No. 23-1197

IN THE

Supreme Court of the United States

DAMON LANDOR,

Petitioner,

v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC HEALTH, ET AL.,

Respondents.

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

BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONER

BRUCE PLAXEN
President
JEFFREY R. WHITE
Counsel of Record
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street, NW #300
Washington, DC 20001
(202) 617-5620
jeffrey.white@justice.org

ROBERT S. PECK
Counsel of Record
CENTER FOR CONSTITUTIONAL LITIGATION, PC
1901 Connecticut Ave. NW
Suite 1101
Washington, DC 20009
(202) 944-2874
robert.peck@cclfirm.com

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INTEREST OF AMICUS CURIAE[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

This case is of acute interest to AAJ members. AAJ members represent plaintiffs in private causes of action under a variety of statutes, including the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Religious Freedom Restoration Act (RFRA), Section 1983, and the Federal Tort Claims Act (FTCA)—all of which provide a basis for persons harmed to obtain their day in court and vindicate interests Congress has sought to protect. The Fifth Circuit's decision in this case deprives the intended beneficiaries of the legislative promise of a meaningful remedy in a significant number of cases, and it is inconsistent with this Court's precedents and the clear

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[1] Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

congressional intent expressed in RLUIPA. AAJ urges this Court to reverse.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Religious Land Use and Institutionalized Persons Act (RLUIPA) provides enforceable, rather than aspirational, protections for the religious rights of institutionalized persons. The Fifth Circuit's decision denying the availability of individual-capacity monetary damages undermines this congressional purpose by denying meaningful remedies in a significant range of cases to individuals suffering the violation of their rights. It erred in concluding that the limitations its decision imposes on the availability of individual-capacity monetary damages are constitutionally required.

This case provides a classic fact pattern of government officials, aware of the rights at issue and aware that the application of those rights to this precise circumstance was authoritatively adjudicated and decided, nevertheless violated those rights. If the decision below were affirmed, this claimant and many like him would be left without a remedy, as Petitioner Landor's discharge from custody foreclosed declaratory or injunctive relief as a remedy and prevented him from initiating a grievance during his custody by lockdown.

The Fifth Circuit's decision disregards the textual connection between RLUIPA and the Religious Freedom Restoration Act (RFRA), which this Court held does provide individual-capacity monetary remedies.

RLUIPA's text, as well as its heavy reliance on RFRA for its formulation, establish that Congress intended RLUIPA to offer the same protections and remedies as RFRA, including monetary compensation for violations of religious rights. Moreover, historical and legal precedents support the argument that monetary damages are an essential remedy for violations of religious rights, as they are for a wide range of protected federal rights and other types of injuries cognizable in the courts. Reflecting RLUIPA's text, courts should interpret it to provide maximum protection for religious exercise, which includes the availability of monetary damages.

That RLUIPA's origins derive from the Spending Clause, as relevant here, does not limit its available remedies when suing government officials in their individual capacity. RLUIPA's use of "appropriate relief" and its expansive definition of "government" to include "any other person acting under color of state law" provides the necessary notice that due process requires and plainly extends potential liability to the correctional officers sued here.

Although the contract analogy this Court has used in Spending Clause cases—and that was employed by the Fifth Circuit below—has some superficial appeal in determining consent to the conditions for federal funding, there remain limits to the comparability between contracts and the requirements applicable to funding recipients. Just as constitutional limitations can apply to private persons acting under color of state law, there should be no bar on RLUIPA's

application to government officials for individual-capacity damages when rights are flaunted as plainly as the facts here establish.

This Court has recognized that monetary liability not only compensates but also broadly deters violations of rights and reflects common-law concepts imbued into our civil justice system from the time of the Nation's founding. Empirical studies confirm that intuition. Such compensation should be available here to uphold the principles of civil liberty and protect the rights of institutionalized persons, particularly because no other remedy exists. The foundational principle that the violation of rights requires a remedy should not be abandoned here. The decision of the Fifth Circuit should be reversed.

ARGUMENT

I. RLUIPA BUILDS UPON THE TEXT AND EXPERIENCE OF RFRA TO PROVIDE PROTECTION TO INSTITUTIONALIZED PERSONS' RELIGIOUS RIGHTS.

The Fifth Circuit's decision in this case reduces the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*., to a mere exhortation for many individuals with legitimate claims well within the statute's intended scope. But Congress does not enact statutes for aspirational purposes; the laws it passes, and the president signs, exist as enforceable obligations. In fact, as relevant here, RLUIPA was enacted into law "*[t]o secure redress* for inmates who encountered undue barriers to their religious observances." *Cutter v. Wilkinson*, 544 U.S. 709, 716–17 (2005) (emphasis added).

The facts of this case provide a classic example of the rights RLUIPA sought to address and the redress it sought to afford for aggrieved persons. Yet, if the decision below is affirmed, the statute cannot provide the anticipated remedy—and its inefficacy could spread to other laws Congress enacted that provide real remedies when state officials violate individual rights.

As the undisputed facts establish, as a Rastafarian, Petitioner Damon Landor understood that he had a right to keep his long dreadlocks as a commitment to his faith even while incarcerated. In the first two prisons of his confinement, that right was honored without incident. Yet, when correctional authorities transferred Landor to a new facility with only three weeks remaining on his sentence, respect for his religious rights evaporated. As the Fifth Circuit described it, Landor explained to the intake guard at his new place of confinement

> that he was a practicing Rastafarian and provided proof of past religious accommodations. And, amazingly, Landor also handed the guard a copy of our decision in *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), which held that Louisiana's policy of cutting the hair of Rastafarians violated RLUIPA.

Pet. App. 2a.

Nonetheless, correctional officers handcuffed Landor to a chair and shaved his head involuntarily—ending a religious vow he had maintained for nearly

two decades. Pet. App. 2a-3a. As the nine judges concurring in the denial of rehearing unsparingly put it, the state officials "knowingly violated Damon Landor's rights in a stark and egregious manner, literally throwing in the trash our opinion holding that Louisiana's policy of cutting Rastafarians' hair violated [RLUPIA]." Pet. App. 23a (Clement, J., concurring in the denial of rehearing en banc). The majority concluded that courts lack the authority to provide Landor with a remedy, because his discharge from custody foreclosed declaratory or injunctive relief and RLUIPA could not provide monetary relief when officials are sued in an individual capacity. *See* Pet. App. 3a–4a, 8a, 13a.

To reach that conclusion, the Fifth Circuit had to disregard RLUIPA's textual connection with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq*., and the two statutes' shared concerns about how neutral, generally applicable laws can result in invidious discrimination.[2] Because RFRA provides an individual-capacity monetary remedy as a function of a statutory right to seek "appropriate relief," *Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020), RLUIPA should be deemed to do so as well. Yet, under the Fifth Circuit's ruling, the clear and undisputed violation of Landor's rights is simply unfortunate and beyond the authority of Congress to remedy. That conclusion, however, is palpably incorrect. Not only did

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[2] *See also Mack P. Warden Loretto FCI*, 839 F.3d 286, 303 (3d Cir. 2016) (declaring itself "unmoved . . . by the similarities in the text of RFRA and its sister statute, RLUIPA," to hold that the latter can also authorize damages against state officials sued in their individual capacities).

Congress seek to provide the same types of rights it authorized in RFRA, but it also corrected the flaw this Court identified in RFRA that made it inapplicable to the States. That correction, relying upon a different constitutional source to enact a statute of appropriate scope, did not impair the remedies Congress clearly intended. Instead, it sought to achieve a fundamental principle of civil justice that Chief Justice Marshall expressed two centuries ago:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803).

A. RFRA Was a Congressional Attempt to End Very Real Religious Discrimination Left Unaddressed After *Employment Division v. Smith*.

Congress enacted RFRA to protect religious liberty by codifying the strict-scrutiny test as a statutory right, reflecting Congress's belief that the test was uniformly employed until this Court's contrary decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). *Smith* held that the First Amendment did not compel religious-based exceptions to neutral, generally applicable laws. *See id.* at 878–80; *see also City of Boerne v. Flores*, 521 U.S. 507, 514 (1997) (characterizing the holding in *Smith*).

Smith held the compelling-interest test inapplicable to free-exercise challenges to neutral laws, except when the claim was combined "with other constitutional protections, such as freedom of speech and of the press." 494 U.S. at 881. The requirement for a hybrid claim to vindicate an express fundamental right confounded many critics of *Smith*—including four members of this Court, *see id.* at 896 (O'Connor, J. concurring in the judgment)—because the Free Exercise Clause stood alone in the past and content-based invasion of free speech, for example, usually receives compelling-interest analysis without attaching another fundamental right. *See, e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *but see Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (declaring the Free Exercise and Free Speech Clauses "work in tandem," with the former protecting "religious exercises, whether communicative or not," and the latter providing "overlapping protection for expressive religious activities"). *Smith* did not, however, impair the application of strict scrutiny to laws that were not neutral, but instead targeted religious beliefs or practices. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

Congress sided with the four members of this Court who disagreed with the majority on the applicability of the compelling-interest test. In a separate concurrence, Justice O'Connor wrote that the majority "dramatically depart[ed] from well-settled First Amendment jurisprudence" in a way that "is incompatible with our Nation's fundamental commitment to individual religious liberty." *Smith*, 494 U.S. at 891 (O'Connor, J., concurring). Because she would have

reached the same result as the majority while using strict scrutiny, Justice O'Connor found it incongruous to jettison its "consistent application . . . to cases involving generally applicable regulations that burden religious conduct." *Id.* at 892, 903 (O'Connor, J., concurring).

On behalf of the three dissenting justices, Justice Blackmun bemoaned the majority's abandonment of the criteria that he said served as "a consistent and exacting standard to test the constitutionality of a state statute that burdens the free exercise of religion." *Id.* at 907 (Blackmun, J., dissenting). Thus, in the view of four justices, *Smith* relegated free exercise to a second-class status and afforded it less protection than other fundamental rights.

Congress expressed the same view by passing RFRA with near unanimity.[3] Congress asserted that Section 5 of the Fourteenth Amendment—"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article"—enabled it to create a statutory right that utilized the compelling-interest test as a means of enforcing the requirement that States observe due process and equal protection. *See City of Boerne*, 521 U.S. at 516. But Congress's disagreement with this Court about the reach of the Free Exercise Clause and its attempt to codify its interpretation of the First Amendment with the application of strict scrutiny provided the basis for much of RFRA's undoing.

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[3] The House acted unanimously on a voice vote, *see* 139 Cong. Rec. 9,687 (1993), and the Senate vote was 97-3. *See id.* at 26,416.

In *City of Boerne*, this Court acknowledged that RFRA was Congress's "direct response" to *Smith*. *Id.* at 512. However, it held that Section 5 of the Fourteenth Amendment does not permit Congress "to decree the substance" of the Court's constitutional mandates and, in RFRA, Congress is not enforcing a constitutional right but redefining it. *Id.* at 519. Moreover, because Congress's Section 5 powers were only remedial and preventative, congressional authority invoking it is limited to protecting against invasion of established constitutional rights by the States. *Id.* at 522; *see also Civil Rights Cases*, 109 U.S. 3, 18 (1883) (stating legislative enforcement "should be adapted to the mischief and wrong which the amendment was intended to provide against").

City of Boerne invalidated RFRA in its attempt to impose the compelling-interest test on the States, but left it intact as mandatory on the Federal Government. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014); *see also Cutter*, 544 U.S. at 715 n.2.

B. RLUIPA Reflects the Lessons Congress Learned from Its RFRA Experience.

In response to the limitations on congressional authority articulated in *City of Boerne*, Congress refocused its new efforts to protect religious liberty on religious land use and the religious rights of incarcerated persons. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). *City of Boerne* had criticized Congress for failing to document "examples of modern instances of generally applicable laws passed because of religious bigotry"

that might justify remedial legislation. 521 U.S. at 530. RLUIPA's sponsors addressed that flaw with respect to institutionalized persons by holding hearings over a three-year period to detail the many "'frivolous or arbitrary' barriers [that] impeded institutionalized persons' religious exercise." *Cutter*, 544 U.S. at 716. In providing a remedy to that problem, "Congress carried over from RFRA the 'compelling governmental interest'/'least restrictive means' standard." *Id.* at 717. Thus, RLUIPA relevantly provides:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution … 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 governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a).

By imposing the same strict-scrutiny test in defense of protected religious exercise, RLUIPA mirrors RFRA, making it, as this Court stated, "its sister statute." *Hobby Lobby*, 573 U.S. at 695, 730. To avoid the problems *City of Boerne* identified in RFRA, Congress made two changes it deemed critical. First, "Congress deleted the reference to the First Amendment" found

in RFRA. *Id.* at 696. In *City of Boerne*, this Court regarded that reference as evidence that Congress was engaged in overriding this Court's interpretation of the Constitution rather than remedying persistent violations in the States. *See* 521 U.S. at 519. The deletion of that reference in RLUIPA, this Court later said, represented "an obvious effort to effect a complete separation from First Amendment case law," *Hobby Lobby*, 573 U.S. at 695, in order to avoid arrogating to the legislature this Court's interpretative authority.

The second corrective feature of RLUIPA was to lodge congressional authority for its enactment, not in Section 5 of the Fourteenth Amendment, but in the Commerce and Spending Clauses of Article I, Section 8. *Id.* Neither the Commerce nor Spending Clauses have the remedial/preventive limitation that Section 5 contains as discussed in *City of Boerne*. The Commerce Clause gives Congress the express power "[t]o regulate Commerce with foreign Nations, and among the several States." U.S. Const. art. I, § 8, cl. 3. Precedent establishes that it provides "protection from state legislation inimical to the national commerce [even] where Congress has not acted." *Southern Pacific Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 769 (1945). The authority the Commerce Clause invests in Congress is broad. *See United States v. Darby*, 312 U.S. 100, 118 (1941) ("The power of Congress . . . extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end.").

The Spending Clause, U.S. Const. art. I, § 8, cl. 1, grants Congress "broad power . . . to set the terms on

which it disburses federal funds." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216 (2022). Utilizing "this authority, Congress has passed a number of statutes prohibiting recipients of federal financial assistance from discriminating based on certain protected characteristics." *Id.* RLUIPA follows this well-understood blueprint in that respect.

II. INDIVIDUAL-CAPACITY MONETARY DAMAGES PLAY AN ESSENTIAL ROLE IN COMBATTING DISCRIMINATION AND MISCONDUCT.

A. This Court Confirmed the Availability of Individual-Capacity Damages Under RFRA.

The statutes' similarities indicate that RFRA's reach should be considered before examining RLUIPA's scope. RFRA authorizes those whose rights to the free exercise of religion are unlawfully burdened, as defined by that statute, to "obtain appropriate relief against a government." 42 U.S.C. § 2000bb-1(c). In determining whether that "appropriate relief" included monetary damages in *Tanzin*, this Court faced analogous facts to the underlying situation presented in this case. In *Tanzin*, the plaintiffs were practicing Muslims placed on a No-Fly list allegedly because of "their refusal to act as informants against their religious communities." 592 U.S. at 46. They sued under RFRA, seeking injunctive and declaratory relief to remove them from the No-Fly List, as well as for monetary damages against agents of the FBI in their individual capacities. *Id.* More than a year after the lawsuit was filed, the plaintiffs were removed from

the list, "mooting the claims for injunctive relief." *Id.* Like Petitioner Landor here, the mooting of the other relief left the plaintiffs in *Tanzin* with only a claim of monetary damages.

In concluding that RFRA authorized monetary relief, this Court began its analysis with the recognition that RFRA defines "government" for purposes of relief to include "a branch, department, agency, instrumentality, and *official (or other person acting under color of law)* of the United States." *Id.* at 47 (quoting 42 U.S.C. § 2000bb-2(1)) (emphasis in original). That meant RFRA authorized relief against individuals. *Id.* at 47–48. Use of "other person acting under color of law" borrowed the phrase from "one of the most well-known civil rights statutes: 42 U.S.C. § 1983," and RFRA's use of "the same terminology as § 1983 in the very same field of civil rights law [renders] 'it . . . reasonable to believe that the terminology bears a consistent meaning.'" *Id.* at 48 (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 323 (2012)).

Because RFRA did not define "appropriate relief," *Tanzin* construed it in accordance with its "plain meaning at the time of enactment." *Id.* Consulting several dictionaries around the 1993 date of enactment, this Court defined "appropriate" relief as "[s]pecially fitted or suitable, proper." *Id.* (citations omitted). Still, the opinion reminded us that appropriate relief reflects context. *Id.* at 49 (citing *Sossamon v. Texas* (*Sossamon II*), 563 U.S. 277, 286 (2011)). *Tanzin* then undertook a brief historical review to conclude that "[i]n

the context of suits against Government officials, damages have long been awarded as appropriate relief," even in the "early Republic." *Id.* It noted that the 1871 precursor to Section 1983 covered state and local government officials and "impos[ed] liability on any person who, under color of state law, deprived another of a constitutional right." *Id.* at 50 (citing 17 Stat. 13).

These historical actions and RFRA's amendment to remove the reference to States or their subdivisions, 114 Stat. 806, conforming to this Court's decision in *City of Boerne*, reinstated pre-*Smith* constitutional protections *and* the avenue that RFRA established for claims, which necessarily includes "a right to seek damages against Government employees." *Tanzin*, 592 U.S. at 51. The definitional and historical findings in *Tanzin* plainly inform the reading of RLUIPA, which is not far removed from RFRA's enactment.

Although not the full explanation for recognizing the right to monetary damages, *Tanzin* further recognized that compensation often provides "the *only* form of relief that can remedy some RFRA violations." *Id.* Not only did this Court find it "odd to construe RFRA in a manner that prevents courts from awarding such relief" in light of its "textual cues," it found that Congress acted deliberately and was fully capable of selecting language that would have limited the available relief had it chosen to do so. *Id.* The same "textual cues" are found in RLUIPA.

B. The Availability of Monetary Relief Under RFRA Supports Its Availability Under RLUIPA.

The analysis applied to RFRA should also obtain here, and should lead to the inexorable conclusion that RLUIPA's remedies include individual-capacity money damages. After all, when this Court has "provided a definitive interpretation of the language in one statute, and Congress then uses nearly identical language in another statute, we will give the language in the latter statute an identical interpretation unless there is a clear indication in the text or legislative history that we should not do so." *Woodford v. Ngo*, 548 U.S. 81, 107 (2006). RLUIPA's language tracking RFRA and the absence of relevant distinguishing text provide no warrant to depart from the scope of remedies this Court held available under RFRA.

As in RFRA, RLUIPA authorizes claims in judicial proceedings that result in "appropriate relief against a government." 42 U.S.C. 2000cc-2(a). *Cf. id.* § 2000bb-1(c) (RFRA). And, as in RFRA, RLUIPA defines "government" to include "any other person acting under color of State law." *Id.* § 2000cc-5(4)(A)(iii). *Cf. id.* § 2000bb-2 (RFRA). The shared language identifying who constitutes the government for purposes of making a claim plainly embraces government officials in their individual capacities. *See Tanzin*, 592 U.S. at 47–48. Additional support for a parallel construction comes from the primary guide to statutory construction: the determination of congressional intent. As this Court has repeatedly stated, in navigating federal statutes that establish a private right of action, this

Court looks to congressional intent as its guiding star. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("Statutory intent . . . is determinative.").

A statute's text provides the best evidence of that congressional intent. *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991). Where the text is clear about Congress's intentions, no further inquiry is necessary. *See, e.g.*, *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.") (citations omitted). That straightforward approach to statutory construction reflects the axiom that courts "presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992).

Here, it is clear that Congress sought to track RFRA as much as possible while correcting those flaws that limited its reach and effectiveness. *See Sossamon II*, 563 U.S. at 281 ("RLUIPA borrows important elements from RFRA"); *see also Ramirez v. Collier*, 595 U.S. 411, 424 (2022) (referring to RFRA as RLUIPA's "sister statute"); *Hobby Lobby*, 573 U.S. at 696 (noting RLUIPA's improvements). The congressional choice to use the same language represents a decision to provide the same rights. *Cf. Tanzin*, 592 U.S. at 50.

Yet further evidence that Congress sought to provide a broad remedy inclusive of individual-capacity monetary damages comes from the explicit rule of construction Congress adopted for RLUIPA. It mandates "[t]his 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." 42 U.S.C. § 2000cc-3(g). It would constitute the height of caprice for Congress to enact a sweeping protection of religious liberty like RLUIPA, *see Holt*, 574 U.S. at 357, and not provide an equally capacious remedy.

The factual context here demonstrates the importance of including monetary damages as a remedy. The substance of the right and its application to the Louisiana correctional system had already been determined by the Fifth Circuit in prior litigation and was binding on the State. Like Petitioner Landor, Christopher Ware was a member of the Rastafari religion who was held in custody at a jail that permitted him to maintain his dreadlocks. *Ware*, 866 F.3d at 266. Due to the length of his sentence, Ware required transfer to a Louisiana Department of Corrections prison where its regulations did not provide for a religious exemption that would have allowed Ware to maintain his dreadlocks. *Id.* at 267. The Fifth Circuit concluded that that policy could not meet RLUIPA's compelling-interest test. *Id.* at 274.

Ware established the applicable law so that there was nothing more to adjudicate about the validity of the Department's policy under RLUIPA. As Petitioner Landor was discharged from custody within three weeks of his head shaving, injunctive relief could not vindicate his RLUIPA rights. Indeed, the district court held his claim for declaratory and injunctive relief moot. Pet. App. 16a. Moreover, the damage had already been done when his head was shaved bald. *Id.*

Under these circumstances, to borrow this Court's language in *Tanzin* when it referred to RFRA, monetary relief became "the only form of relief that can remedy [this RLUIPA] violation[]." 592 U.S. at 51.

Finally, *Tanzin* eliminated one potential obstacle to monetary relief by its treatment of *Sossamon II*, which had recognized that acceptance of federal funding that obligated a State to comply with RLUIPA did not constitute a waiver of sovereign immunity and thus foreclosed monetary damages *against the State*. 563 U.S. at 285–88. *Tanzin* held that an "obvious difference" existed where the defendants were individuals "who do not enjoy sovereign immunity." 592 U.S. at 52, The same analysis applies here. The defendants against whom Landor seeks monetary damages, having been sued in their individual capacities, also do not enjoy sovereign immunity.

C. Derivation of Authority to Enact RLUIPA from the Spending Clause Does Not Change the Outcome.

The ruling below placed monetary damages for religious discrimination in the States beyond Congress's reach, but the Fifth Circuit's reasoning does not withstand scrutiny. *City of Boerne* established that RFRA did not reach discrimination in the States because the statute was premised on Section 5 of the Fourteenth Amendment and added to what the Free Exercise Clause protected. 532 U.S. at 532–36. With this case, the Fifth Circuit, despite what this Court said in *Tanzin*, found that the Spending Clause basis for RLUIPA, while reaching the States for injunctive and

declaratory purposes, cannot authorize individual-capacity monetary damages. Pet. App. 13a. This Court should reject that position.

To reach its decision, the Fifth Circuit relied on in-circuit precedent affirmed by this Court in *Sossamon II*. Before the Fifth Circuit, Sossamon sought "damages and equitable relief under RLUIPA from Texas and from the defendants in their individual and official capacities" for violations of his religious rights as an incarcerated individual. *Sossamon v. Lone Star State of Texas* (*Sossamon I*), 560 F.3d 316, 326 (5th Cir. 2009), *aff'd sub nom. Sossamon II*, 563 U.S. 277 (2011). Even though the Fifth Circuit recognized the "plain language of RLUIPA, however, seems to contemplate such relief," it rejected the reasoning this Court later adopted in *Tanzin*, *id.* at 327, and concluded, following an Eleventh Circuit ruling, that enactment pursuant to Congress's Spending Clause power obligated only the state as a grant recipient, for the violation, not individuals who are "not parties to the contract[4] in their individual capacities." *Id.* at 328–29. This Court affirmed but only addressed the monetary liability of States sued under RLUIPA and their proper continued reliance on sovereign immunity. *Sossamon II*, 563 U.S. at 293. *Tanzin* effectively acknowledged that the individual-capacity question

[4] The reference to a "contract" is a recognition that this Court has likened the obligations undertaken when receiving federal funding pursuant to the Spending Clause to a contract with the Federal Government and subject to the "*usual* contract remedies in private suits." *Cummings*, 596 U.S. at 221.

was left unaddressed in *Sossamon II*. *See* 592 U.S. at 52.

In the decision below, the Fifth Circuit found no reason to reconsider *Sossamon I* in light of *Tanzin* because "*Sossamon I* and *Tanzin* involve different laws," RLUIPA and RFRA, respectively. Pet. App. 8a. While deeming that not dispositive, the Fifth Circuit found the distinction based on which power Congress employed sufficient to rule against monetary damages. *Id*. at 11a.

However, this Court has not so cabined individual liability based on statutes that derive their existence from the Spending Clause. This Court's examination of the availability of monetary damages as remedies to enforce antidiscrimination statutes passed under the Spending Clause began with *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60 (1992). Of note to this dispute, *Franklin* reaffirmed that, "[w]here legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Id.* at 66 (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)). *Bell* did not create that power in 1946, but called it one of "longstanding" while tracing the authority to remedy the invasion of "federally protected rights" as "the rule from the beginning" and instructed courts to "be alert to adjust their remedies so as to grant the necessary relief." 327 U.S. at 684.

The *Bell* Court could have, even if it did not, cite a then-century-old precedent, *Cary v. Curtis*, 44 U.S. (3

How.) 236 (1845), in support. *Cary* held that the "judicial power of the United States" is generally dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress." *Id.* at 245. Save an exercise otherwise repugnant to the Constitution, the authority Article III vests in Congress to "ordain and establish" courts inferior to the Supreme Court,[5] *see* U.S. Const. art. III, § 1, includes the power to enforce federal law through traditionally recognized remedies, which includes monetary damages.[6] Thus, this Court held that, under the "general rule" and "absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable

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[5] That authority includes impressing state court judges into service to enforce federal statutes by virtue of the Judges' Clause in the Supremacy Clause. U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."); *see also Haaland v. Brackeen*, 599 U.S. 255, 288 (2023).

[6] Compensatory damages are "traditionally part of the range of tort law remedies," *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 310 (1986); *see also Carey v. Piphus*, 435 U.S. 247, 257 (1978) (stating the "common law of torts" recognizes that a "person should be compensated fairly for injuries caused by the violation of his legal rights"). Tort provides the appropriate measure because this "Court has confirmed in countless cases that a § 1983 cause of action sounds in tort" and "creates a species of tort liability." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 727 (1999) (citations omitted).

cause of action brought pursuant to a federal statute." *Franklin*, 503 U.S. at 70–71.

Franklin took these principles seriously and applied it to the implied cause of action that exists under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688. In *Franklin*, a high school student sued over sexual improprieties taken by a school employee who was her coach and teacher. 503 U.S. at 63–65. Title IX was enacted pursuant to Congress's Spending Clause authority. *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999). To reach its conclusion based on the background principle that monetary damages are generally available as a remedy, the *Franklin* Court focused its attention on "whether Congress intended to limit application of this general principle in the enforcement of Title IX." 503 U.S. at 71. The Court relied on the pattern of congressional behavior that assumed the courts' reliance on a common-law tradition of affording monetary damages, so it viewed "denial of a remedy as the exception rather than the rule." *Id.* at 72. It added that the only way monetary damages were not available as "appropriate relief" was an explicit denial of monetary damages. *Id. Franklin* therefore held that a "traditional presumption in favor of any appropriate relief for violation of a federal right" attached to a federal statute without a specific remedy and that, because that presumption applies to suits under Title IX, monetary damages are authorized. *Id.* at 73.

Recently, this Court explained (again) that the scope of relief for Spending Clause statutes tends to

reflect the contractual nature of the relationship between the Federal Government for the funding it provides and the recipient of funds. *Cummings*, 596 U.S. at 219. The contract analogy provides helpful guidance, this Court has said, because Spending Clause enactments do not reflect the congressional authority to impose involuntary requirements, but instead constitute matters of consent about the conditions of funding between the funder and recipient. *Id.* The recipient, it held, must understand both the requirements that acceptance of the funds entails and the penalties "on the table" for a violation. *Id.* at 220.

Cummings looked to *Barnes v. Gorman*, 536 U.S. 181 (2002), for guidance. There, applying those principles with respect to the Americans with Disabilities Act and the Rehabilitation Act, this Court concluded that punitive damages were not available as a form of appropriate relief, largely because "punitive damages, unlike compensatory damages and injunction, are generally not available for breach of contract." *Id.* at 187.

Utilizing the same approach—which this Court characterized as creating a "straightforward" analysis—*Cummings* held that emotional distress damages, generally unavailable in contract, were not compensable for an alleged violation of the Rehabilitation Act and the Patient Protection and Affordable Care Act. 596 U.S. at 221–22. That conclusion was unshaken by the existence of a rare and special rule that allowed emotional distress damages in circumstances where it was an especially likely result, because "[i]t is one thing to say that funding recipients will know the

basic, general rules [on the penalties they could face for a violation, but [i]t is quite another to assume that they will know the contours of every contract doctrine, no matter how idiosyncratic or exceptional." *Id.* at 223, 225.

Compensatory monetary damages for the person harmed are a traditional contract remedy providing the contract beneficiary the benefit of the bargain and, "to the extent possible, put him in as good a position as he would have been in had the contract been performed." *Id.* at 233 (quoting Restatement (Second) of Contracts § 347 cmt. a, at 112). To put a finer point on it, "compensatory damages serve contract law's 'general purpose,' namely, to 'give compensation.'" *Id.* at 233–34 (citation omitted). There is nothing exotic or unusual in imposing compensatory monetary damages based on violations of a Spending Clause statute like RLUIPA.

D. The Fact That the Defendant Government Official Is Sued in an Individual Capacity Does Not Change the Conclusion That Monetary Damages Remain Available.

The upshot of these precedents is that Congress has the authority to impose monetary damages for Spending Clause violations, even where it does not define the scope of "appropriate relief" and leaves it to courts to apply the traditional common law assumption that monetary damages are included. The Spending Clause creates no bar to monetary damages. *Cummings*, 596 U.S. at 216. Those principles apply to

RLUIPA, where Congress authorized appropriate relief with a clear understanding that this Court has continuously read that statutory language to include the remedy of monetary damages. The caselaw and congressional actions confirm a clear answer to the question of whether RLUIPA authorizes monetary damages, and that answer is "yes."

Even so, the Fifth Circuit decision questions whether a government official, in an individual-capacity lawsuit, is susceptible to monetary damages under the Spending Clause. The Fifth Circuit's analysis adheres to the contract analogy for Spending Clause statutes and posits that, based on its *Sossamon I* ruling, that "only the grant recipient—the state—may be liable for its violation" and not any "non-party to the contract between the state and the federal government." Pet. App. 6a (quoting *Sossamon I*, 560 F.3d at 328, 329). Because the Fifth Circuit deemed an individual-capacity lawsuit as involving a non-state actor who is not a party to the contract, rather than an agent of the State, it found individual-capacity lawsuits unavailable for monetary damages.

Two principal problems plague this aspect of the Fifth Circuit's decision. Although this Court has found the contract analogy useful in many respects and determinative in a few cases, it has also recognized inherent limits to use of the term "contract" to characterize Spending Clause relationships. *See, e.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (describing it as "*much in the nature of a contract*") (emphasis added). Thus, precedent cautions

that "we have been careful not to imply that *all* contract-law rules apply to Spending Clause legislation." *Barnes*, 536 U.S. at 187.

Even so, contracts are not merely enforceable between the signatories. For example, "traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through 'assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (quoting 21 Williston on Contracts § 57:19, at 183 (4th ed. 2001)).

Here, the correctional officers named as defendants allegedly acted both intentionally and with deliberate indifference to the rights they were abridging. Their actions were only made possible by the authority the State invested in them. That they were sued in their individual capacities neither changes the quality or the basis for their actions, where they derived their authority, or whether the state funding that made RLUIPA applicable had relevance. It should not provide a basis to eliminate any remedy for Landor.

RLUIPA itself provides the essential connection that answers the individual-capacity question. It defines the "government" as including "any person acting under color of state law," 42 U.S.C. § 2000cc-5(4)(A)(iii), and directed that this designation be construed broadly "to the maximum extent permitted by the terms of this chapter and the Constitution." *Id.* § 2000cc-3(g) (explicitly incorporated in the definition

of "government" at *id.* § 2000cc-5(4)(B)). *Tanzin* interpreted that same definition in RFRA—"person acting under color of state law"—as authorizing individual-capacity damages. 592 U.S. at 52. Therefore, if the defendants in their individual capacities still stand in the shoes of the government for purposes of RLUIPA's remedies, there should be no bar on monetary damages, which is generally available in other statutes that premise liability on actions taken under color of state law.

That terminology—"person acting under color of state law"—has a long lineage that includes Section 1983, originally enacted in 1871. *See, e.g.*, *Imbler v. Pachtman*, 424 U.S. 409, 417, 417 n.10 (1976) (citing 42 U.S.C. § 1983). This Court has explained that the phrase seeks to reach the "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *United States v. Classic*, 313 U.S. 299, 326 (1941). Just as the "prohibitions of the Fourteenth Amendment are directed to the States," *Ex parte Virginia*, 100 U.S. 339, 346 (1879), a public official, even one acting *ultra vires*, engages in state action amenable to suit under Section 1983. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929 (1982).

Lugar is instructive because it recognized that private individuals can still be held responsible for a constitutional deprivation under certain circumstances. It explained why, under certain circumstances, a private person stands in the shoes of the government. In so holding, it marked a departure from the general rule that "most rights secured by the Constitution are

protected only against infringement by governments." *Flagg Bros. v. Brooks*, 436 U.S. 149, 156 (1978). Even so, *Flagg Bros.* understood that "[s]ome rights established either by the Constitution or by federal law are protected from both governmental and private deprivation," and a private person is liable for such a deprivation "only when he does so under color of law." *Id.*

The state-action doctrine—which limits most deprivations-of-federal-rights liabilities to government actions—does not just preserve liberty against an abuse of federal authority but also "avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed." *Lugar*, 457 U.S. at 936. Thus, precedent insists that qualifying misconduct "allegedly causing the deprivation of a federal right be fairly attributable to the State." *Id.* at 937. In this matter, the actions of the correctional officers cannot be ascribed anywhere else.

As a contrary example of purely private action, *Lugar* offered the decision in *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972), where the private party's discriminatory practices could not "in any way be ascribed to a governmental decision." *Lugar*, 457 U.S. at 938 (footnote omitted). The inquiry, *Lugar* reflected, looked to those policies adopted by the State that were applied to appellant." *Id.* The proper inquiry was "fact-bound," looking at the specific basis upon which the State was involved in the deprivation. *Id.* at 939.

Lugar then held that, "[w]hile private misuse of a state statute does not describe conduct that can be attributed to the State," a private party's participation

with state officials makes them a "state actor." *Id.* at 941.

Here, comparable appropriate distinctions exist where state officials act under color of state law to permit Congress, legislating under its Spending Power, to impose monetary damages in individual-capacity lawsuits. The correctional officials were indisputably acting under color of state law. They were government officials implementing a qualifying government policy that violated RLUIPA. They also unquestionably were not engaged in the misuse of the state policy, but were acting under color of state law in accordance with it to implement the policy. Moreover, they could not have taken their actions against the exercise of religious rights without having been cloaked with the authority of the State. Indeed, this Court held that "congressional authority to spend in the first place" includes the "power to keep a watchful eye on expenditures and on the reliability of those who use public money." *Sabri v. United States*, 541 U.S. 600, 608 (2004). Certainly, because these defendants were invested with state authority, the correctional officials here fell within that expressed concern for accountability that goes hand in hand with Congress's Spending authority, even when the lawsuit names the officials in their individual capacity.

And, although unnecessary to impose liability, the defendants were fully informed that their actions violated RLUIPA when Landor handed them a copy of the Fifth Circuit's decision in *Ware*, so that the idea of notice of an established right is satisfied even under this

Court's qualified-immunity jurisprudence. *See Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

Tanzin, then, informs this analysis and establishes that an award of monetary damages is necessary to vindicate the law, particularly here, where no other remedy is available. *See* 592 U.S. at 51.

Precedent and persuasive authority confirm that, even if RLUIPA emanates from the Spending Clause, which generally authorizes individual-capacity monetary damages, it reaches those acting under color of state law for damages when sued in their individual capacity.

III. MONETARY DAMAGES SERVE A CRITICALLY IMPORTANT ROLE IN REDRESSING THE VIOLATIONS OF RIGHTS.

Chief Justice Marshall wrote that we cannot remain a "government of laws, and not of men, . . . if the laws furnish no remedy for the violation of a vested legal right." *Marbury*, 5 U.S. (1 Cranch) at 163. That concept of a remedy for every right was an essential part of the common law, "a general and indisputable rule," as described in Blackstone's Commentaries, 3 William Blackstone, Commentaries *23 (1783), which were considered by the Constitution's Framers as "the most satisfactory exposition of the common law of England." *Schick v. United States*, 195 U.S. 65, 69 (1904). Under the common law centuries ago and continuing today, we recognize that "every violation [of a right] imports damage." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021) (quoting *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 507 (C.C.D. Me. 1838)).

Because antidiscrimination laws generally sound in tort, *see City of Monterey*, 526 U.S. at 727, and tort law awards compensatory damages on the basis of the harm experienced, it is useful to consider why monetary damages serve important societal interest as explained in tort theory.

Monetary liability provides essential compensation in an attempt to place plaintiffs back in the position they would have been in, had no statutory violation occurred. *See* Dan B. Dobbs & Caprice L. Roberts, Law of Remedies: Damages, Equity, Restitution § 3.1, at 215 (3d ed. 2017); *see also* 4 Fowler Harper, Fleming James, Jr., & Oscar S. Gray, Harper, James and Gray on Torts § 25.1, at 574 (3d ed. 2007) ("The cardinal principle of damages in Anglo-American law is that of compensation for the injury caused to the plaintiff by defendant's breach of duty."). There is little wonder, then, that monetary damages have served as "the traditional form of relief offered in the courts of law," *Curtis v. Loether*, 415 U.S. 189, 196 (1974), and were "commonly available against state and local government officials." *Tanzin*, 592 U.S. at 50.

It also has another beneficial effect: deterrence against future rights' violations. This Court's recognition of its importance in Section 1983 cases plainly applies as well to RLUIPA. When government actors understand that potential liability exists for monetary damages, it "create[s] an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights." *Owen v. City of Independence*,

445 U.S. 622, 651–52 (1980). And those in policy positions are more apt to "institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional rights." *Id.* at 652.

Studies confirm the deterrent effect of monetary damages in tort law. *See, e.g.*, William M. Landes & Richard A. Posner, The Economic Structure of Tort Law 10 (1987). In fact, it is well-documented that monetary liability has served as a catalyst to innovations that lead to safer products and practices. *See* Robert S. Peck, Richard Marshall, & Kenneth D. Kranz, *Tort Reform 1999: A Building Without a Foundation*, 27 Fla. St. U. L. Rev. 397, 436–43 (2000) (cataloging studies and industries that have demonstrated the positive effects of monetary liability on better behavior). It has the same public-interest effect in deterring wrongful government conduct.

CONCLUSION

For the foregoing reasons, the American Association for Justice asks this Court to reverse the judgment of the Fifth Circuit in this case.

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Respectfully submitted,

Robert S. Peck
Counsel of Record
CENTER FOR CONSTITUTIONAL LITIGATION, P.C.
1901 Connecticut Ave. NW
Suite 1101
Washington, DC 20009

Phone: (202) 944-2874
Fax: (646) 365-3382
robert.peck@cclfirm.com

Bruce Plaxen
President
Jeffrey R. White
Sr. Assoc. Gen. Counsel
AMERICAN ASSOCIATION FOR JUSTICE
777 6th St. NW, #300
Washington, DC 20001
(202) 617-5620
jeffrey.white@justice.org

Counsel for Amicus Curiae