No. 08-1438

In the Supreme Court of the United States

HARVEY LEROY SOSSAMON, III, PETITIONER

v.

STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether an individual may sue a State or a state official in his official capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc *et seq*.

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INTEREST OF THE UNITED STATES

This case presents the question whether an individual may sue a State or a state official in his official capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.* The United States has a significant interest in the resolution of that question. The Attorney General may bring actions under RLUIPA for injunctive or declaratory relief, 42 U.S.C. 2000cc-2(f), but full enforcement of RLUIPA's requirements depends on an effective private judicial remedy. If damages are unavailable in actions against States and their officials, RLUIPA's enforcement will be significantly undermined. At the Court's invitation, the United States filed a brief at the petition stage in this case.

STATEMENT

1. Congress enacted RLUIPA to provide statutory protection against religious discrimination—including unequal treatment of religions in the provision of accommodations and unjustified infringement of the free exercise of religion—by state and local governmental entities. The statute applies to two specific contexts: land use regulation and institutionalization. The provision at issue in this case is Section 3 of RLUIPA, 42 U.S.C. 2000cc-1, which provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden "is in furtherance of a compelling governmental interest," and "is the least restrictive means" of furthering that interest. 42 U.S.C. 2000cc-1(a)(1) and (2). Congress defined the statutory term "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. 2000cc-5(7)(A). And Congress defined "government" as "a State, county, municipality, or other governmental entity created under the authority of a State"; "any branch, department, agency, instrumentality, or official of [such] an entity"; and "any other person acting under color of State law." 42 U.S.C. 2000cc-5(4)(A).

Before enacting RLUIPA, Congress held nine hearings over three years. It gathered substantial evidence that, in the absence of federal legislation, persons institutionalized in state mental hospitals, nursing homes, group homes, prisons and detention facilities had faced substantial, unwarranted, and discriminatory burdens on their religious exercise. See, *e.g.*, *Joint Statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000*,

146 Cong. Rec. 16,698-16,699 (2000). Such unjustified burdens on religious exercise particularly affect persons confined to correctional facilities. See *id* at 16,701. Congress learned about instances of prison officials' interfering with religious rituals without apparent justification, thereby restricting prisoners' religious exercise "in egregious and unnecessary ways." *Id.* at 16,699.

Congress also heard testimony about sectarian discrimination in the provision of accommodations to prisoners. For example, one prison permitted the lighting of votive candles but not Chanukah candles. See *Protecting Religious Freedom After* Boerne v. Flores: *Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong., 2d Sess. Pt. 3, at 41 (1998) (*House Hearing*) (statement of Isaac Jaroslawicz). Another prison provided kosher food to Jewish prisoners, but not Halal food to Muslim prisoners, although it could have acquired both types of meals from the same vendor. *Id*. at 11 n.1 (statement of Marc D. Stern). And Congress learned of one case in which a prison treated the religious exercise of Catholics more favorably than that of Protestants by permitting prisoners to wear crosses only when they were part of rosaries. 146 Cong. Rec. at 16,699 (discussing *Sasnett* v. *Litscher*, 197 F.3d 290, 292-293 (7th Cir. 1999)).

Based on the evidence it collected, Congress concluded that prison inmates faced "frivolous or arbitrary" rules that resulted from "indifference, ignorance, bigotry, or lack of resources" and that had the effect of restricting their religious exercise "in egregious and unnecessary ways." 146 Cong. Rec. at 16,699. To prevent federal funds from contributing to such unreasoned or discriminatory burdens on the religious exercise of institutionalized persons, Congress invoked its Spending

Clause authority, U.S. Const. Art. I, § 8, Cl. 1, to apply RLUIPA's statutory protections whenever a substantial burden on religious exercise "is imposed in a program or activity that receives Federal financial assistance." 42 U.S.C. 2000cc-1(b)(1).[1] A covered "program or activity" includes "all of the operations of * * * a department, agency, special purpose district, or other instrumentality of a State or of a local government." 42 U.S.C. 2000cc-5(6), 2000d-4a(1)(A). Congress modeled this provision on similar provisions in other civil rights laws that likewise rely upon Spending Clause authority, such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Congress also provided an express private right of action to enforce RLUIPA's protections and to obtain "appropriate relief" for violations of RLUIPA. 42 U.S.C. 2000cc-2(a).

2. At the time he filed his complaint, petitioner was a state inmate housed in the Robertson Unit of the Texas Department of Criminal Justice-Correctional Institutions Division facility (Robertson). Pet. App. 2a. Petitioner, a Christian, alleges that he was denied the use of the prison chapel for purposes of worship (which has been referred to as his "chapel use" claim) and was denied access to all worship services while he was on cell restriction (his "cell restriction" claim). *Id.* at 2a-4a. He further alleges that inmates who practiced other faiths were provided special accommodations that were not

[1] In a provision not at issue in this case, Congress also invoked its authority under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3, in providing that RLUIPA's protections apply to institutionalized persons when "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States or with Indian tribes." 42 U.S.C. 2000cc-1(b).

provided to Christians, *id.* at 3a, and that inmates who were on cell restriction were permitted to attend secular activities such as work and the law library, but were not permitted to attend religious services, *ibid.*

Petitioner filed suit pro se against the State of Texas and various prison officials alleging violations of: RLUIPA's institutionalized persons provisions; 42 U.S.C. 1983 for violations of his rights under the First, Eighth, and Fourteenth Amendments; and state law provisions protecting religious liberties. Pet. App. 4a-5a. He sought declaratory and injunctive relief against respondents in their official capacities, and compensatory and punitive damages from them in their official and individual capacities. *Id.* at 5a. On the chapel-use claim, respondents conceded that petitioner and other prisoners were denied access to the chapel at the Robertson facility for the entirety of his period of incarceration. *Id.* at 6a. Respondents further noted that, starting at some point after petitioner filed a grievance on this issue, no religious worship at all is permitted at the chapel. *Ibid.* On the cell-restriction claim, respondents noted that the Robertson facility changed its policy to permit certain prisoners (including petitioner) to attend religious services while on cell restriction, and the State later adopted that policy for all of its correctional facilities. *Id.* at 5a.

The district court granted summary judgment to respondents. Pet. App. 8a. The court held that: (1) the Eleventh Amendment barred petitioner's claims for monetary relief against the State and state officials in their official capacities, *id.* at 42a-43a; (2) respondents were entitled to qualified immunity from suit for damages in their individual capacities, *id.* at 43a-45a; and

(3) injunctive relief was not appropriate under the circumstances, see *id.* at 8a.

3. The court of appeals affirmed in part and reversed in part. Pet. App. 1a-35a. The court first dismissed as moot petitioner's claims seeking declaratory and injunctive relief based on respondents' former cell-restriction policy. *Id.* at 9a-13a.

Turning to petitioner's RLUIPA claims against respondents in their individual capacities, the court of appeals found no basis in the statute for such relief, holding that, because RLUIPA was passed pursuant to Congress's authority under the Spending Clause, only entities that were "parties to the contract" (*i.e.*, the grant of federal funds in exchange for agreement to certain conditions) could be held liable for violation of the statute. Pet. App. 14a-20a. Individual RLUIPA defendants, the court explained, were not parties to the contract, and thus are not subject to suit in their individual capacities. *Id.* at 17a-19a.[2]

The court of appeals then assumed that RLUIPA creates a damages cause of action against officials in their official capacities, but held that Texas's sovereign immunity bars such an action. Pet. App. 20a-24a. Acknowledging a division among the courts of appeals on that issue, *id.* at 21a, the court concluded that RLUIPA's language is "clear enough to create a right for damages on the cause-of-action analysis, but not clear enough to do so in a manner that abrogates state

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[2] This Court granted the petition for a writ of certiorari in this case limited to the question: "Whether an individual may sue a State or a state official in his official capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act." Thus, the question whether an individual may sue a state official in his personal capacity for violations of RLUIPA is not before the Court.

sovereign immunity from suits for monetary relief," *id.* at 23a. Accordingly, the court held that the Eleventh Amendment bars claims for monetary relief against Texas and its officers in their official capacities. *Id.* at 23a-24a.

Finally, the court of appeals allowed petitioner's chapel-use claims for declaratory and injunctive relief against respondents in their official capacities to proceed, Pet. App. 24a-32a, finding that "RLUIPA unambiguously creates a private right of action for injunctive and declaratory relief," *id.* at 14a.

SUMMARY OF ARGUMENT

When Congress grants federal funds to States or other entities, it may exercise its authority under the Spending Clause to attach conditions to the receipt of those funds so long as it is unambiguously clear what those conditions are. It is undisputed in this case that, when Congress enacted RLUIPA, it unambiguously conditioned the receipt of federal funds on a State's agreeing not to impose substantial burdens on the free exercise of institutionalized persons unless doing so is the least restrictive means of furthering a compelling government interest. Congress also conditioned the receipt of federal funds on a State's waiver of its Eleventh Amendment immunity—to claims for money damages and for injunctive relief—to suits to enforce RLUIPA's substantive requirements.

Respondents contend that they are not subject to private suits for money damages because RLUIPA's authorization of "appropriate relief" is not sufficiently clear to put them on notice that they will be subject to such relief for violations of the statute. Respondents do not appear to contest that they had sufficient notice that

they would be subject to private suits in federal court for injunctive relief. Critically, respondents also do not appear to contest that RLUIPA speaks in sufficiently clear terms to notify non-State recipients of federal funds that they will be subject to private suits for money damages for violations of the statute. This Court has repeatedly held that, when Congress conditions the receipt of federal funds on a recipient's agreeing to abide by certain substantive provisions, individuals are entitled to monetary damages to compensate them for a recipient's violation of the conditions to which it agreed when it accepted the funds. The Court has explained that, because Spending Clause legislation is much in the nature of a contract, contract law governs the scope of available remedies when a recipient violates the terms of the contract. And this Court has repeatedly held that that scope includes all "appropriate relief," including monetary damages. Even if Congress had failed to mention anything about the scope of relief in RLUIPA, this Court's precedents would dictate that monetary damages are available. And here, where Congress has decided to provide an additional layer of clarity by incorporating the very phrase this Court has used to describe a range of relief that includes compensatory damages, the explicit condition on the funds is manifest.

The thrust of respondents' argument is that Congress must use different words to notify State recipients of the consequences of their accepting federal funds than it must to notify non-State government entities of the same consequences. That contention finds no support in either the Spending Clause or the Eleventh Amendment. Nor can it be derived from the law governing the United States' waiver of its own immunity. When the federal government waives its immunity in a

statute, it does so unilaterally and as a gratuity, and courts have held that such a waiver must be narrowly construed and must specify the types of relief to which immunity has been waived. But even if the same rules applied to States—and they do not—this case does not implicate a State's similarly gratuitous waiver of its immunity. Rather, the waiver of immunity at issue in this case is the State's contractual agreement to abide by the terms of RLUIPA and to answer in federal court for its failure to do so in return for accepting federal funds. The scope of relief available in such a situation is determined by background principles of contract law. The same is true with respect to the United States, which has waived its sovereign immunity to suits for breach of contract in the Tucker Act, 28 U.S.C. 1491(a)(1); the scope of relief available in breach-of-contract suits against the United States is governed by background contract principles, which authorize the award of money damages.

Even if RLUIPA itself did not provide sufficient notice to State recipients of federal funds that they would be subject to suit for money damages, Congress provided additional notice of that fact when it enacted 42 U.S.C. 2000d-7. Section 2000d-7 provides that State recipients of federal funds waive their Eleventh Amendment immunity to—and shall be liable for the same damages as other parties in—suits alleging violations of Spending Clause statutes prohibiting discrimination. RLUIPA is a federal statute prohibiting discrimination in programs that accept federal funds. This Court has repeatedly held that, when Congress uses the word "discrimination," courts should interpret that term broadly. As is clear from Section 2000d-7's reference to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794,

"discrimination" as used in that provision includes a prohibition on a fund recipient's imposition of unjustified burdens. RLUIPA's requirement that State prisons not impose unjustified burdens on inmates' religious exercise also prohibits discrimination by barring prisons from imposing unequal burdens on one type of religious exercise as compared to another, and from preferring secular activity over a similar type of religious activity. RLUIPA follows in a long tradition of preventing discrimination by guarding against unfair bias, and therefore falls comfortably within the scope of Section 2000d-7.

ARGUMENT

A STATE WAIVES ITS ELEVENTH AMENDMENT IMMUNITY TO SUITS FOR MONEY DAMAGES UNDER RLUIPA WHEN IT ACCEPTS FEDERAL FUNDS

This Court has made clear that Congress, in the exercise of its power under the Spending Clause, may condition the receipt of federal funds on a State's waiver of Eleventh Amendment immunity to suit—including suits seeking money damages. See *College Sav. Bank* v. *Florida Prepaid Postsec. Educ. Expense Bd.*, 527 U.S. 666, 686-687 (1999); *Lane* v. *Pena*, 518 U.S. 187, 198-200 (1996). When Congress intends to attach such a condition to the receipt of federal funds, it must do so clearly and unambiguously. See, *e.g.*, *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 247 (1985) (*Atascadero*); *South Dakota* v. *Dole*, 483 U.S. 203, 207 (1987). Congress has done precisely that in two separate statutory provisions, thereby putting States on notice that, if they accept federal funds for their correctional systems, they will be subject to private suits in federal court to enforce RLUIPA's protection of inmates' religious liberties, in-

cluding suits for money damages. By accepting such funds, a State knowingly waives its Eleventh Amendment immunity to RLUIPA claims brought by state inmates.

A. RLUIPA Puts Recipients Of Federal Funds On Notice That They Are Subject To Suit In Federal Court For Appropriate Relief, Including Money Damages

As this Court held in *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1, 17 (1981) (*Pennhurst*), "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." By speaking clearly, Congress gives fund recipients "the choice of complying with the conditions set forth * * * or foregoing the benefits of federal funding." *Id.* at 11. It is common ground in this case that, in enacting RLUIPA, Congress put recipients of federal funds on notice of at least three things. First, Congress clearly stated that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution * * * in any case in which * * * the substantial burden is imposed in a program or activity that receives Federal financial assistance." 42 U.S.C. 2000cc-1. Second, Congress created an express cause of action for individuals against "a government," including "a State," thereby putting fund recipients on notice that they would be subject to private suits in federal courts for violations of RLUIPA. 42 U.S.C. 2000cc-2(a) ("A person may assert a violation of [RLUIPA] as a claim or defense in a judicial proceeding and obtain appropriate relief against a government."); 42 U.S.C. 2000cc-5(4)(A)(i) (defining "government" to include "a State"). And third, Congress put fund recipients on notice that they would be liable for "appropriate

relief" in such actions. 42 U.S.C. 2000cc-2(a). The central question in this case is whether Congress also put fund recipients on notice that the authorization of "appropriate relief" for violations of the statute encompasses an authorization for courts to award money damages. Under this Court's many cases interpreting Congress's authority to place conditions on the grant of federal funds, it is clear that Congress did.

1. This Court has frequently considered the scope of relief available to private individuals in suits brought to enforce civil rights laws enacted pursuant to the Spending Clause, specifically Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794. The Court has held that each of those statutes may be enforced by individuals through a private right of action, see *Barnes* v. *Gorman*, 536 U.S. 181, 185-186 (2002); but because that right of action is implied, none of those statutes contains any provision specifying what remedies are available. In the absence of such specification by Congress, this Court has held that those statutes permit individual litigants to seek "appropriate relief," and that "appropriate relief" includes "compensatory damages." See *id.* at 187-189; *Franklin* v. *Gwinnett County Pub. Schs.*, 503 U.S. 60, 68-71 (1992).

In *Franklin*, the Court confronted the question whether money damages are available in private suits under Title IX. In answering that question affirmatively, the Court explained that, when a statute creates a legal right and permits an individual to sue for invasion of that right, the Court "presume[s] the availability of *all appropriate remedies* unless Congress has ex-

pressly indicated otherwise." 503 U.S. at 66 (emphasis added); see *id.* at 68; *Bell* v. *Hood*, 327 U.S. 678, 684 (1946). Specifically rejecting the argument that remedies under Title IX should be limited to injunctions and other equitable relief, the Court further noted that "it is axiomatic that a court should determine the adequacy of a remedy in law before resorting to equitable relief." *Franklin*, 503 U.S. at 75-76. Finding no "legislative intent to abandon the traditional presumption in favor of all available remedies," *id.* at 72, the Court held that "a damages remedy is available for an action to enforce Title IX," *id.* at 76.

In so holding, the Court considered and rejected the view "that the normal presumption in favor of all appropriate remedies should not apply" to statutes "enacted pursuant to Congress' Spending Clause power." *Franklin*, 503 U.S. at 74. Instead, the Court held that the availability of money damages for intentional violations of Spending Clause legislation is presumed so long as Congress clearly alerts fund recipients about the substantive requirements of the statute. *Id.* at 74-75. The Court reaffirmed that principle in subsequent cases such as *Davis* v. *Monroe County Board of Education*, 526 U.S. 629 (1999), and *Gebser* v. *Lago Vista Independent School District*, 524 U.S. 274 (1998), holding again that individuals may enforce Spending Clause statutes such as Title IX through "private damages actions * * * where recipients of federal funding had adequate notice that they could be liable for the conduct at issue." *Davis*, 526 U.S. at 640; see *Gebser*, 524 U.S. at 287. Clear notice of the substantive conditions attached to the receipt of federal funds is necessary, the Court noted, because of "Title IX's contractual nature." *Ibid.*; see *Franklin*, 503 U.S. at 74. As the Court explained in *Da-*

vis, "[w]hen Congress acts pursuant to its spending power, it generates legislation 'much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.'" 526 U.S. at 640 (quoting *Pennhurst*, 451 U.S. at 17).

In *Barnes* v. *Gorman*, 536 U.S. 181 (2002), the Court again considered the range of remedies available to private parties for violations of conditions contained in Spending Clause statutes. *Id.* at 185 (noting that the Court was addressing "the scope of 'appropriate relief'" available under Spending Clause statutes). In determining that punitive damages are not available for such violations, the Court continued its settled practice of applying a "contract-law analogy" to determine "the *scope* of damages remedies" available. *Id.* at 187; accord, *Gebser*, 524 U.S. at 287. The Court thus reasoned that a remedy for a violation of Spending Clause legislation "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) (internal citation omitted). And, the Court held, "[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." *Ibid.* Such remedies include compensatory money damages and injunctive relief, which the Court described as "forms of relief traditionally available in suits for breach of contract," but not punitive damages, which the Court noted "are generally not available for breach of contract." *Ibid.*

2. Congress enacted RLUIPA in 2000 against the backdrop of this Court's decisions in cases such as *Franklin*, *Gebser*, and *Davis*. Those cases made clear

that, "unless Congress has *expressly indicated otherwise*," *Franklin*, 503 U.S. at 66 (emphasis added), courts should presume that recipients of federal funds are subject to "appropriate relief," including money damages, for intentional violations of Spending Clause conditions. If Congress had imposed RLUIPA's substantive conditions on recipients of federal funds without specifying the scope of relief available to private plaintiffs for violations of those conditions, this Court's holdings in the *Franklin* line of cases would fill the gap by specifying that compensatory damages are available. Cf. *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy*, 548 U.S. 291, 297-298 (2006) (holding that spending clause statute authorizing the award of "costs" to prevailing plaintiffs is not sufficiently clear to authorize the award of expert fees because "'costs' is a term of art that generally does *not* include expert fees" (emphasis added)). Congress decided to include an additional layer of clarity, specifically noting the availability of "appropriate relief." By including this well-worn phrase in RLUIPA, Congress made it unambiguously clear to recipients of federal aid, including States, that RLUIPA authorizes actions for compensatory damages against those whose intentional actions violate RLUIPA's requirements. The court of appeals could find the term "appropriate relief" ambiguous only by considering it divorced from the jurisprudence that RLUIPA incorporates.

As the Court did in *Franklin*, a court should inquire whether Congress expressly indicated in RLUIPA that it intended to depart from the general rule that money damages are available for intentional violations of Spending Clause conditions. There is no such indication in RLUIPA. On the contrary, the text and purpose of the statute indicate that Congress intended that com-

pensatory damages be available to institutionalized persons whose free exercise of religion has been substantially burdened in violation of the statute. For example, Congress's intention to provide private claimants with the ability to seek money damages is apparent from the statute's express limitation on remedies the Attorney General may seek in enforcing RLUIPA. That limitation of remedy to "injunctive or declaratory relief," 42 U.S.C. 2000cc-2(f), would be superfluous if private plaintiffs were not entitled to seek other remedies.[3]

In addition, the general rule in enforcing federal rights is that, "where 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." *Bell*, 327 U.S. at 684; see *J.I. Case Co.* v. *Borak*, 377 U.S. 426, 433 (1964). In RLUIPA suits brought by institutionalized persons, prospective relief is often insufficient to "make good the wrong done" by the institution's imposition of a substantial burden on the individual's religious exercise. In many such cases, claims for injunctive relief become moot long before the legitimacy of the state actions that precipitated them can be adjudicated because, *e.g.*, the institution releases the individual or transfers him to

[3] Moreover, even if Congress had also specified that private plaintiffs were entitled to "injunctive or declaratory relief," this Court's holding in *Barnes* dictates that inmates would also be entitled to compensatory damages. *Barnes*, 536 U.S. at 187 (noting that a recipient of federal funds 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," including compensatory damages).

another prison or to another area within the prison.[4] Or—as happened in this case—a prison may change its challenged practice in response to a RLUIPA suit. Although such voluntary compliance with RLUIPA's mandate is desirable, it does not compensate the individual whose rights may have been violated and therefore is not an adequate remedy for that individual. As this Court explained in *Barnes*, "[w]hen 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." 536 U.S. at 189 (citing *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 633 (1983)).[5]

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[4] See, *e.g.*, *Gladson* v. *Iowa Dep't of Corr.*, 551 F.3d 825, 835 (8th Cir. 2009); *Ivory* v. *Tilton*, No. 09-cv-1272, 2010 WL 144356, at *8 (E.D. Cal. Jan. 8, 2010); *Rust* v. *Nebraska Dep't of Corr. Servs. Religion Study Comm.*, No. 08-cv-3185, 2009 WL 3836544, at *10-*11 (D. Neb. Nov. 12, 2009).

[5] Particularly likely to evade review are those RLUIPA violations that arise out of animus-based incidents or short-term treatment of prisoners. These sorts of claims can involve some of the most egregious violations of prisoners' RLUIPA rights, but they cannot be remedied by prospective relief. Absent the availability of a damages remedy, a prisoner may have no standing to challenge a practice that harmed him in the past but is not currently harming him or likely to do so again. See *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 106-111 (1983). For example, prospective relief cannot make whole a prison's failure to provide kosher food for eight days upon a prisoner's arrival, effectively starving the prisoner during that time. See *Cardinal* v. *Metrish*, 564 F.3d 794, 797-799 (6th Cir. 2009), petition for cert. pending, No. 09-109 (filed July 22, 2009). Congress specifically heard testimony about the problem of prisons' interference with religiously-motivated dietary restrictions in the hearings leading to the enactment of RLUIPA. See

Nor was Congress careless about subjecting state prison systems to excessive monetary liability. RLUIPA explicitly declares that it shall not "be construed to repeal the Prison Litigation Reform Act of 1995" (PLRA), 42 U.S.C. 1997e. See 42 U.S.C. 2000cc-2(e). Among other things, the PLRA bars prisoners from bringing suit "for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. 1997e(e). Unless an inmate can establish that he was physically harmed, therefore, States will often be subject only to nominal damages under RLUIPA's institutionalized persons provisions. See *Smith* v. *Allen*, 502 F.3d 1255, 1271 (11th Cir. 2007).

B. Nothing In The Constitution Requires Congress To Speak More Clearly When Attaching Conditions To Funds Received By States Than When Attaching Conditions To Funds Received By Local Governments

1. Respondents have argued (Br. in Opp. 13-14) that the rules articulated in cases such as *Franklin* and *Barnes* do not apply here because those cases involved defendants who were not entitled to Eleventh Amendment immunity. But the requirement that conditions attached to federal funds be unambiguously expressed does not vary according to the type of entity accepting the conditioned funds. That notice requirement, which formed the basis of the decisions in cases such as *Franklin* and *Barnes*, applies regardless of whether Congress offers financial assistance to States, to local governments, or to private entities. *E.g.*, *Gebser*, 524 U.S. at 287 (noting necessity of "ensuring that 'the receiving entity of federal funds [has] notice that it will be liable

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House Hearing 11 n.1 (Statement of Marc D. Stern); *id.* at 43 (Statement of Isaac Jaroslawicz).

for a monetary award'") (brackets in original) (quoting *Franklin*, 503 U.S. at 74). If other entities have sufficient notice of the availability of money damages in suits to enforce funding conditions, so too do States.

To be sure, States and state agencies receiving federal funds start out with Eleventh Amendment immunity—to suits for injunctive relief as well as damages—while other entities do not. But that difference is relevant only to the calculus the State must make in deciding whether to accept clearly conditioned funds. As this Court explained in *Barnes*: "Just as a valid contract requires offer and acceptance of its terms, '[t]he legitimacy of Congress' power to legislate under the spending power . . . rests on whether the [recipient] voluntarily and knowingly accepts the terms of the 'contract.'" 536 U.S. at 186 (quoting *Pennhurst*, 451 U.S. at 17) (brackets in original). Congress made it clear in the text of RLUIPA that States that accept federal funds for their prison systems would have to comply with RLUIPA's accommodation mandate and would be subject to federal suits by private individuals. Indeed, respondent State of Texas apparently does not contest that it is subject to private suits in federal court for injunctive relief claims. Texas therefore does not contest that it knowingly waived its Eleventh Amendment immunity to such claims when it accepted federal funds.

As explained *supra*, Congress made it equally clear that the acceptance of federal funds would also subject recipients—including State recipients—to private suits for money damages. RLUIPA was the contractual offer, the Texas Department of Criminal Justice's voluntary receipt of federal financial assistance was the acceptance of the terms of the offer, and Texas cannot now evade traditional remedies for its alleged breach of that con-

tract. There is nothing in the Eleventh Amendment that renders a State any less able than another party to understand the clear conditions imposed through a federal spending statute.

2. Although respondents admit (Resp. Supp. Br. 10) in one breath that "the clear-statement rule in the spending context does apply alike to all entities," they suggest in the next that a statement that is clear enough to inform a local government that it will be subject to damages suits may not be clear enough to inform a State government of the same thing. That amounts to an argument that Congress must choose among a particular set of (unidentified) words when it wishes to express its intent to subject States to money damages for violating conditions on the receipt of federal funds. But this Court has never held that Congress must use specific words like "Eleventh Amendment" or "sovereign immunity," when it intends to indicate that States will be subject to private suits in federal court. Cf. *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 73-78 (2000) (holding that Congress clearly expressed its intent to abrogate States' immunity to suits under the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*, without using such phrases). Nor has the Court held that Congress must use magic words like "money damages" or "compensatory damages" to specify that such damages may be awarded for violations of spending conditions. Indeed, the Court in the *Franklin* line of cases repeatedly relied on the clear-statement rule as articulated in *Pennhurst*—a case against a State defendant—in finding that Title IX, Title VI, and Section 504 provided sufficiently clear notice to fund recipients that they would be subject to the remedy of money damages for violations of the protections provided in those stat-

utes. There is no indication in any of those cases that the Court was applying a relaxed version of *Pennhurst*'s notice rule because the recipient-defendants in those cases were not State entities.

Some courts of appeals (including the court in this case) have held that a different clear-statement rule applies in determining the scope of remedies available in suits against States than in suits against other parties. In so holding, those courts—like respondents (Br. in Opp. 12-14)—ventured outside the Spending Clause context and relied instead on this Court's cases involving the federal government's waiver of *its own* sovereign immunity. *E.g.*, Pet. App. 22a & n.46; *Cardinal* v. *Metrish*, 564 F.3d 794, 799-801 (6th Cir. 2009), petition for cert. pending, No. 09-109 (filed July 22, 2009); *Van Wyhe* v. *Reisch*, 581 F.3d 639, 653 (8th Cir. 2009), petition for cert. pending, No. 09-821 (filed Jan. 8, 2010); *Madison* v. *Virginia*, 474 F.3d 118, 131-132 (4th Cir. 2006). In *Lane* v. *Pena*, *supra*, for example, the Court concluded that the holding in *Franklin* that the "implied private right of action under Title IX * * * supports a claim for monetary damages" does not apply to suits against the federal government. Instead, when Congress statutorily subjects the federal government to suit, "the available remedies are not those that are 'appropriate,' but only those for which sovereign immunity has been expressly waived." 518 U.S. at 196-197.

But the federal government's voluntary waiver of its sovereign immunity is not at all equivalent to a State's waiver of Eleventh Amendment immunity in exchange for clearly conditioned federal funds. In the former case, the enactment of federal legislation itself constitutes the waiver, and the Court requires Congress to speak clearly in that legislation about both the Govern-

ment's amenability to suit and the relief available in such a suit. But when Congress conditions the receipt of federal funds on a State's waiver of immunity, the waiver comes not from the terms of the legislation, but from the State's acceptance of funds with knowledge of the consequences, as informed by the text of the statute and governing background legal principles. Here, a State has such knowledge because this Court has made clear that, when Congress attaches substantive conditions to the receipt of federal funds and (explicitly or implicitly) authorizes private parties to sue for violation of those conditions, those parties may seek money damages. Thus, when a State accepts federal funds for its correctional system, it does so cognizant of the following consequences: that it must comply with the substantive requirements of RLUIPA; that state inmates may sue States for breach of those requirements; and that, if such an inmate prevails on the merits, the State will be liable for compensatory damages (unless otherwise prohibited, see p. 18, *supra*). None of this should come as a surprise to States—just as it does not come as a surprise to non-State governmental entities.

In any case, because of the contract nature of spending clause legislation, the appropriate analogy in determining the *scope* of relief available against a sovereign under RLUIPA is the scope of relief available against the United States in suits for breach of contract. Although the United States is entitled as a constitutional matter to assert sovereign immunity to claims for breach of contract, Congress waived the federal government's immunity to damages claims arising out of breach of contract (as well as certain other enumerated sources of law) in the Tucker Act, 28 U.S.C. 1491(a)(1), and related statutes. The Tucker Act provides the

United States Court of Federal Claims with "jurisdiction to render judgment upon any claim against the United States founded * * * upon any express or implied contract with the United States." *Ibid.* It is well settled that, although the Tucker Act constitutes a waiver of the federal government's sovereign immunity to certain types of damages claims, it does not itself create any enforceable right to such claims. See *United States* v. *Mitchell*, 463 U.S. 206, 216-219 (1983). Rather, some other source of law must give rise to a right to compensation from the federal government—and if it does, the Tucker Act permits enforcement of that right in the Court of Federal Claims. This Court has held that the question whether damages are available for breach-of-contract claims against the federal government under the Tucker Act is governed by the background federal common law of contracts. See *Lynch* v. *United States*, 292 U.S. 571, 579 (1934); see also *United States* v. *Winstar Corp.*, 518 U.S. 839, 870-871, 895 (1996); Gregory C. Sisk, *Litigation with the Federal Government* § 4.08(e), at 320 (4th ed. 2006). And that background law provides that money damages are the default remedy for breach-of-contract claims regardless of whether the contract itself specifies that such damages are available.[6] See *Winstar*, 518 U.S. at 885-886 & n.30 (relying on Restatement (Second) of Contracts

[6] Of course, even against the backdrop of existing contract law, private parties could not sue the United States for breach of contract unless the United States waived its immunity to suit, see *Lynch*, 292 U.S. at 580-582, as it has in the Tucker Act. By accepting federal funds conditioned on private parties' being able to sue fund recipients (including States) to enforce RLUIPA, 42 U.S.C. 2000cc-2(a), respondent Texas similarly waived its immunity.

§ 346, Comment *a* (1981)); see also *Hatzlachh Supply Co.* v. *United States*, 444 U.S. 460,462-465 (1980).[7]

In other words, the federal government is liable for damages when it breaches contract terms because it agreed to be subject to suit for contract claims and the background federal common law of contracts provides that damages are available for breach. Similarly, a State is liable for damages when it breaches the terms of RLUIPA's spending clause contract because it agreed to be subject to private suit in federal court to enforce those terms and the background principles of contract law provide that damages are available for breach of those terms. See *Barnes*, 536 U.S. at 187. Thus, even if courts were required to construe the scope of relief available against a State that waives its immunity as narrowly as they construe the scope of relief available against the United States when it waives its immunity —which they are not—respondents would still be liable for money damages for violations of RLUIPA.

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[7] In *Webman* v. *Federal Bureau of Prisons*, 441 F.3d 1022 (2006), for example, the District of Columbia Circuit correctly held that the term "appropriate relief" as used in the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*—which applies only to the federal government—is insufficient to waive the federal government's sovereign immunity from suits for monetary damages. Although RFRA creates enforceable statutory rights, it is not contractual in nature and is therefore not governed by the background principles that govern the federal government's contractual relationships or the interpretation of Spending Clause legislation.

C. Even If Congress Were Required To Use Particular Words, It Did So When It Enacted 42 U.S.C. 2000d-7, Which Conditions The Receipt Of Federal Funds On A State's Waiver Of Its Eleventh Amendment Immunity To Suits For Violations Of Antidiscrimination Spending Clause Legislation

1. Even if Congress were required to use particular words to signal that a State waives its Eleventh Amendment immunity to suits for money damages for violations of RLUIPA, Congress did so not only with the phrase "appropriate relief" but also in completely separate legislation. In 1986, Congress enacted 42 U.S.C. 2000d-7, a statutory provision titled "Civil rights remedies equalization." Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, § 1003, 100 Stat. 1845 (42 U.S.C. 2000d-7). That provision provides in pertinent part:

> (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], *or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance*.
>
> (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies

> are available for such a violation in the suit against any public or private entity other than a State.

42 U.S.C. 2000d-7(a) (brackets in original) (emphasis added).

Section 2000d-7 was enacted in response to this Court's decision in *Atascadero*, 473 U.S. at 246, which held that Congress had not used sufficiently clear statutory language in Section 504 of the Rehabilitation Act to condition the receipt of federal financial assistance on a State's waiver of its Eleventh Amendment immunity to claims brought under that section. The Court reaffirmed in *Atascadero* that "mere receipt of federal funds" by a State is insufficient to constitute a waiver of immunity, while confirming that, if a statute "manifest[s] a clear intent to condition participation in the programs funded under the Act on a State's consent to waive its constitutional immunity," the acceptance of funds constitutes a waiver. *Id.* at 246-247; *College Sav. Bank*, 527 U.S. at 686.

Section 2000d-7 provides the requisite unequivocal notice to "enable the States to exercise their choice [to accept federal funds] knowingly, cognizant of the consequences of their participation" in a federal spending program. *Pennhurst*, 451 U.S. at 17. That statutory provision makes clear both that a State or state agency that accepts federal funds will be subject to private suits in federal court to enforce "any * * * Federal statute prohibiting discrimination by recipients of Federal financial assistance" and that it will be subject to the same remedies (including money damages) that are available against non-State entities. 42 U.S.C. 2000d-7(a). In his concurring opinion in *Franklin*, Justice Scalia noted that he would have held that money damages are available for violations of Title IX by funding recipients

because Congress "implicit[ly] acknowledg[ed]" as much in enacting Section 2000d-7. 503 U.S. at 78. Notably, Justice Scalia also remarked that Section 2000d-7 "withdraw[s] the States' Eleventh Amendment immunity" and provides that the same remedies that are available against non-State entities—which Justice Scalia agreed includes money damages—are available against State recipients of federal funds. *Ibid.*

2. Because RLUIPA is a "Federal statute prohibiting discrimination by recipients of Federal financial assistance," Section 2000d-7 puts States on notice that, by accepting federal funds, they waive their Eleventh Amendment immunity to RLUIPA claims—and that they will be subject to the same damages remedy that is available against non-State recipients.[8] Respondents

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[8] It appears that the court of appeals did not consider whether Section 2000d-7 applies to RLUIPA claims. As explained in the United States' amicus brief filed in *Cardinal* v. *Metrish*, No. 09-109 (filed July 22, 2009), this Court is nevertheless free to consider whether Section 2000d-7's requirement that federal fund recipients waive their Eleventh Amendment immunity applies to RLUIPA claims under the Court's "traditional rule" that "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (brackets in original). The argument that a State waives its immunity pursuant to Section 2000d-7 is "not a new claim within the meaning of that rule, but a new argument to support what has been [petitioner's] consistent claim:" that he is entitled to sue respondents for money damages under RLUIPA. *Ibid.* Respondents rely (Resp. Supp. Br. 6-7) on this Court's decision in *United States* v. *United Foods, Inc.*, 533 U.S. 405, 416-417 (2001), in which the Court declined to consider an argument that had not been raised below because the court of appeals had not addressed the issue. Here, however, the court of appeals relied in large part on the Fourth Circuit's decision in *Madison*, which did consider and reject

have argued (Br. in Opp. 6-8; Resp. Supp. Br. 7-9), and several courts of appeals have held, that Section 2000d-7's catch-all provision does not waive immunity from a suit like petitioner's because the relevant statutory protection in RLUIPA does not use the word "discrimination." *Madison*, 474 F.3d at 132-133; *Van Wyhe*, 581 F.3d at 654-655. Respondents also assert (Resp. Supp. Br. 8-9) that "[t]here is a clear distinction, as a matter of law and logic, between provisions requiring *accommodations* (such as RLUIPA) and those prohibiting *discrimination* (such as in Section 2000d-7)." That argument both misconstrues the statute's prohibition on the imposition of substantial burdens and inappropriately narrows the meaning of the word "discrimination" as used in Section 2000d-7.

a. RLUIPA's prohibition on the imposition of "a substantial burden on the religious exercise of a person residing in or confined to an institution," 42 U.S.C. 2000cc-1(a), prohibits discrimination by requiring funding recipients to justify the imposition of such burdens. In construing the protections of the Free Exercise Clause, this Court has held that it "[a]t a minimum" prohibits government rules that "discriminate[] against some or all religious beliefs or regulate[] or prohibit[] conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 532 (1993) (*Lukumi*). Although the protection afforded in this provision of RLUIPA is

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this argument. See Pet. App. 22a-23a; *Madison*, 474 F.3d at 132-133. And, unlike the arguments that were not addressed by the court of appeals in *United Foods*, the argument that Section 2000d-7 clearly conditions respondents' receipt of federal funds on a waiver of immunity to damages claims under RLUIPA does not depend on the development of any particular facts. See 533 U.S. at 416-417.

certainly intended to be broader than that afforded by the Free Exercise Clause (insofar as it prohibits some substantial burdens resulting from generally applicable rules that would be permissible under the First Amendment), it also encompasses the protection afforded in the Free Exercise Clause itself. And that protection includes a prohibition on a government's imposition of a substantial burden on religious exercise in a manner that is not neutral—*i.e.*, in a manner that discriminates. *Id.* at 534 ("The Free Exercise Clause * * * extends beyond facial discrimination. The Clause 'forbids subtle departures from neutrality.'") (quoting *Gillette* v. *United States*, 401 U.S. 437, 452 (1971)).

When Congress enacted RLUIPA, it understood that prisoners often face disparate treatment based on their *particular* religions—for example, when prisons make accommodations for adherents of some faiths but not for adherents of others, or when prisons permit certain types of activities for secular purposes but not for religious purposes. See p. 3, *supra*; see also *Cutter* v. *Wilkinson*, 544 U.S. 709, 713 (2005) (inmates who are members of "nonmainstream" religions contended that they were denied "the same opportunities for group worship that are granted to adherents of mainstream religions"); *id.* at 716 n.5 (a "typical example" of problems Congress meant to remedy with RLUIPA was a prison that "refused to provide Moslems with Hallal food, even though it provided Kosher food"). RLUIPA remedies this widespread problem of selective imposition of burdens on religious exercise by ensuring that all faiths will receive accommodations on equal terms. And RLUIPA ensures that prisons do not discriminate against religious observance in general by permitting activities undertaken for secular purposes and prohibiting the same

activities undertaken for religious purposes. For example, in this case petitioner alleges that respondents discriminated against his religious exercise by refusing (without good reason) to allow him to attend worship services while on cell restriction while permitting other inmates on cell restriction to attend secular activities. Accordingly, even if respondents were correct that Section 2000d-7 applies only to spending clause statutes that prohibit intentionally disparate treatment, RLUIPA is such a statute.

b. In any case, respondents are not correct that Congress's use of the word "discrimination" in Section 2000d-7 is so limited. This Court has held that the word "'[d]iscrimination' is a term that covers a wide range of intentional unequal treatment," and that, when Congress "us[es] such a broad term, Congress g[i]ve[s] [a] statute a broad reach." *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005). So too in Section 2000d-7: when Congress clearly conditioned federal funds on a State's waiver of Eleventh Amendment immunity to claims under "any" federal statute "prohibiting discrimination by recipients of Federal financial assistance," 42 U.S.C. 2000d-7(a), it included statutes prohibiting a broad range of discriminatory conduct.

That broad range of conduct may include a failure to make reasonable accommodations as prescribed by law. Section 504 of the Rehabilitation Act—the very statute at issue in *Atascadero* and listed first in Section 2000d-7—demonstrates how a prohibition on "discrimination" may include a requirement that accommodations be made to generally applicable rules as RLUIPA requires. For decades, regulations have interpreted Section 504's ban on disability-based discrimination to require that covered entities make "reasonable accom-

modation[s]" for qualified persons with disabilities. See, *e.g.*, 28 C.F.R. 41.53. In *Olmstead* v. *L.C.*, 527 U.S. 581 (1999), this Court considered the scope of the identical antidiscrimination mandate in Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12131 *et seq.* The Court held that the ADA's prohibition on subjecting persons with disabilities to "discrimination" by public entities includes a prohibition on unjustified isolation of such persons. *Olmstead*, 527 U.S. at 597-602. In so holding, the Court specifically rejected the argument that the ADA's prohibition on "discrimination" was limited to a prohibition on "uneven treatment of similarly situated individuals." *Id.* at 598. Instead, the Court held, "Congress had a more comprehensive view of the concept of discrimination," *ibid.*—a view that "properly regarded" unjustified isolation "as discrimination based on disability," *id.* at 597. That view of discrimination is also necessarily encompassed in Section 504 as the integration mandate at issue in *Olmstead* was modeled on Section 504. *Id.* at 590-592.

Nor is RLUIPA the only statute in which Congress required the reasonable accommodation of religious practices as a means of preventing discrimination. In Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, Congress prohibited employment "discriminat[ion] against any individual * * * because of such individual's * * * religion." 42 U.S.C. 2000e-2(a). In order to ensure that that broad antidiscrimination mandate included a requirement that employers provide reasonable accommodations to employees' religious practices, Congress defined "religion" in Title VII to "include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an em-

ployee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). Congress's reference in Section 2000d-7 to statutes that prohibit "discrimination" should similarly be understood to include RLUIPA's requirement of such accommodations in the prison setting.

This Court has also interpreted the term "discrimination" broadly in other statutes specifically enumerated in Section 2000d-7. For example, the Court has repeatedly interpreted the general prohibition of sex discrimination in Title IX to include more than a simple ban on traditional disparate treatment. Rather, the Court has interpreted the prohibited "discrimination" to include a school's deliberate indifference to teacher-on-student or student-on-student sexual harassment, see *Davis*, 526 U.S. at 649-651; *Gebser*, 524 U.S. at 287-290; *Franklin*, 503 U.S. at 74-75, as well as retaliation for complaining about sex discrimination, *Jackson*, 544 U.S. at 174; accord *Gomez-Perez* v. *Potter*, 128 S. Ct. 1931, 1936 (2008); *CBOCS W., Inc.* v. *Humphries*, 128 S. Ct. 1951, 1960-1962 (2008).

RLUIPA "follows in the footsteps of a long-standing tradition of federal legislation that seeks to eradicate discrimination and is 'designed to guard against unfair bias and infringement on fundamental freedoms.'" *Charles* v. *Verhagen*, 348 F.3d 601, 607 (7th Cir. 2003) (quoting *Mayweathers* v. *Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002), cert. denied, 540 U.S. 815 (2003)); see *Saints Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005) (Posner, J.). Because RLUIPA is a "[f]ederal statute prohibiting discrimination by recipients of Federal financial assistance," the State of Texas had clear notice,

by dint of the plain language of Section 2000d-7, that its acceptance of federal funds for its correctional system would constitute a waiver of its Eleventh Amendment immunity to RLUIPA claims, including claims for money damages.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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