freedom, just as Congress did when employing the same language in RFRA. Professor Laycock's Congressional

testimony before RLUIPA's enactment provides unique insight into the statute's text and legislative history.

Professor Laycock's proposed amicus brief would also provide practical perspectives that are "relevant to the disposition of the case" by flagging the real-world implications to inmates if RLUIPA were construed to deny damages. Fed. R. App. P. 29(a)(3)(B). Since prisoners can rarely vindicate violations of their religious freedom rights until after the violations occur, injunctive relief for RLUIPA violations is often unavailable. If individual-capacity damages were to be excluded from RLUIPA, the statute's text and purpose would be frustrated.

Professor Laycock's perspective is especially warranted given the important nature of the issues raised by this case. Plaintiff-Appellant asks this Court to recognize the abrogation of a circuit precedent that incorrectly denies Congress's authority to impose liability on individual officers and interprets RLUIPA in a manner at odds with the statute's text and the Supreme Court's recent, intervening decision in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020). In a case with statutory interpretation at its core, Professor Laycock's direct experience in the passage and implementation of RLUIPA will aid the Court. *See Lefebure v. D'Aquilla*, 15

F.4th 670, 676 (5th Cir. 2021) ("[W]e would be 'well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted.'" (citation omitted)).

For these reasons, Professor Laycock requests that the Court grant this motion for leave to file a brief as amicus curiae in support of Plaintiff-Appellant, and that the Court accept for filing the brief submitted with this motion.

Respectfully submitted,

/s/ *Joshua C. McDaniel*
JOSHUA C. MCDANIEL
Counsel of Record
KELSEY M. FLORES
PARKER W. KNIGHT III
MATTHEW E. MYATT
HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC
6 Everett Street, Suite 5110
Cambridge, MA 02138
(617) 496-4383
jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This motion complies with the length limit of Fed. R. App. P. 27(d)(2)(A) because it has 662 words.

This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(2)(A) and 32(a)(5)(A) because it has been prepared in a proportionally spaced, 14-point Century Schoolbook font.

Dated: November 21, 2022

/s/ *Joshua C. McDaniel*
Joshua C. McDaniel

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2022, I electronically filed this document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 21, 2022

/s/ *Joshua C. McDaniel*
Joshua C. McDaniel

No. 22-30686

United States Court of Appeals for the Fifth Circuit

DAMON LANDOR,
Plaintiff-Appellant,
v.
LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:21-00733
Hon. Shelly D. Dick

BRIEF OF PROFESSOR DOUGLAS LAYCOCK AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT

JOSHUA C. MCDANIEL
Counsel of Record
KELSEY M. FLORES
PARKER W. KNIGHT III
MATTHEW E. MYATT
HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC
6 Everett Street, Suite 5110
Cambridge, MA 02138
(617) 496-4383
jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

CERTIFICATE OF INTERESTED PERSONS

No. 22-30686, *Damon Landor v. Louisiana Department of Corrections and Public Safety*:

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiff-Appellant:

Damon Landor

Counsel for Plaintiff-Appellant:

Zachary D. Tripp, Joshua Halpern, Shai Berman, and Sara Weiss
Weil, Gotshal & Manges LLP

Casey Denson
Casey Denson Law LLP

Defendants-Appellees:

Louisiana Department of Public Safety and Corrections
James M. LeBlanc
Marcus Myers
Raymond Laborde Correctional Center

Counsel for Defendants-Appellees:

Phyllis Esther Glazer and LaKeisha A. Ford

Louisiana Department of Justice, Office of Attorney General

Amicus Curiae:

Douglas Laycock

Counsel for Amicus Curiae:

Joshua C. McDaniel, Kelsey M. Flores, Parker W. Knight III, Matthew E. Myatt, Nate Bartholomew, John Heo, Nicolas Wilson, and Mazzen Shalaby
Harvard Law School Religious Freedom Clinic

/s/ *Joshua C. McDaniel*
JOSHUA C. MCDANIEL
Counsel of Record
KELSEY M. FLORES
PARKER W. KNIGHT III
MATTHEW E. MYATT
HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC
6 Everett Street, Suite 5110
Cambridge, MA 02138
(617) 496-4383
jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In passing RLUIPA, Congress sought to ensure "appropriate relief" for state and local government officials' religious freedom violations in the land use and prison contexts. The question before the Court is whether "appropriate relief" can include damages. The answer is the same as it is under RFRA: In both statutes, "appropriate relief" means the remedies available under 42 U.S.C. § 1983, including damages against officials in their individual capacity. *See Tanzin v. Tanvir*, 141 S. Ct. 486, 489 (2020).

In *Tanzin*, the Supreme Court considered this question under RFRA. Looking at the statute's text from every angle, the Court held that RFRA provides a clear answer. The term "appropriate relief" is broad and open-ended, and Congress chose to allow relief not only against the Government but against individual officials and other persons acting under color of state law—a choice that would serve no purpose if the statute allowed only equitable relief. In doing so, Congress sought to track § 1983, under which "damages claims have always been available" for religious freedom violations. *Id.* at 492.

Every point the Supreme Court highlighted in favor of reading "appropriate relief" to permit damages against individual officers under RFRA applies with equal or greater force to RLUIPA. The identical language in each statute should carry the same meaning.

Without the benefit of *Tanzin*'s guidance, this Court construed RLUIPA narrowly to refuse any damage remedy—despite recognizing that "[t]he plain language of RLUIPA . . . seems to contemplate such relief." *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 327 (5th Cir. 2009), *aff'd on other grounds sub nom. Sossamon v. Texas*, 563 U.S. 277 (2011) (*Sossamon II*). This Court overrode the statutory text to avoid concerns that allowing individual-capacity damages claims under the Act might exceed Congress's powers under the Spending Clause. *Id.* at 328–29. But those concerns were misplaced. By directing courts to construe RLUIPA to provide the maximum relief permitted by the Constitution, Congress precluded using constitutional avoidance to choose a less protective reading of RLUIPA. And the Supreme Court has made clear that Congress may use its broad Spending Clause powers to impose liability on individuals. *See, e.g.*, *Sabri v. United States*, 541 U.S. 600, 608 (2004). More to the point, the Supreme Court's intervening

decision in *Tanzin* makes clear that "appropriate relief" can and does include damages against government officials.

Ultimately, this case isn't just about whether claimants like Mr. Landor can recover damages. It's about whether they can receive any relief at all. As with its sister statute, RLUIPA's text, purpose, and history confirm that Congress intended to provide them a remedy.

INTEREST OF AMICUS CURIAE[1]

Professor Douglas Laycock is a leading expert on both remedies and religious liberty. He has authored influential volumes and dozens of law review articles in those fields. *See, e.g.*, Douglas Laycock, *Religious Liberty* (Wm. B. Eerdmans Publishing 2010–18) (5 volumes); Douglas Laycock & Richard L. Hasen, *Modern American Remedies: Cases and Materials* (Aspen 5th ed. 2019). He has appeared before the Supreme Court to argue some of the most important religious freedom cases of the last few decades, has testified before Congress on proposed religious liberty legislation, and helped lead the effort to enact RLUIPA into law.

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting this brief; and no person other than amicus curiae or his counsel contributed money intended to fund preparing or submitting this brief.

He files this brief in his individual capacity as a scholar; neither the University of Virginia nor the University of Texas, the two schools with which he is affiliated, takes any position on the issues in this case.

ARGUMENT

I. By providing for all "appropriate relief" against officials who violate prisoners' religious rights, RLUIPA ensures that violations can be remedied with damages.

A. RLUIPA's text provides a damages remedy.

Congress passed RLUIPA to expand prisoners' access to remedies for state actions burdening their free exercise of religion. In appropriate cases, those remedies include personal-capacity damages. Indeed, in many cases, damages would be the only relief available.

To begin with, the Court should start with the presumption that RLUIPA's remedial language carries the same meaning it does in RFRA. When, as here, "Congress uses the same language in two statutes having similar purposes," courts should "presume that Congress intended that text to have the same meaning in both statutes." *Vetcher v. Barr*, 953 F.3d 361, 369 (5th Cir. 2020) (quoting *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005)).

Just like RFRA, RLUIPA allows plaintiffs to seek all "appropriate relief" against the "government," including any state "official." 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A). That language is "clear." *Tanzin*, 141 S. Ct. at 490. Rather than limit claims against officials to their official capacities, Congress "supplanted the ordinary meaning of 'government'" by defining it to include officials *as persons*. *Id.* And it did so twice—reaching not only any state or local "official" but "any *other* person acting under color of State law." § 2000cc-5(4)(A)(ii)–(iii) (emphasis added).

Were "appropriate relief" not to include damages against individual officials, there would be little point in Congress deviating from the ordinary meaning of "government." That reading of "appropriate relief" would leave plaintiffs with only injunctive or declaratory relief—relief they could have obtained against officials in their *official* capacity, effectively binding the government itself, requiring compliance in the future but providing no compensation for past violations. Congress would have had no need to go out of its way to define "government" to include both official and nonofficial state actors. Those provisions make sense only if RLUIPA permits individual-capacity damages claims.

The term "appropriate relief" also confirms this reading. As the Supreme Court has explained, that term "is 'open-ended' on its face." *Tanzin*, 141 S. Ct. at 491. While the word "appropriate" is not a sufficiently clear statement to overcome the traditional bar against imposing damages on the government as sovereign, *see Sossamon II*, 563 U.S. at 285–86, the legal tradition here is entirely different. Imposing damages against individual actors is not only suitable ("appropriate"), but in line with decades of civil rights law. *See Tanzin*, 141 S. Ct. at 491.

This interpretation of "appropriate relief" follows the presumption that all typical remedies are available unless Congress specifies something else. *Franklin v. Gwinnett Cnty. Pub. Schools*, 503 U.S. 60, 66 (1992) (courts should "presume the availability of all appropriate remedies unless Congress has expressly indicated otherwise"). Nothing in RLUIPA's text suggests Congress wished to exclude damages.

To the contrary, RLUIPA's legislative history confirms the opposite. In the House Report for RLUIPA's unenacted predecessor, which had the same "appropriate relief" language, Congress explained that it sought to "track" RFRA by providing for damages. H.R. Rep. No. 106-

219, at 29 (1999) ("This section provides remedies for violations. Sections 4(a) and (b) track RFRA, creating a private cause of action for damages, injunction, and declaratory judgment . . . ."). Because RLUIPA's remedies provision was "based on the corresponding provision of RFRA," it too provides for damages against government officials. *Religious Liberty Protection Act of 1999: Hearing on H.R. 1691 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 106th Cong. 111 (1999) (statement of Douglas Laycock, Then-Professor, University of Texas Law School).

What's more, courts have also harmonized the two statutes in the other direction when addressing *official capacity* damages claims. Just as *Sossamon II* held that "appropriate relief" in RLUIPA doesn't override a state's sovereign immunity from damages claims, 563 U.S. at 285–88, courts have read the same language in RFRA to preserve the federal government's sovereign immunity from such claims. *See, e.g.*, *Davila v. Gladden*, 777 F.3d 1198, 1210 (11th Cir. 2015) (holding that *Sossamon II*'s reading of "appropriate relief" in RLUIPA "applies equally" in RFRA cases); *Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*, 676 F.3d 829, 841 (9th Cir. 2012) (same). This further

confirms that "appropriate relief" in RLUIPA and "appropriate relief" in RFRA mean the same thing.

By contrast, reading the two statutes' identical language in disparate ways would lead to arbitrary results. A prisoner's ability to recover damages for religious freedom violations would come down to whether the prisoner happens to be held at a federal or a state or local facility. Nothing in RLUIPA's text or surrounding history suggests Congress would have wanted that result.

B. Damages are "appropriate relief" under RLUIPA.

In determining what "appropriate relief" includes, *Tanzin* looked not only to RFRA's text but to the broader "context of suits against Government officials." *Tanzin*, 141 S. Ct. at 491. Because "RFRA reinstated pre-*Smith* protections and rights," the Court explained, "parties suing under RFRA must have at least the same avenues for relief against officials that they would have had before *Smith*." *Id.* at 492 (discussing *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872 (1990)).

Looking to that context, *Tanzin* noted that damages against government officials had "long been awarded as appropriate relief." *Id.* at 491. From the early Republic, damages were awarded against government

officials at common law. *Id.* And even when statutes later displaced the common law, Congress carried the damages remedy forward. *Id.* at 491–92.

Of particular importance here, damages were "also commonly available against state and local government officials." *Id.* at 491. Most notably, § 1983 has long allowed plaintiffs to recover damages for religious freedom violations. *Id.* (citing cases allowing plaintiffs to seek damages against state officials under § 1983).

Like RFRA, RLUIPA also reinstated (and strengthened) pre-*Smith* protections and rights in the zoning and prison contexts. Thus, the same logic that applied in *Tanzin* applies here: Prisoners suing under RLUIPA should have at least the same avenues for relief against prison officials that they would have had before *Smith*.

Those avenues were broad. Under § 1983, prisoners can seek remedies available to all civil litigants, including damages. *See, e.g.*, *Sockwell v. Phelps*, 20 F.3d 187, 192–93 (5th Cir. 1994). And they have long recovered damages against prison officials for violating their free exercise rights. *See Bryant v. McGinnis*, 463 F. Supp. 373, 384–88 (W.D.N.Y. 1978) (awarding damages against state officials for refusing to

recognize Muslim inmates' religion and preventing them from accessing their minister, wearing religious articles, or observing a religious diet); *see also, e.g.*, *Vanscoy v. Hicks*, 691 F. Supp. 1336, 1337 (M.D. Ala. 1988) (awarding damages against prison official who denied inmate access to prison chapel); *Campbell v. Thornton*, 644 F. Supp. 103, 104–05 (W.D. Mo. 1986) (awarding damages against leaders of a state-sponsored half-way house who forced religious views on residents); *Stovall v. Bennett*, 471 F. Supp. 1286, 1289–92 (M.D. Ala. 1979) (awarding damages against prison official who threated to discipline prisoners seeking regular worship services); *Masjid Muhammad-D.C.C. v. Keve*, 479 F. Supp. 1311, 1327–28 (D. Del. 1979) (awarding damages against officials who refused to deliver mail to Muslim inmates); *Young v. Lane*, No. 85 C 20019, 1989 WL 57810, at *3, *7 (N.D. Ill. Feb. 21, 1989) (awarding damages against prison officials who prohibited Jewish prisoners from wearing religious articles).

This context confirms that damages were commonly awarded against prison officials long before Congress passed RLUIPA. Damages are thus a perfectly "appropriate" remedy under RLUIPA, just as they are under RFRA. *See Tanzin*, 141 S. Ct. at 492.

C. *Tanzin* abrogated this Court's decision in *Sossamon*.

Before *Tanzin* clarified the meaning of "appropriate relief" in RFRA (and by extension, RLUIPA), this Court interpreted the same term to exclude damages of any kind. *Sossamon*, 560 F.3d at 329. Under *Tanzin*, however, that conclusion is now untenable. *Sossamon* should be revisited and overruled for at least three reasons.

First, *Sossamon* erred from the start by applying constitutional avoidance to RLUIPA. *See id.* Although that interpretive tool normally permits courts to choose between permissible readings of a statute "to avoid the constitutional concerns that an alternative reading would entail," *id.*, RLUIPA eliminated that choice. Instead, Congress flipped the presumption, directing courts to choose the reading that provides relief "to the maximum extent permitted by the . . . Constitution." 42 U.S.C. § 2000cc-3(g); *see also* H.R. Rep. No. 106-219, at 29 (RLUIPA's broad-construction provision intended to apply to "all [of RLUIPA's] other provisions"). *Sossamon* did not address RLUIPA' broad-construction provision, and its avoidance analysis cannot be squared with it. *See De La Paz v. Coy*, 786 F.3d 367, 373 (5th Cir. 2015) (noting the "black letter law" that "a question not raised by counsel or discussed in the opinion of

the court has not been decided merely because it existed in the record and might have been raised and considered" (quoting *United States v. Mitchell*, 271 U.S. 9, 14 (1926) (internal quotation marks omitted))).

Second, *Tanzin* makes clear that *Sossamon*'s interpretation of "appropriate relief" was mistaken. Indeed, because *Sossamon* relied on the constitutional avoidance canon, it sidestepped a proper analysis of the various textual and contextual cues that "provide[] a clear answer" here. *Tanzin*, 141 S. Ct. at 490. Despite finding that RLUIPA's "plain" and "expansive" language "appears to create a right against state actors in their individual capacities," *Sossamon*, 560 F.3d at 327–28, the Court then contradicted itself by reading the Act to provide no such relief. *Id.* at 328–29. Not only that, this Court adopted a reading that would render some of the Act's provisions useless and would deprive many claimants of effective relief. *Cf. Tanzin*, 141 S. Ct. at 492 (declining to interpret RFRA's "appropriate relief" language to exclude "the *only* form of relief that can remedy some RFRA violations").

Third, *Sossamon*'s belief that reading RLUIPA to allow individual-capacity damages might raise Spending Clause concerns was wrong.[2] That Clause (bolstered by the Necessary and Proper Clause) gives Congress "broad discretion to . . . spend for the 'general Welfare'" and "impose limits on the use of such funds to ensure they are used in the manner Congress intends." *Agency for Int'l Dev. V. All. For Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013); *see also New York v. United States*, 505 U.S. 144, 158 (1992) (noting that the Court has given the Spending Clause a "broad construction").

Looking to an out-of-circuit decision, *Sossamon* reasoned that "only the grant recipient—the state—may be liable for . . . violation" of laws passed under the Spending Clause. *Sossamon*, 560 F.3d at 328. But by the time *Sossamon* was decided, the Supreme Court had made clear that this reading of the Spending Clause was wrong. As Plaintiff's Opening Brief explains (at 33–41), the Spending Clause can "bring federal power to bear directly on individuals" who don't receive federal

[2] Because *Sossamon* (incorrectly) relied on the constitutional avoidance canon, it did not in fact decide the Spending Clause question. 560 F.3d at 329. It therefore isn't binding on that question.

funds. *Sabri v. United States*, 541 U.S. 600, 608 (2004); *see also* Pl. Opening Br. in this case at 38–40 (citing additional cases).

For support, *Sossamon* also looked to decisions limiting Title IX liability to the recipients of federal funds. But it was Title IX itself that led to that conclusion. *See Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 654 (5th Cir. 1997) ("Title IX does not instruct courts to impose liability based on anything other than the acts of the recipients of federal funds."). Unlike RLUIPA, Title IX does not give plaintiffs an express right to sue, let alone the right to sue individuals acting under color or law or to seek all "appropriate relief." *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 683 (1979). To the contrary, Title IX's "text," "structure and legislative history" make clear Congress wasn't creating "a panacea for all types of sex discrimination, but rather a limited *initial* attempt to end discrimination by educational institutions." *Rosa H.*, 106 F.3d at 654–57 (emphasis added). Here, by contrast, RLUIPA's text, purpose, and legislative history all point toward holding prison officials personally accountable for free exercise violations.

Finally, *Sossamon* worried that imposing individual-capacity damages on state and local prison officials would undermine federalism

interests. 560 F.3d at 329. But those interests have posed no obstacle to other valid Spending Clause laws that similarly imposed liability on individuals rather than states. *See, e.g.*, *Sabri*, 541 U.S. at 608. And in any event, it would be strange to say that federalism concerns rule out individual-capacity damages when that "exact remedy has coexisted with our constitutional system since the dawn of the Republic." *Tanzin*, 141 S. Ct. at 493.

This Court should revisit and overrule its *Sossamon* decision.

II. RLUIPA's remedial aims require damages.

RLUIPA is the culmination of Congress's repeated efforts to ensure that states respect free exercise rights. And providing a damages remedy was a critical part of Congress's goal. As *Tanzin* explained, a "damages remedy is not just 'appropriate' relief" but is often "the *only* form of relief that can remedy" a religious claimant's harm. 141 S. Ct. at 492 (emphasis in original). Reading RLUIPA to withhold damages for violations of the Act would frustrate Congress's decades-long efforts to protect religious freedom.

If damages were unavailable, many plaintiffs, particularly institutionalized persons, would be left without any relief at all. Inmates often

cannot vindicate their rights until the violation is long past. Their suits are delayed by administrative barriers. They are moved among prisons as violations of their rights begin and end and begin again. And, of course, they eventually complete their sentences. Because injunctions cannot redress violations that have abated, it is often damages or nothing for victims of past harms. *Sossamon*, 560 F.3d at 325–26 (dismissing claims for injunctive and declaratory relief as moot); *see Tanzin*, 141 S. Ct. at 492. Removing any damages remedy from RLUIPA would conflict with the statute's text and core purpose.

Many inmates spend a short time in the correctional system and move among facilities within it. Inmates released in 2018 had spent an average of only 2.7 years in prison and just 26 days in jail. U.S. Bureau of Justice Statistics, NCJ 255662, *Time Served in State Prison, 2018* at 1 (2021); Jake Horowitz & Tracy Velazquez, *Why Hasn't the Number of People in U.S. Jails Dropped?*, Pew Trusts (March 3, 2020), https://perma.cc/922N-CBX5.

Damages are essential not just for inmates who complete their sentences but for those who are transferred from the facility where their rights were violated. A prisoner's assignments in state correctional

systems are often transitory, with inmates spending time in multiple jails, prisons, and other detention facilities. Jailers transfer inmates due to overcrowding, to provide healthcare, and for administrative reasons. And each time they do, the transfer renders any request for injunctive relief against an earlier prison moot. *Russell v. Henderson*, 475 F.2d 1138, 1138 (5th Cir. 1973) (per curiam). Sometimes jailers transfer prisoners for the very purpose of mooting their claims.

These inmates often lack the time to secure judicial relief from violations of their free exercise rights before their claims become moot. Before they can even sue, the Prison Litigation Reform Act requires them to first exhaust all available prison grievance procedures. 42 U.S.C. § 1997e(a); *see Ross v. Blake*, 578 U.S. 632, 639 (2016) (holding that prisoners must exhaust all available grievance procedures—"irrespective of any 'special circumstances'"). That process alone can take months.

Practical matters also slow inmate claims. Over 90 percent of prisoner petitions are filed pro se, meaning inexperienced inmates must learn the necessary information to file their complaint, draft it, and then engage in the legal process, all while serving their sentence. *Just*

the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019, U.S. Courts (Feb. 11, 2021), https://perma.cc/KK5R-4V4B. Together, PLRA requirements and practical obstacles make it less likely an inmate's rights will be vindicated before their injunctive claims become moot.

Apart from those hurdles, prison officials can at any point during litigation seek to avoid liability by changing their policies or granting the plaintiff's requested accommodation. Without damages, that would give states another way (besides transfers) to strategically moot claims before courts could award relief, thwarting RLUIPA's protections of religious freedom.

Even more strangely, denying damages under RLUIPA would result in unequal outcomes depending on *where* a prisoner is held. Despite RLUIPA's and RFRA's identical language and purpose in the prison context, federal prisoners would have a damages remedy while state prisoners would not. Given the identical language used in both statutes and RLUIPA's intent to reapply RFRA's protection to state prisons, damages should be available under RLUIPA as they are under RFRA. *See Tanzin*, 141 S. Ct. at 489.

In short, Congress passed RLUIPA for cases like this one. This Court recently recognized that RLUIPA forbids prisons from cutting the dreadlocks of devout Rastafarians. *Ware v. Louisiana Dep't of Corr.*, 866 F.3d 263, 274 (5th Cir. 2017). But without individual capacity damages, prison officials could ignore *Ware* with no consequences. *See* Pl. Opening Br. at 6–7. By contrast, if Mr. Landor were a federal prisoner, he would have a right to money damages under RFRA. *Tanzin*, 141 S. Ct. at 489. And no one doubts that if he were still in prison being denied his free exercise rights, he could bring suit. *See, e.g.*, *Mayfield v. Texas Dep't of Crim. Just.*, 529 F.3d 599, 605 (5th Cir. 2008). Under *Sossamon*'s flawed construction of RLUIPA, however, Mr. Landor has no claim. That is the opposite of "appropriate relief."

CONCLUSION

Reading a prohibition on money damages in individual-capacity suits into RLUIPA would ignore its context, history, and text and would frustrate Congress's clear and lawful exercise of its legislative authority

to guarantee prisoners the ability to vindicate their most sacred rights. This Court should overrule *Sossamon*.[3]

Respectfully submitted,

/s/ *Joshua C. McDaniel*
JOSHUA C. MCDANIEL
Counsel of Record
KELSEY M. FLORES
PARKER W. KNIGHT III
MATTHEW E. MYATT
HARVARD LAW SCHOOL
RELIGIOUS FREEDOM CLINIC
6 Everett Street, Suite 5110
Cambridge, MA 02138
(617) 496-4383
jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

[3] Amicus thanks Nate Bartholomew, John Heo, Nicolas Wilson, and Mazzen Shalaby, students in the Harvard Law School Religious Freedom Clinic, for helping to prepare this brief.

CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. P. 32(a)(7)(B) because it contains 3,656 words, excluding the parts exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a) because it has been prepared in a proportionally spaced, 14-point Century Schoolbook font.

Dated: November 21, 2022

/s/ *Joshua C. McDaniel*
Joshua C. McDaniel

CERTIFICATE OF SERVICE

I certify that on November 21, 2022, I served this document on all parties or their counsel of record via CM/ECF.

Dated: November 21, 2022

/s/ *Joshua C. McDaniel*
Joshua C. McDaniel