No. 08-1438

IN THE
Supreme Court of the United States

HARVEY LEROY SOSSAMON, III,

Petitioner,

v.

TEXAS, ET AL.,

Respondents.

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

BRIEF FOR CHRISTIAN LEGAL SOCIETY AND PRISON FELLOWSHIP AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Christian Legal Society ("CLS") is a nonprofit, interdenominational association of Christian attorneys, law students, judges, and law professors with chapters in nearly every state and at numerous accredited law schools. CLS's legal advocacy and information division, the Center for Law and Religious Freedom, works for the protection of religious belief and practice, as well as for the autonomy from the government of religion and religious organizations, in state and federal courts throughout this nation. The Center for Law and Religious Freedom strives to preserve religious freedom in order that men and women might be free to do God's will and because the founding instrument of this nation acknowledges as a "self-evident truth" that all persons are divinely endowed with rights that no government may abridge nor any citizen waive. Among such inalienable rights is the right of religious liberty.

In the wake of the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), CLS played a leading role in a coalition formed to draft and support new religious freedom legislation. *See Religious Liberty Protection Act: Hearing on H.R. 1691 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. 225–313

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[1] The parties consented to the filing of this brief, and copies of the consent letters are on file with the Clerk of the Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *amici curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

(2000) (statement of Steven T. McFarland, Director, Center for Law and Religious Freedom, Christian Legal Society). That effort led to the adoption of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et seq.* ("RLUIPA"), which is at issue in this case. Since RLUIPA was enacted, CLS has consistently participated in the defense of RLUIPA's constitutionality in multiple forums, including in this Court in the case of *Cutter v. Wilkinson*, 544 U.S. 709 (2005), which rejected an Establishment Clause challenge to section 3 of RLUIPA.

This Court's determination as to whether an individual may sue a State or a State official in his official capacity for damages for violations of RLUIPA has significant implications for the breadth and scope of the protections guaranteed to fundamental liberties. This Court's determination will affect the ability of religious assemblies and institutions, persons owning or occupying property used for religious exercise, and institutionalized persons throughout the United States to seek judicial recourse when a State unlawfully imposes a substantial burden on religious exercise in violation of RLUIPA.

Prison Fellowship (PF) is the largest prison ministry in the world, partnering with thousands of churches and tens of thousands of volunteers in caring for prisoners, ex-prisoners, and their families. Founded 30 years ago by Chuck Colson, who served as special counsel to President Nixon and went to prison in 1975 for Watergate-related crimes, PF carries out its mission both in service to Jesus Christ and in contribution to restoring peace

to our communities endangered by crime. Among other things, PF: (i) provides in-prison seminars and special events that expose prisoners to the Gospel, teach biblical values and their application, and develop leadership qualities and life skills; (ii) develops mentoring relationships that help prisoners mature through coaching and accountability; and (iii) supports released prisoners in a successful restoration to their families and society. As founder Chuck Colson has explained, "God has given us a vision and a ministry to go to the last, the least, and the lost of our society and bring hope to them." *Foundations for Life: Prison Fellowship Annual Report 2004-2005*.

PF thus has a strong interest in the correct application of laws such as RLUIPA. Religion has an unmistakable influence on prisoners' lives because it motivates them to make good choices that benefit themselves and our communities, bringing greater peace and security. Allowing an individual to sue the State or a State official for damages for violations of RLUIPA appropriately recognizes the harm of not only contravening a fundamental right to exercise religion but also the harm of cutting inmates off from the resources and relationships they need to transform their lives.

SUMMARY OF ARGUMENT

As Spending Clause legislation, the Religious Land Use and Institutionalized Persons Act ("RLUIPA") unambiguously allows an individual to assert a claim for appropriate relief against a State or State official in his official capacity. A plain reading of RLUIPA indicates that a State knowingly waives its sovereign immunity to suits for monetary damages by accepting federal funds under the statute. Case law and statutes in effect at the time Congress enacted RLUIPA put the States on notice that prisoners and others affected by a violation of their fundamental right to religious exercise as protected by RLUIPA could bring suit under the statute for monetary damages, among other appropriate remedies. A State's interest in sovereign immunity does not authorize the State to violate a statutorily-protected fundamental right without being subject to monetary damages.

The practical effect of holding that individuals may not recover damages under RLUIPA would be crippling to the intent of the statute and legitimate efforts to remedy violations of RLUIPA. Allowing the phrase "appropriate relief" to include only prospective relief would, for many individuals, create a right without a remedy, as injunctions and declaratory relief would not adequately deter future RLUIPA violations and would come too late for individual rights to be sufficiently vindicated.

Nor does the Prison Litigation Reform Act ("PLRA") serve as an independent bar to the Petitoner's RLUIPA claim for damages. A plain reading of the PLRA shows that it does not limit damages exclusively to suits for physical injury and

does not bar either damages claims for State violations of fundamental rights or claims for nominal damages.

ARGUMENT

I. RLUIPA ALLOWS SUIT FOR MONETARY DAMAGES AGAINST A STATE OR STATE OFFICIAL IN HIS OFFICIAL CAPACITY.

Congress passed the RLUIPA pursuant to its Spending Power. U.S. Const. art. I, § 8, cl. 1; *Cutter v. Wilkinson*, 544 U.S. 709 (2005). RLUIPA establishes statutory protection of religious exercise, which is a First Amendment fundamental right, and states that "[a] person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a) ("RLUIPA Remedial Provision").

This Court has "required that if Congress desires to condition the States' receipt of federal funds, it 'must do so unambiguously . . ., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.'" *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). RLUIPA unambiguously informs the States that a claim for "appropriate relief" includes a suit for monetary damages. This is supported by:

- A plain reading of RLUIPA as a whole;
- Relevant case law and statutes in effect at the time RLUIPA was enacted;
- The legislative history of RLUIPA; and
- The fact that RLUIPA was fashioned to provide a statutory remedy for State infringement of fundamental constitutional rights.

For each of these reasons, RLUIPA enables a State to exercise its choice to accept federal funds knowingly, cognizant of the possibility of monetary damages for violating RLUIPA.

A. RLUIPA Unambiguously Allows for Monetary Damages Against a State or State Official in His Official Capacity.

A State's waiver of sovereign immunity need not include a specific enumeration of remedies to which the State consents to suit. RLUIPA unambiguously conditions a State's receipt of federal funds upon submission to "a judicial proceeding" for violations of the Act. 42 U.S.C. § 2000cc-2(a). At that proceeding, the Act allows an aggrieved person, with no expressed limitation, to assert a claim for any "appropriate relief" against the State. *Id.* Therefore, a State exercises its choice to accept federal funds knowingly, cognizant of the possibility of monetary damages for violating RLUIPA.

1. *The Text of RLUIPA Indicates that a State Knowingly Waives its Sovereign Immunity to Suits for Monetary Damages Relief.*

The text of RLUIPA unambiguously informs a State that "[a] person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." *Id.* The statute also is clear that the term "government" includes a State or State official—in this case, Texas. *Id.* § 2000cc-5(4).

In its own rules of construction, RLUIPA mandates that courts and the States construe these provisions "in favor of a broad protection of religious

exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."[2] 42 U.S.C. § 2000cc-3(g). Congress felt so strongly about this that it did not even leave it to the general rule that remedial statues are to be interpreted broadly, *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967), but reinforced this well established rule of statutory interpretation with an express statement in the statutory text.

Because the phrase "appropriate relief" cannot be interpreted in a vacuum, *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988), and because RLUIPA requires that it be "construed in favor of broad protection," if a question arises as to interpretation of the RLUIPA Remedial Provision, the Court must construe this provision broadly to the maximum extent permitted by the Constitution.[3]

Reading "appropriate relief" to include monetary relief is entirely consistent with this Court's Spending Power jurisprudence. Thus, a statute passed under Congress's Spending Power may authorize monetary damages against a State or

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[2] When Congress includes instructions such as these, this Court has regularly relied on them. *See, e.g.*, *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497–98 (1985) (employing the rule of interpretation set forth in RICO that the statute is to "be liberally construed to effectuate its remedial purposes").

[3] The idea that this provision requires broad interpretation of RLUIPA is not a novel one; as Judge Kozinski of the Ninth Circuit recently observed, "[i]t seems to me that when Congress goes to the trouble of telling us how to construe a statute, and uses such phrases as 'broad protection' and 'the maximum extent permitted,' we need to pay close attention and do as Congress commands." *Khatib v. County of Orange,* 603 F.3d 713, 718–19 (9th Cir. 2010) (Kozinski, J., dissenting).

State official. *See Sabri v. United States*, 541 U.S. 600, 605 (2004) (Congress has authority to impose liability for violations of Spending Clause legislation); *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686–87 (1999) (Congress may use Spending Clause legislation to "extract" waivers of state sovereign immunity); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 74 (1992) (finding damages remedies generally available to enforce Spending Clause legislation). Contrary to the Respondents' argument at the petition stage and the Fifth Circuit's conclusion, the simple terms Congress used in RLUIPA to designate available remedies point to no limitation. Nothing in the common meaning of "appropriate" signifies a limitation in terms of monetary versus non-monetary relief. Rather, the term simply points to the determination that its object—in this case "relief"—should be "suitable" or "fit." *See, e.g., Webster's New World College Dictionary* 69 (4th ed. 2005) (defining "appropriate" as "right for the purpose; suitable; fit; proper").

RLUIPA includes no qualifying language to provide any limitations on the type of relief that may be awarded other than its appropriateness under the specific facts of a particular case. By contrast, when Congress has intended to restrict the types of "appropriate relief" available, it has expressly done so. In § 502(a)(3) of ERISA, Congress used the phrase "appropriate *equitable* relief" to describe one remedy for violation of certain of its provisions. 29 U.S.C. § 1132(a)(3) (emphasis added). This Court has interpreted the ERISA provision to mean what it says—"'[e]quitable' relief must mean *something* less than *all* relief," *Mertens v. Hewitt Assocs.*, 508 U.S.

248, 258 n.8 (1993) (emphasis in original) —and when Congress intends to provide anything less than all relief, it says so. There is no ambiguity here. *See, e.g.*, *Sereboff v. Mid Atlantic Med. Servs., Inc.*, 547 U.S. 356, 361–63 (2006) ("appropriate equitable relief" under § 502(a)(3) does not include damages, does include constructive trust or equitable lien). Conversely, where, as here, Congress includes no qualifier of the type of remedy for which a State waives immunity, "*all* relief" that is otherwise appropriate is available, including monetary damages. *Mertens*, 508 U.S. at 258 n.8.

Importantly, the language of RLUIPA is markedly distinguishable from the text of any statute this Court has held to be ambiguous, equivocal, or insufficient to constitute a State's waiver of sovereign immunity and a consequent unavailability of monetary relief. *See, e.g., Edelman v. Jordan*, 415 U.S. 651 (1974), *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985), and *Welch v. Tex. Dep't of Highways*, 483 U.S. 468 (1987).

In *Edelman*, this Court recognized a distinction between prospective relief and retroactive relief, allowing prospective injunctive relief against State officials but barring retroactive relief that would have required a State to disgorge funds from the State treasury where the funds were improperly accumulated in the State's administration of a federal program under the Social Security Act. 415 U.S. at 672–73. Addressing whether a State could "constructively consent" to be sued in federal court notwithstanding its Eleventh Amendment protection, the Court held that monetary damages were not available because, unlike RLUIPA, the Social Security Act did not specifically authorize suit

against the State. *Id.* However, the distinction allowing injunctive relief but not retroactive relief arose not from a specific waiver of immunity or consent to suit—there was none in *Edelman*, unlike in this case—but from the limited exception to Eleventh Amendment immunity established in *Ex Parte Young*, 209 U.S. 123 (1908) (prospective injunctive relief available against state officials in their official capacity).

The Court reached the same conclusion in *Atascadero* (no monetary damages because the Rehabilitation Act of 1973 did not specifically authorize suite against a State) and *Welch* (same under the Jones Act).

Edelman, *Atascadero*, and *Welch* each focused on the specific text of the statute at issue, requiring unequivocal expression that a State was subject to suit and thus knowingly waived its sovereign immunity. However, these cases did not suggest that a State will waive immunity to specific remedies only when a statute specifies each available remedy. The immunity waived when a State consents to suit under Spending Clause legislation is immunity from suit, not immunity from specific types of remedies. *Fed. Maritime Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 766 (2002).[4]

RLUIPA contains the type of unambiguous language contemplated in *Edelman*, *Atascadero* and *Welch* whereby a State waives its sovereign

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[4] Likewise, the relief sought by a plaintiff is not determinative of whether a State may assert sovereign immunity as a defense. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996); *P.R. Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993).

immunity, including monetary damages, "'by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction.'" *Atascadero*, 473 U.S. at 237 (quoting *Edelman*, 415 U.S. at 673). Unlike the statutes at issue in those cases, RLUIPA unambiguously authorizes an individual to sue a State or a state official in his official capacity. *See* 42 U.S.C. § 2000cc-2(a) (allowing suit against "a government"); § 2000cc-5(4) (defining "government" to include, among other things, a State or State official). Instead of a specific enumeration of every available remedy, which would be impractical and contrary to typical legislative drafting, the unqualified phrase "appropriate relief" sets forth the scope of recoverable awards. The language of RLUIPA enables a State to exercise its choice of accepting federal funds knowingly, cognizant that it includes monetary damages, *because* the language is broad and specifies that it must be construed to include all available protections of religious exercise, not in spite of its being broad.

Further, Congress expressly *excluded* monetary damages in a separate section of RLUIPA that grants the United States authority to enforce the provisions of the Act by "an action for injunctive relief," rather than by an action for "appropriate relief." 42 U.S.C. § 2000cc-2(f). This contrast demonstrates Congress's intent that the phrase "appropriate relief" should encompass remedies above and beyond injunctions. *See Timbers of Inwood Forest Assoc.*, 484 U.S. at 371 ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme —

because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law . . . ." (citations omitted)).

This is not an instance of general statutory language susceptible to more than one meaning. To hold that RLUIPA allows monetary damages against a State would not authorize a plaintiff to seek monetary damages against a State in instances where the statutory text is ambiguous or equivocal. To the contrary, accepting the argument that a State was not knowingly cognizant that the broad phrase "appropriate relief" included damages would be tantamount to viewing the State as a dull-witted entity incapable of making informed funding decisions. Cases evaluating the States in this and similar contexts require Congress to treat the States as fellow adults and to speak plainly to them; they do not treat the States as children who do not understand language or who are unknowledgeable about what is going on around them. *See Guardians Ass'n v. Civil Service Comm'n of City of New York*, 463 U.S. 582, 596 (1983) (noting that States or other federal funding recipients are presumed to have "weighed the benefits and burdens before accepting the funds"); *United States v. New Jersey*, 194 F.3d 426, 433 (3d Cir. 1999) (in the context of a contractual relationship between the federal government and a State, "the State is a sophisticated litigant").

2. *Relevant Case Law and Statutes in Effect at the Time Congress Enacted RLUIPA Demonstrate that a State Accepting Federal Funds Under RLUIPA had Clear, Unambiguous Notice that the Phrase "Appropriate Relief" Included Damages.*

This Court has stated that, "in determining Congress's intent to limit application of the traditional presumption of all appropriate relief [including monetary damages], we evaluate the state of the law when the Legislature passed [the statute in question]." *Franklin*, 503 U.S. at 71 (citation omitted); *see also Fitzgerald v. Barnstable Sch. Comm.*, --- U.S. ---, 129 S.Ct. 788, 797 (2009) ("[W]e presume Congress was aware of [the law at the time the statute was put into effect] when it passed Title IX.") (citation omitted). Therefore, the plain reading of the text is reinforced by: (a) this Court's relevant jurisprudence at the time Congress enacted RLUIPA, and (b) the interpretation of similar statutes Congress had created at the time it enacted RLUIPA.[5] These resources indicate that RLUIPA permits recovery of monetary damages against a State.

a. Prior Case Law

In drafting the RLUIPA Remedial Provision, Congress used language identical to that used by this Court in *Franklin*, when it held that plaintiffs could be awarded retroactive relief (damages) under the implied right of action in Title IX in accordance

[5] This limits the inquiry on this point, at the latest, to authorities issued on or before September 22, 2000, the date President Clinton signed RLUIPA into law.

with "the long line of cases in which the Court has held that if a right of action exists to enforce a federal right and Congress is silent on the question of remedies, a federal court may order *any appropriate relief*." 503 U.S. at 69 (emphasis added) (citing *Davis v. Passman*, 442 U.S. 228, 247 n.26 (1979)). "The general rule, therefore, is that absent clear direction to the contrary by Congress, the federal courts have the power to award *any appropriate relief* [including damages] in a cognizable cause of action brought pursuant to a federal statute." *Id.* at 70–71 (emphasis added). *See also Barnes v. Gorman*, 536 U.S. 181, 189 (2002). "That a statute does not authorize the remedy at issue 'in so many words is no more significant than the fact that it does not in terms authorize execution to issue on a judgment.'" *Franklin*, 503 U.S. at 68 (quoting *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 288 (1940)). Thus, existing precedent at the time of RLUIPA's enactment pointed States to two conclusions regarding the phrase "appropriate relief." First, to the extent a State thought the phrase unspecific on allowable remedies, it knew that such lack of specificity permitted the courts to award any relief, including monetary damages. Second, "appropriate relief" includes monetary damages as specified and awarded in *Franklin*.

Additionally, a Spending Clause statute's "contractual nature has implications for [this Court's] construction of the scope of available remedies." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998). "One of these implications, we believe, is 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." *Barnes*, 536 U.S. at 187 (quoting *Franklin*, 503 U.S. at 73). "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.* at 187 (emphasis added). "When a federal-funds recipient violates conditions of Spending Clause legislation, the wrong done is the failure to provide what the contractual obligation requires; and that wrong is 'made good' when the recipient *compensates* the Federal Government or a third-party beneficiary (as in this case) for the loss caused by that failure." *Id.* at 189 (citing *Guardians Ass'n*, 463 U.S. at 633 (Marshall, J., dissenting)).

Based on these principles, and under this Court's well-settled Spending Clause analysis, "a recipient of federal funds is . . . subject to suit for compensatory damages and injunction, forms of relief traditionally available in suits for breach of contract." *Barnes*, 536 U.S. at 187 (internal quotation marks omitted). More importantly, however, this analysis demonstrates that the phrase "appropriate relief" unambiguously gave notice to the States that, in accepting federal funds, a State waives its immunity to suits for relief traditionally available in suits for breach of contract, including monetary damages.

b. Prior Statutes

The RLUIPA Remedial Provision closely parallels the remedial section of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination by certain Government agencies and departments and grants "the Civil Service

Commission . . . authority to enforce [that prohibition against those agencies] through *appropriate remedies*." 42 U.S.C. § 2000e-16(b) (emphasis added). In 1999, just prior to Congress's enactment of RLUIPA, this Court held that the phrase "appropriate remedies" was an unequivocal waiver of the federal government's sovereign immunity and granted the Equal Employment Opportunity Commission authority to award aggrieved parties compensatory damages against the applicable Government agencies. *West v. Gibson,* 527 U.S. 212, 222–23 (1999).

The language Congress chose to form the RLUIPA Remedial Provision also mirrors verbatim the language in the remedial provision of the Religious Freedom Restoration Act ("RFRA"). *Compare* 42 U.S.C. § 2000cc-2(a) ("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*." (emphasis added)) *with* 42 U.S.C. § 2000bb-1(b) ("A person whose religious exercise has been burdened in violation of this section may assert that violation *as a claim or defense in a judicial proceeding and obtain appropriate relief against a government*." (emphasis added)).[6]

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[6] In their normal usage, the phrases "claim" and "appropriate relief" generally include monetary relief. For example, the Tucker Act, 28 U.S.C. § 1491(a)(1), confers jurisdiction on the United States Court of Appeals of Federal Claims over "any claim" arising under the Contract Disputes Act of 1978 ("CDA"). The CDA applies to "all claims by a contractor against the government relating to a contract." 41 U.S.C. § 602(a). Federal regulations specifically define claim as a written demand seeking "the payment of *money* in a sum certain, . . . *or other relief* arising under or relating to the

Presuming, as this Court must, that Congress was fully aware that the phrase "appropriate relief" in RLUIPA mirrored the language of these other statutes used in similar contexts, *Franklin*, 503 U.S. at 71, the Court should conclude that Congress unambiguously intended RLUIPA to include relief for monetary damages. Had Congress been unhappy with the Court's prior interpretation of "appropriate relief" or "appropriate remedies," it could have easily altered the language in the RLUIPA Remedial Provision to expressly exclude monetary damages.

3. *A State is on Notice of the Court's Prior Holdings When it Subjects Itself to Suits for "Appropriate Relief" Under RLUIPA.*

When RLUIPA was enacted in September 2000, Congress used the term "appropriate relief" with knowledge that this Court had interpreted this phrase in *Franklin*, 503 U.S. at 68–71, (and other cases set forth above) to include monetary damages. *See, e.g.*, *Miles v. Apex Marine Corp.,* 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation."); *McNary v. Haitian Refugee Center*, 498 U.S. 479, 496 (1991)

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contract." 48 C.F.R. § 2.101 (emphasis added). Moreover, the Tucker Act also grants jurisdiction to courts in bid procurement actions to "award *any relief* that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs." 28 U.S.C. § 1491(b)(2) (emphasis added). As these statutes indicate, Congress assumed the normal usage of "claim" and "any relief" would include monetary relief, and in certain instances took additional steps to limit the monetary relief that was otherwise contemplated by the words "claim" and "any relief."

(Congress legislates with knowledge of basic rules of statutory construction).

The highest court of the State of Texas has interpreted its own laws using this same rule of construction. *See, e.g.*, *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) ("Presumptively, the Legislature was aware of [an earlier] opinion when it enacted [the statute there at issue] in 1995."); *accord Phillips v. Beaber,* 995 S.W.2d 655, 658 (Tex. 1999) (presumed knowledge of common law). Like it does with Congress, then, this Court may presume that the Texas Legislature knew the prior law of *Franklin* (and the body of law interpreting the phrase "appropriate relief") when it accepted federal funds and waived its sovereign immunity pursuant to RLUIPA's terms. *Cf. Guardians Ass'n*, 463 U.S. at 596 (noting that States are presumed to have "weighed the benefits and burdens before accepting the funds"). This body of law indicates that "appropriate relief" includes a host of remedies, including monetary damages.

4. *The Legislative History of RLUIPA Shows that Congress Intended, and the States Knew, that Aggrieved Persons Would Be Able to Recover Damages.*

The legislative history of RLUIPA also clearly indicates that Congress intended "appropriate relief" for RLUIPA violations to include monetary damages. Indeed, the day before RLUIPA was signed into law, RLUIPA's primary sponsor specifically noted on the Congressional Record that RLUIPA creates "a private cause of action for *damages*, injunction, and declaratory judgment." 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (emphasis added) (statement of

Hon. Charles T. Canady); *see also* H.R. Rep. No. 106-219, at 29 (1999) (providing an identical analysis of section 4(a) of the Religious Liberty Protection Act of 1999, the predecessor to RLUIPA).[7]

Similarly, prior to RLUIPA's enactment, the author of a leading casebook on remedies[8] presented testimony to the House Subcommittee on the Constitution and the Senate Judiciary Committee indicating that the remedies section of RLUIPA should be read so that "appropriate relief includes declaratory judgments, injunctions and damages." *See Religious Liberty Protection Act: Hearing on H.R. 1691 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. (May 12, 1999) (statement of Douglas Laycock, Professor, University of Texas Law School discussing section 4(a) of Religious Liberty Protection Act, the predecessor to RLUIPA); *see also Issues Relating to Religious Liberty Protection, And Focusing on the Constitutionality of a Religious Protection Measure, Hearing Before the Committee on the Judiciary of the United States Senate*, 106th Cong. 91 (1999) (same); *Religious Liberty Protection Act of 1998: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 219 (1998) (same).

RLUIPA's legislative history further indicates that Congress intentionally used the phrase

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[7] The Religious Liberty Protection Act was the precursor to what eventually became RLUIPA. *See* 146 Cong. Rec. E1563 (Sept. 22, 2000) (statement of Hon. Charles T. Canady) ("[RLUIPA] is patterned after an earlier, more expansive bill, H.R. 1691 . . . .").

[8] *See* Douglas Laycock, *Modern American Remedies: Cases and Materials* (3d ed. 2002).

"appropriate relief" to provide for a broad scope of remedies and avoid unnecessarily limiting the scope of relief under the statute. Therefore, Congress drafted RLUIPA with specific "accordion-like provision[s]" which "leave[] it to the Court to decide what kind of relief can appropriately be obtained against a particular government being sued." *Issues Relating to Religious Liberty Protection, And Focusing on the Constitutionality of a Religious Protection Measure, Hearing Before the Committee on the Judiciary of the United States Senate*, 106th Cong. 122, 125 (1999) (statement of Gene C. Schaerr, Sidley & Austin). Congress included these "accordion-like provisions" so that trial courts and fact finders could determine what relief would be "appropriate" depending on the facts and circumstances of each case. Therefore, RLUIPA demonstrates Congress's efforts to ensure that relief for RLUIPA violations would be appropriately tailored under the circumstances, to include declaratory judgments, injunctions, and, when appropriate, monetary damages.

B. A State's Interest in Sovereign Immunity Does not Authorize the State to Violate an Individual's Fundamental Right to Religious Exercise as Protected by RLUIPA Without Being Subject to Monetary Damages.

Congress enacted RLUIPA to protect individual religious liberties. *See* 42 U.S.C. § 2000cc(a)(1) ("No government shall impose . . . a substantial burden on the religious exercise of a person . . . ."); 42 U.S.C. § 2000cc-1(a) (same); *see also* 146 Cong. Rec. E1563 (Sept. 22, 2000) (statement of Hon. Charles T. Canady) (stating RLUIPA was designed to "protect

the free exercise of religion from unnecessary governmental interference").

Sovereign immunity, while an important principle generally, is a thin veil for a State's violation of an individual fundamental right, especially when the State has accepted federal funds on the statutory condition that it will be liable for all appropriate relief if it violates this fundamental right without a compelling governmental interest in the least restrictive means. See 42 U.S.C. § 2000cc-1(a). In this regard, the interest of a State does not trump an individual's fundamental rights.

A State's sovereign immunity under a federal statute is an issue of federalism insofar as it involves whether federal law may impose monetary damages against a State. However, in the debate of federal and State powers, the interest of the individual whose fundamental right has been violated is a greater concern than whether a federal statute may allow monetary damages against a State. From the founding of this nation, an underlying principle of the federal structure has been that the interests of the people are superior to those of both the federal and state governments. James Madison wrote:

> Notwithstanding the different modes in which they are appointed, we must consider both [the federal government and the state governments] as substantially dependent on the great body of the citizens of the United States. . . . The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes. The

> adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone . . . .

The Federalist No. 46 (James Madison). As the founding fathers intended, the federal and State governments have a "common superior" in the people. Therefore, in the debate over whether a federal statute that protects an individual's fundamental right may allow for monetary damages against a State, the greatest concern must be redress for the individual right, not the interest of the State.

In this case, this principle manifests itself in the context of waiver of sovereign immunity when a State consents to suit under Spending Clause legislation. Similarly, in the distinct but related context of Congressional abrogation of sovereign immunity under Section 5 of the Fourteenth Amendment, this Court has denied a sovereign immunity defense against monetary damages in cases involving statutes that protect fundamental rights or suspect classes. *Compare Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 366–69 (2001) (plaintiffs could not recover damages from State under Title I of Americans with Disabilities Act ("ADA") where no fundamental right or protected

class was involved) *with Tennessee v. Lane*, 541 U.S. 509, 522–34 (2004) (plaintiffs could recover damages from State under Title II of the ADA because Title II protected the fundamental right of access to the courts and "Congress enacted Title II against a backdrop of . . . systematic deprivations of fundamental rights"); *see also Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 727–28 (2003) (state employee could recover damages from State for violations of Family and Medical Leave Act that redressed State's unconstitutional sex discrimination).

The Court reconciled the various positions on this issue in *United States v. Georgia*, 546 U.S. 151, 159 (2006). Acknowledging disagreement among the Members of the Court as to the scope of Congress's powers under the Fourteenth Amendment, the Court stated that "no one doubts" that Congress's power under the Fourteenth Amendment includes the power to abrogate a State's sovereign immunity by creating "a private cause of action for damages against the States" for conduct that "independently violated" the Fourteenth Amendment. *Id.* at 158–59. Therefore, whether a statute can allow monetary damages against a State in the Fourteenth Amendment context turns on whether the statute provides redress for conduct that independently violates the Fourteenth Amendment. This most often arises in the context of individual fundamental rights and suspect classes that invoke strict scrutiny.

In the same way, Congress may allow monetary damages against a State in a Spending Clause statute that provides redress for conduct that independently violates an individual's fundamental

rights. The concept of a fundamental right is not strictly a Fourteenth Amendment concept. A fundamental right is one so essential to individual liberty that it is said to be "'deeply rooted in this Nation's history and tradition'" and "'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citations omitted). Such fundamental rights underlay the fabric of the Constitution and are recognized in all contexts, including the Spending Clause and associated analyses of sovereign immunity and the Eleventh Amendment. Therefore, the test for whether a State has waived sovereign immunity by accepting federal funds under a Spending Clause statute should not be applied in a vacuum. When a statute enacted under the Spending Clause creates a cause of action against a State to protect religious exercise, the fact that an individual fundamental right is at issue should play into the Court's analysis of whether the State has waived its sovereign immunity and consented to suit for monetary damages under the statute.

In this case, there is no dispute that a fundamental right is at issue. The case involves an individual's religious liberty, and RLUIPA is tailored to protect religious liberty, which "is a constitutional value of the highest order." *Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000*, 2 *Pub. Papers* 1906 (Sept. 22, 2000). Since the First Congress and the ratification of the Bill of Rights, it has been axiomatic that the free exercise of religion is a fundamental right. *See, e.g.*, *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974)

("Unquestionably, the free exercise of religion is a fundamental constitutional right.").

The fundamental right to the free exercise of religion applies to all citizens, including prisoners, and the right is not limited or pared down simply because an individual is institutionalized: "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty." *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972). Thus, as this Court has previously held, RLUIPA properly protects institutionalized persons who are "dependent on the government's permission and accommodation for exercise of their religion." *Cutter*, 544 U.S. at 721.

With RLUIPA, Congress sought to protect these fundamental freedoms by allowing monetary as well as injunctive relief—giving full, not partial, protection to State violations of First Amendment liberties. Holding that RLUIPA does not include the possibility of monetary damages against a State or a State officer in his official capacity would elevate a State's sovereignty above an individual's fundamental rights as enumerated in the First and Fourteenth Amendments and as protected by RLUIPA. Because a State which accepts federal funds under RLUIPA waives its sovereign immunity generally, and the type of remedy available through that waiver is irrelevant in evaluating State sovereign immunity, the dignity accorded States consistent with their status as sovereign entities will not be harmed if monetary damages are deemed recoverable under RLUIPA.

II. THE PRACTICAL EFFECT OF AFFIRMING THE FIFTH CIRCUIT'S HOLDING WOULD BE CRIPPLING TO CONGRESSIONAL INTENT AND THE LEGITIMATE EFFORTS OF ORGANIZATIONS SUCH AS *AMICI* TO REMEDY VIOLATIONS OF RLUIPA.

"[RLUIPA] is . . . designed to protect the free exercise of religion from unnecessary governmental interference." 146 Cong. Rec. H7190 (daily ed. July 27, 2000) (statement of Hon. Charles T. Canady). In the Congressional proceedings on religious freedom legislation that led to RLUIPA, Congressional findings revealed widespread governmental infringement of the free exercise of religion in the institutional context: "prison officials sometimes imposed frivolous or arbitrary rules" and "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict[ed] religious liberty in egregious and unnecessary ways." 146 Cong. Rec. S7774–75 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy) (noting three years of House and Senate hearings addressing the need for legislation to target frequently occurring burdens on religious liberty). Accordingly, Congress enacted RLUIPA to afford added protection to religious liberty. In particular, RLUIPA was intended to guard the fundamental right to "religious exercise of a class of people particularly vulnerable to governmental regulation, and that is institutionalized persons." 146 Cong. Rec. H7190 (daily ed. July 27, 2000) (statement of Hon. Charles T. Canady). *See also Cutter*, 544 U.S. at 721 ("RLUIPA thus protects institutionalized persons who are unable freely to attend to their religious

needs and are therefore dependent on the government's permission and accommodation for exercise of their religion").

If only equitable relief is available under RLUIPA, there is virtually no incentive for a State or State official to abide by its prohibitions. They could effectively use federal funds while simultaneously violating RLUIPA with little or no risk other than the threat of eventually being scolded by a court to stop. Such an interpretation would unreasonably inhibit an individual's fundamental right to religious exercise in contravention of RLUIPA's purpose. Additionally, this interpretation would contradict Congress's intent of protecting religious exercise and deterring the States from violating RLUIPA by permitting States and State actors to freely infringe on those liberties with impunity.

"The preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities." *Fed. Maritime Comm'n*, 535 U.S. at 760 (citing *In re Ayers*, 123 U.S. 443, 505 (1887)). Failing to permit aggrieved parties to recover monetary damages under RLUIPA would not promote this preeminent purpose; rather, it would encourage States and State actors to undermine this dignity by violating RLUIPA until they were ordered to stop by a federal court or, more likely, decided to stop in order to moot a meritorious RLUIPA claim.. Indeed, this pattern has already reared its head in the lower courts. For example, in 2009 the Seventh Circuit determined that a RLUIPA claim was moot because a prison began serving meals in accordance with an inmate's religious beliefs three years after the inmate filed suit. *See Nelson v. Miller*, 570 F.3d 868, 882 (7th

Cir. 2009). Moreover, a lower court has held a prisoner's RLUIPA claim moot after the defendant altered its policy and permitted prisoners to wear religious garbs in certain circumstances. *Boles v. Neet*, 402 F. Supp. 2d 1237, 1241 (D. Colo. 2005), *aff'd on other grounds*, 486 F.3d 1177 (10th Cir. 2007).

The absurd results that would occur if States and State actors are permitted to violate RLUIPA until the last possible moment stand in stark contrast to Congress's intent to deter the States' from committing constitutional wrongs. Often when a person's fundamental right to religious exercise is violated in breach of RLUIPA, injunctive relief is pointless because the relief would come too late. For example, if a prison inmate with sincere religious beliefs discovered, days before a sacred holiday, that he would be required to work at his prison job during the holiday (or otherwise have his observance of the holiday inhibited in violation of RLUIPA), there would be no time for an injunction to provide the prisoner relief. The sacred holiday would have passed, taking with it the individual's fundamental right to religious freedom, by the time the inmate was able to exhaust administrative remedies and seek an injunction. Similarly, if a prisoner with a legitimate RLUIPA claim were released during the litigation process, injunctive relief would become moot and pointless. One scholar has noted similar issues in the land use context of RLUIPA, stating that "the absence of damages [in RLUIPA's remedial provision] would create a perverse incentive for municipalities to drag out the conditional use permit . . . and litigation process for as long as possible, with the hope that an appellant will eventually lose the

land, and with it, their entire cause of action." Daniel P. Dalton, *Defining "Appropriate Relief" Under the Religious Land Use and Institutionalized Persons Act: The Availability of Damages and Injunctive Relief with RLUIPA*, 2 Alb. Gov't L. Rev. 604, 616 (2009).

As these examples demonstrate, in many cases, monetary relief may be the only deterrent that could reasonably be fashioned to prevent legitimate RLUIPA violations. Congress could not and did not create RLUIPA to provide a right without a remedy. As Chief Justice John Marshall observed, "[t]he Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (emphasis added). The practical effect of reading legal remedies out of the phrase "appropriate relief" in RLUIPA will be to create the paradox of having a Federal statute, applicable to the States, which permits the States to violate or obey it at the whim of the very actors Congress sought to confine. RLUIPA should not be enfeebled in this manner, particularly at the expense of fundamental liberties.

III. THE PRISON LITIGATION REFORM ACT DOES NOT BAR THE PETITIONER'S CLAIM FOR MONETARY DAMAGES.

The Respondents have argued at the petition stage that the Court need not address the question of monetary damages under RLUIPA because they claim the Prison Litigation Reform Act of 1995 ("PLRA") bars any damages award and prohibits all

prisoner suits seeking damages for non-physical injury, regardless of whether RLUIPA allows monetary damages against a State or State official in his official capacity. Br. for Resp't in Opp'n to Pet. for Writ of Cert. at 4. This argument misses the mark because (1) the Respondents' reading of the PLRA is overly broad and misinterprets the plain language of the PLRA and (2) the PLRA does not bar claims for nominal damages.

A. The Plain Language of the PLRA Demonstrates that it Does not Bar the Claim at Issue.

The plain language of the PLRA, 42 U.S.C. § 1997e(e), does not indicate that a mere lack of a physical injury completely bars an incarcerated person from seeking recovery against a tortfeasor. Rather, only those claims brought "for mental or emotional injury" are barred absent a prior showing of physical injury. *Id.* The proper intention of the statute is that the requirement of a "prior showing of physical injury" modifies specific claims, namely, actions "for mental or emotional injur[ies]." *Id.* If an action is *not* for mental or emotional injury, the claimant need not make a prior showing of physical injury. Thus, if a claim alleges a non-physical injury that is not "for mental or emotional injury suffered," such as a claim for violation of First Amendment rights, as well as a claim under RLUIPA specifically, the PLRA does not preclude that claim.

Respondents incorrectly interpret the PLRA to limit damages exclusively to suits for physical injury. Such a reading "would render superfluous the qualifying language 'for mental or emotional injury' and would be contrary to the well-established

principle that all words in a statute should be read to have meaning. . . . If Congress had intended to apply § 1997e(e)'s restriction to all federal civil suits by prisoners, it could easily have done so simply by dropping the qualifying language 'for mental or emotional injury.'" *Amaker v. Haponik*, No. 98 Civ. 2663 (JGK), 1999 U.S. Dist. LEXIS 1568, at *22–23 (S.D.N.Y. Feb. 17, 1999). *See also Doe v. Chao*, 540 U.S. 614, 631 (2004) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (citations omitted) (internal quotation marks omitted).

The private right of action provided under RLUIPA does not require a showing of injury, whether physical or non-physical, in order to succeed on a claim for relief. Instead, RLUIPA provides that a person whose First Amendment right "has been burdened in violation of [RLUIPA] may assert that violation as a claim." 42 U.S.C. § 2000cc-2(a). Put another way, a claim brought under RLUIPA is not "for mental or emotional injury suffered" but is simply for violations of RLUIPA. Therefore, the PLRA does not preclude an award of damages for claims under RLUIPA.

Moreover, lower courts have held that claims for constitutional violations of fundamental rights, such as those asserted under RLUIPA, do not fall within the PLRA's bar to recovery. As one circuit has aptly explained, "[t]he deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred. Therefore, § 1997e(e) does not apply to First

Amendment claims regardless of the form of relief sought." *Canell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir. 1998). Similarly, the Seventh Circuit has "held explicitly that prisoners need not allege a physical injury to recover damages because the deprivation of the constitutional right is itself a cognizable injury, regardless of any resulting mental or emotional injury." *Calhoun v. DeTella*, 319 F.3d 936, 940 (7th Cir. 2003) (citing *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999)). Although some circuits have held to the contrary, those cases did not completely foreclose RLUIPA claims where the PLRA may also apply.[9] In short, the PLRA bars only claims brought for mental or emotional injuries; such injuries are distinct from injuries to an individual's constitutionally protected fundamental rights. For this reason, the PLRA is inapplicable here.

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[9] For example, in *Smith v. Allen*, 502 F.2d 1255 (11th Cir. 2007), the Eleventh Circuit held that although RLUIPA's "appropriate relief" is broad enough to encompass monetary damages, a prisoner plaintiff's right to relief is significantly circumscribed by the PLRA. *Id.* at 1271. Relying on *Napier v. Preslicka,* 314 F.3d 528 (11th Cir. 2002), the court assumed that the phrase "[f]ederal civil action" in §1997e(e) includes constitutional claims. However, neither *Smith* nor *Napier* addressed whether §1997e(e) was intended to cover *all* "[f]ederal civil action[s]" or only those "for mental or emotional injury"—as distinct from constitutional claims. The Court in *Smith* also acknowledged the PLRA would not bar nominal damages for violation of a constitutional right. The other two circuit opinions finding that the §1997e(e) barred First Amendment claims, *Geiger v. Jowers*, 404 F.3d 371, 374 (5th Cir. 2005) (per curiam), and *Searles v. Van Bebber*, 251 F.3d 869, 876 (10th Cir. 2001), did not address this issue in the RLUIPA context.

B. The PLRA Does not Bar Claims for Nominal Damages, Which the Petitioner can Demonstrate in Accordance with RLUIPA.

Notably, the PLRA does not bar a claim for nominal damages. Several circuits have already reached this conclusion. *See, e.g.*, *Royal v. Kautzky*, 375 F.3d 720, 723 (8th Cir. 2004) (nominal, punitive, injunctive and declaratory relief available under PLRA); *Hughes v. Lott,* 350 F.3d 1157, 1162 (11th Cir. 2003) (PLRA does not bar nominal damage awards); *Thompson v. Carter,* 284 F.3d 411, 418 (2d Cir. 2002) (same); *Searles v. Van Bebber*, 251 F.3d 869, 879 (10th Cir. 2001) ("[S]ection 1997e(e) does not bar recovery of nominal damages for violations of prisoners' rights."); *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 (1986) ("[N]ominal damages, and not damages based on some undefinable 'value' of infringed rights, are the appropriate means of 'vindicating' rights whose deprivation has not caused actual, provable injury."); *Carey v. Piphus*, 435 U.S. 247, 266 (1978) (approving recovery of nominal damages without proof of actual injury).

As set forth above, Section 2000cc-2(a) provides that a person whose First Amendment right "has been burdened in violation of [RLUIPA] *may assert that violation as a claim*" (emphasis added). Because "a claim" in the statute, by definition, must include at least nominal damages, legitimate RLUIPA violations that would trigger at least nominal damages may not be barred by the PLRA.

CONCLUSION

For the reasons set forth above, *amici* respectfully request this Court to conclude that an individual may sue a State or a state official in his official capacity for damages for violations of RLUIPA.

Respectfully submitted,

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APPENDIX

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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.

* * * * *

e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. * * * *

Section 2000cc-3. Rules of construction

* * * * *

(g) Broad construction

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

* * * * *

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 * * * *

(7) Religious exercise

(A) In general

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

* * * * *

The Prison Litigation Reform Act of 1995 ("PLRA") provides, in relevant part:

42 U.S.C. § 1997e(e). Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.