

NOTE

IDENTICAL, NOT FRATERNAL TWINS: RLUIPA, RFRA, AND DAMAGES

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*The federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and Religious Freedom Restoration Act (“RFRA”) are commonly labeled “twin” or “sister” statutes. Both reinstall a strict scrutiny regime for religious accommodations, and they use identical remedial language to do so, providing for “appropriate relief against a government.” In 2020’s *Tanzin v. Tanvir*, the Supreme Court interpreted RFRA’s remedial provision to allow for personal capacity damages suits against government officials. By that time, however, ten federal courts of appeals had reached the opposite conclusion regarding that same remedial text within RLUIPA. Post-*Tanzin*, no circuit has changed course. Instead, they hold fast to two objections grounded in RLUIPA’s Spending Clause underpinnings: (1) RLUIPA has not provided “clear notice” of potential liability, which is required for a party to be liable for damages; and (2) because government officials are non-recipients of federal funds, they cannot be held personally liable.*

This Note argues that these circuits have misapplied Spending Clause jurisprudence. Background presumptions, text, context, and precedent all make clear that damages suits against individuals are on the table. And the Supreme Court has repeatedly held funding non-recipients monetarily liable for violation of Spending Clause statutes, creating a line of precedent at odds with the circuits’ divined rule. This Note also illustrates the injustice that these erroneous damages bars have worked

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upon the one million-plus incarcerated persons in state and local institutions whose rights under RLUIPA often lack a remedy.

INTRODUCTION	1496
I. THE DOCTRINAL LANDSCAPE OF RELIGIOUS ACCOMMODATIONS	1500
A. <i>Sherbert, Turner, Smith, and the Fall of Strict Scrutiny</i>	1500
B. <i>RFRA, RLUIPA, and Strict Scrutiny's Partial Revival</i>	1502
C. <i>Interpretations of RFRA's and RLUIPA's Remedial Provisions</i>	1505
II. RLUIPA AND "CLEAR NOTICE" OF PERSONAL CAPACITY	
DAMAGES SUITS	1507
A. <i>The Spending Clause "Contract" and Its "Clear Notice" Requirement</i>	1507
B. <i>Sossamon II and RLUIPA's "Ambiguity"</i>	1508
C. <i>Applying the Court's "Clear Notice" Test to RLUIPA</i>	1510
1. <i>The Presumption in Favor of Monetary Damages</i>	1510
2. <i>The Arlington "Clear Notice" Statutory Analysis</i>	1512
3. <i>Applying Arlington to RLUIPA</i>	1514
III. INDIVIDUAL OFFICERS AS NON-RECIPIENTS OF FEDERAL FUNDS	1518
A. <i>The Objection to the Personal Liability of Non-Recipients of Federal Funds Under Spending Clause Legislation</i>	1518
B. <i>Supreme Court Cases Upholding Non-Party Liability</i>	1520
IV. REAL-WORLD IMPLICATIONS OF THE CURRENT DOCTRINAL LANDSCAPE	1526
A. <i>The Turner Free Exercise Standard and RLUIPA</i>	1526
B. <i>State RFRA's</i>	1527
C. <i>The (Un)availability of Equitable Relief Under RLUIPA</i>	1528
CONCLUSION	1530

INTRODUCTION

In his civil complaint filed in the U.S. District Court for the Middle District of Louisiana, Damon Landor alleged that Louisiana prison officials at the Raymond Laborde Correctional Center ("RLCC") forcibly shaved his head upon transfer to the facility.¹ Landor, a devout Rastafarian, had been growing his dreadlocks for twenty years in

¹ Complaint & Jury Demand ¶ 37, *Landor v. La. Dep't of Corr. & Pub. Safety*, No. 21-cv-00733, 2022 WL 4593085 (M.D. La. Sept. 29, 2022), *aff'd*, 82 F.4th 337 (5th Cir. 2023), *cert. granted*, 145 S. Ct. 2814 (2025).

compliance with the Nazarite vow not to cut one's hair.² Precedent in the U.S. Court of Appeals for the Fifth Circuit squarely forbade the officials' conduct as a violation of Landor's rights under the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA").³ Landor, in an abundance of caution, had brought with him to RLCC a physical copy of the opinion that established Rastafarian incarcerated persons' right to grow their hair.⁴ RLCC's intake officer, unpersuaded by binding federal law, tossed the opinion in the garbage.⁵ The warden arrived and demanded the religious documentation provided by Landor's sentencing judge.⁶ Landor offered to request the documents from his attorney.⁷ "Too late for that," the warden responded, before having Landor cuffed to a chair.⁸

Despite its egregious facts, Landor's complaint was summarily dismissed by the district court judge.⁹ A Fifth Circuit panel reviewing the case on appeal "*emphatically* condemn[ed]" Landor's treatment.¹⁰ Nevertheless, the panel unanimously affirmed the dismissal.¹¹ While a *prima facie* violation of RLUIPA had been alleged, no remedy was available to redress the injury suffered. Injunctive and declaratory relief were off the table since Landor was no longer incarcerated.¹² The Supreme Court has held that RLUIPA claims against state officials in their *official* capacity—which are tantamount to claims against the state itself—are barred by state sovereign immunity.¹³ And Fifth Circuit

² Id. ¶¶ 21–24.

³ See *Ware v. La. Dep't of Corr.*, 866 F.3d 263, 274 (5th Cir. 2017) (holding that a Louisiana Department of Corrections grooming policy, which prohibited inmates from having dreadlocks, was an unjustified substantial burden on Rastafarian inmates' faith under RLUIPA).

⁴ Complaint & Jury Demand, *supra* note 1, ¶ 33.

⁵ Id. ¶ 34.

⁶ Id. ¶¶ 34–35.

⁷ Id. ¶ 36.

⁸ Id. ¶ 37.

⁹ *Landor v. La. Dep't of Corr. & Pub. Safety*, No. 21-cv-00733, 2022 WL 4593085, at *3 (M.D. La. Sept. 29, 2022).

¹⁰ *Landor v. La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 345 (5th Cir. 2023).

¹¹ Id.

¹² See *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001) (concluding that an incarcerated individual's suit for equitable relief under RLUIPA is mooted once they leave the injurious facility).

¹³ See *Sossamon v. Texas (Sossamon II)*, 563 U.S. 277, 282, 293 (2011).

precedent holds that monetary damages are unavailable under RLUIPA for suits against state officials in their *individual* capacity.¹⁴

Sympathy aside, the federal courts left Landor empty-handed. This Note rejects that result as his proper judicial fate. Particularly, it argues that damages should be available in suits against officers in their individual capacity under RLUIPA. The present answer, across all federal circuits to have addressed the question, is that they are not.¹⁵ But this unanimity is deceiving. Most courts have not readdressed the question since the U.S. Supreme Court handed down its 2020 decision in *Tanzin v. Tanvir*, which established that individual capacity suits for damages are available under the federal Religious Freedom Restoration Act (“RFRA”).¹⁶ RFRA and RLUIPA are commonly labeled “twin” or “sister” statutes.¹⁷ Both were enacted as part of Congress’s efforts to legislatively abrogate the Supreme Court’s abandonment of the strict scrutiny standard for violations of the Free Exercise Clause in *Employment Division v. Smith*.¹⁸ They also share functionally identical remedial provisions, allowing for injured parties to seek “appropriate relief against a government.”¹⁹

Despite this congruity and the common practice of using case law interpreting the text of one of these “twin” statute to elucidate the other’s meaning, the scope of RLUIPA’s remedies remains unchanged.²⁰ The Fifth Circuit, one of the few courts of appeals to revisit the question of individual capacity damages suits following *Tanzin*, reaffirmed their unavailability under RLUIPA in Landor’s case.²¹ The panel focused, as other circuits have, on the fact that RLUIPA, unlike RFRA, is Spending

¹⁴ *Sossamon v. Lone Star State of Texas* (*Sossamon I*), 560 F.3d 316, 331 (5th Cir. 2009), *aff’d on other grounds sub nom. Sossamon II*, 563 U.S. 277. Suits against an officer in their individual or “personal” capacity are lawsuits that “can be executed only against the official’s personal assets” and not the governmental entity for which they work. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

¹⁵ See, e.g., *Rendelman v. Rouse*, 569 F.3d 182, 189 (4th Cir. 2009); *Stewart v. Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012); *Smith v. Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007).

¹⁶ 141 S. Ct. 486, 493 (2020).

¹⁷ See, e.g., *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022) (“sister”); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2396 n.13 (2020) (Alito, J., concurring) (“twin”).

¹⁸ See *Holt v. Hobbs*, 574 U.S. 352, 356–57 (2015).

¹⁹ 42 U.S.C. §§ 2000bb-1(c), 2000cc-2(a).

²⁰ See *infra* Section I.B.

²¹ *Landor v. La. Dep’t of Corr. & Pub. Safety*, 82 F.4th 337, 345 (5th Cir. 2023).

Clause legislation.²² As the panel explained, there are unique barriers to the imposition of liability under statutes enacted through Congress's spending power—barriers that RLUIPA does not overcome in the context of individual officer damages suits.²³ However, six judges dissented from the denial of a rehearing en banc, finding the Spending Clause arguments unconvincing.²⁴ Nine other judges concurred in the denial, asserting that only the Supreme Court could resolve the intractable friction between prior precedent and *Tanzin*.²⁵ As Damon Landor's case sits pending on the Supreme Court's docket and other circuits grapple with *Tanzin*'s upshot,²⁶ the question is ripe and underexplored.

This Note proceeds in four Parts. Part I examines the establishment and demise of the strict scrutiny standard of review for claims under the First Amendment's Free Exercise Clause. Part I also analyzes the enactment of RFRA and RLUIPA in response to *Smith*, the case that circumscribed the application of strict scrutiny review to free exercise claims, as well as the prevailing judicial interpretations of these statutes' remedial schemes. Parts II and III separately address each of the two Spending Clause rationales for the unavailability of damages against individual state and local officials under RLUIPA: (1) that RLUIPA does not provide the requisite "clear notice" to individual officers of their potential liability for damages; and (2) that individual officials are not themselves recipients of federal funds and thus cannot be held personally liable for violating RLUIPA's terms. Parts II and III challenge these conclusions. Specifically, these Parts conclude that "clear notice" *has* been provided and non-recipients of federal funds *can* be held liable for violations of the conditions of spending power legislation, so damages should be available

²² See *id.* at 344 (explaining that *Tanzin*'s holding does not reach RLUIPA because "it addresses a different law that was enacted under a separate Congressional power"); see also *Tripathy v. McKoy*, 103 F.4th 106, 114 (2d Cir. 2024) (reaffirming a narrower interpretation of RFRA's remedial scheme "for the simple reason that RFRA and RLUIPA were enacted pursuant to different constitutional provisions").

²³ See *Landor*, 82 F.4th at 341 ("Spending Clause legislation 'operates like a contract,' so 'only the grant recipient—the state—may be liable for its violation.'" (quoting *Sossamon I*, 560 F.3d 316, 328 (5th Cir. 2009))).

²⁴ See *Landor v. La. Dep't of Corr. & Pub. Safety*, 93 F.4th 259, 265 (5th Cir. 2024) (Oldham, J., dissenting from the denial of rehearing en banc).

²⁵ See *id.* at 261 (Clement, J., concurring in the denial of rehearing en banc) ("[T]hread[ing] the needle between *Sossamon II* and *Tanzin* is a task best reserved for the court that wrote those opinions.").

²⁶ See, e.g., *Fuqua v. Raak*, 120 F.4th 1346, 1360 (9th Cir. 2024) (acknowledging that *Tanzin* indicates that "appropriate relief" should carry the same meaning across RFRA and RLUIPA, but concluding that the court remains bound by pre-*Tanzin* circuit precedent).

against individual officers under RLUIPA. Finally, Part IV discusses the real-world implications of the issues addressed in this Note. For the over 1.5 million individuals currently incarcerated in federally funded state prisons and local jails, the Free Exercise Clause permits almost across-the-board denial of religious accommodations. And RLUIPA currently extends a right to religious accommodations but often no remedy.

I. THE DOCTRINAL LANDSCAPE OF RELIGIOUS ACCOMMODATIONS

A. *Sherbert*, *Turner*, *Smith*, and the *Fall of Strict Scrutiny*

For nearly thirty years, the Supreme Court's 1963 decision in *Sherbert v. Verner* provided the doctrinal test for claims for religious accommodations under the First Amendment's Free Exercise Clause.²⁷ All litigants claiming a religious accommodation had to meet a threshold condition that their (1) religious beliefs, (2) sincerely held, (3) had been substantially burdened by the government.²⁸ Upon the litigants' meeting these three requirements, the burden shifted to the government to prove that the infringement upon the claimant's First Amendment rights was justified by a compelling state interest and was the least restrictive means to vindicate that interest.²⁹ The *Sherbert* test was a variant of the strict scrutiny standard, the most stringent form of constitutional review available.

In *Turner v. Safley*, the Supreme Court excised incarcerated persons from the class of litigants able to invoke *Sherbert*'s rigorous standard.³⁰ Though the case itself involved an alleged violation of the incarcerated plaintiffs' fundamental right to marriage, the *Turner* Court held that *all* constitutional expressive freedom claims brought by incarcerated persons are governed by a deferential standard.³¹ A challenged prison regulation will be sustained if it is "reasonably related to legitimate penological interests."³² The *Turner* Court stressed that prison officials' constant need "to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration" makes strict scrutiny

²⁷ 374 U.S. 398, 403 (1963).

²⁸ See *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 447 (1988).

²⁹ See *Thomas v. Rev. Bd. of the Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981).

³⁰ 482 U.S. 78, 89 (1987).

³¹ See *id.* (subjecting to a reasonableness analysis any prison regulation that "impinges on inmates' constitutional rights").

³² *Id.*

analysis unduly exacting.³³ The test that the Supreme Court handed down judges the reasonableness of challenged conduct through four factors: (1) whether there is a “valid, rational connection” between the regulation and the stated government interest it vindicates; (2) the availability of alternative means for incarcerated persons to exercise the right they claim has been impinged; (3) the impact that the grant of an accommodation would have on guards and other inmates; and (4) the availability of an alternative to the regulation that would impose only a “*de minimis* cost” on penological interests.³⁴ The *Turner* test remains the relevant benchmark for evaluating incarcerated persons’ free exercise claims, despite longstanding criticism that it provides “obsequious deference” to prison officials’ judgment in all but the most egregious cases.³⁵

Three years after *Turner*, the Court sent shockwaves throughout religious accommodation jurisprudence in *Employment Division, Department of Human Resources v. Smith*.³⁶ For the first time, the Court reasoned that incidental burdens on free exercise do *not* trigger a strict scrutiny analysis if they are neutral and generally applicable.³⁷ Up until that point, *Sherbert* and its progeny had not distinguished between purposeful and incidental burdens on religion.³⁸ In fact, many of the cases that applied strict scrutiny themselves involved instances of incidental burdens on religion.³⁹ The *Smith* Court reimagined *Sherbert* and other prior accommodation cases as exceptions and cabined them to their facts.⁴⁰ The passageway to strict scrutiny analysis had shrunk to a

³³ *Id.*

³⁴ *Id.* (quoting *Block v. Rutherford*, 468 U.S. 576, 586 (1984)); *id.* at 90–91.

³⁵ David M. Shapiro, *Lenient in Theory, Dumb in Fact: Prison, Speech, and Scrutiny*, 84 *Geo. Wash. L. Rev.* 972, 979–80 (2016).

³⁶ 494 U.S. 872 (1990).

³⁷ See *id.* at 879 (“[T]he right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability’” (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring in the judgment))).

³⁸ See *Sherbert v. Verner*, 374 U.S. 398, 403 (1963) (establishing that “any incidental burden” on an individual’s free exercise rights must survive strict scrutiny analysis); *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (“A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.”).

³⁹ See, e.g., *Lee*, 455 U.S. at 261 (subjecting to strict scrutiny Congress’s “sensitive” imposition of social security taxes that nonetheless created incidental burdens on Amish employers’ religious exercise).

⁴⁰ See *Smith*, 494 U.S. at 881–82 (distinguishing the application of strict scrutiny in *Yoder* and other cases as a unique situation in which the law in question burdens multiple

mousehole. The challenged governmental conduct in the vast majority of accommodation claims would now instead be subjected to rational basis review.

B. RFRA, RLUIPA, and Strict Scrutiny's Partial Revival

Writing for the *Smith* majority, Justice Scalia emphasized that the Court's role was only to set a constitutional *floor*.⁴¹ Legislatures could, of course, enact laws that establish a more generous accommodations regime.⁴² Congress responded to that appeal to the political process in swift fashion. Its first effort, RFRA, reinstated the *Sherbert* test for all federal and state claims for religious accommodation by invoking Congress's legislative powers under Section 5 of the Fourteenth Amendment.⁴³ A challenged government regulation that substantially burdened religious exercise would have to show that it "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."⁴⁴

RFRA passed in 1993 with near-unanimous bipartisan support,⁴⁵ but evidently would not have had the votes of six then-Supreme Court Justices. By a 6-3 majority in *City of Boerne v. Flores*, the Supreme Court ruled that Congress had exceeded the scope of its constitutional powers under the Fourteenth Amendment when applying RFRA's requirements to the states.⁴⁶ While the Fourteenth Amendment allows Congress to enact legislation to enforce constitutional guarantees against the states, it does not grant Congress the power to rewrite those constitutional guarantees.⁴⁷ Yet that was exactly what RFRA did. The *Smith* Court had concluded that the *Sherbert* test was not constitutionally required. As a result, state action could violate RFRA without coming close to a core violation of the

constitutional protections); *id.* at 883 (limiting the *Sherbert* test's application to unemployment compensation cases).

⁴¹ See *id.* at 890.

⁴² *Id.* ("Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process.")

⁴³ *City of Boerne v. Flores*, 521 U.S. 507, 515–17 (1997).

⁴⁴ *Id.* at 515–16 (quoting 42 U.S.C. § 2000bb-1).

⁴⁵ Peter Steinfels, Clinton Signs Law Protecting Religious Practices, *N.Y. Times*, Nov. 17, 1993, at A18 (noting that RFRA passed in the House by voice vote without objection and in the Senate by a 97-3 floor vote).

⁴⁶ *Flores*, 521 U.S. at 536.

⁴⁷ See *id.* at 519 (establishing that Section 5 of the Fourteenth Amendment grants Congress the power to enforce its provisions, but not "decree the substance" of the Amendment).

constitutional standard.⁴⁸ Because RFRA prohibited constitutionally innocuous conduct, Congress had no Fourteenth Amendment power to impose it upon the states. But RFRA remained constitutional as a regulation of federal agencies, such as the Bureau of Prisons, with its constitutional foundation “based on the enumerated power that supports the particular agency’s work.”⁴⁹

Undeterred by this setback, Congress enacted RLUIPA in 2000.⁵⁰ With RFRA now only applicable to federal officials, RLUIPA recovered some of that lost ground by extending the *Sherbert* test to state and local government conduct related to (1) land use regulations and (2) religious exercise by institutionalized persons.⁵¹ Within that subset, RLUIPA’s application was further limited to programs or activities that (a) receive federal funding or (b) affect interstate commerce.⁵² Through this invocation of the Spending and Commerce Clauses, RLUIPA maintained a more defensible constitutional foothold for its regulation of state actors.⁵³

RFRA and RLUIPA’s commonalities are immediately apparent upon statutory inspection. Both statutes were designed to roll back *Smith* and reinstate the *Sherbert* strict scrutiny test.⁵⁴ Their articulations of the *Sherbert* standard are nearly verbatim.⁵⁵ The statutes also have indistinguishable remedial provisions, both providing injured parties with

⁴⁸ See *id.* at 534 (“Laws valid under *Smith* would fall under RFRA without regard to whether they had the object of stifling or punishing free exercise.”).

⁴⁹ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014).

⁵⁰ C.R. Div., U.S. Dep’t of Just., Report on the Twentieth Anniversary of the Religious Land Use and Institutionalized Persons Act 3, 5 (2020), <https://www.justice.gov/media/1096176/dl?inline> [<https://perma.cc/BCZ2-XCBB>].

⁵¹ See 42 U.S.C. §§ 2000cc–2000cc-1. RLUIPA’s land use provision not only imposes the *Sherbert* test on government regulations, but also prohibits the imposition or implementation of a land use regulation (1) “in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution”; or (2) that “discriminates against any assembly or institution on the basis of religion or religious denomination.” *Id.* § 2000cc(b)(1)–(2).

⁵² See *id.* §§ 2000cc(a)(2)(A)–(B), 2000cc-1(b). Though RLUIPA also invokes the commerce power, the consensus view is that regulation of religious accommodations for incarcerated persons can be justified only through Congress’s spending power. See *Smith v. Allen*, 502 F.3d 1255, 1274 n.9 (11th Cir. 2007) (collecting cases).

⁵³ But see *Cutter v. Wilkinson*, 544 U.S. 709, 727 n.2 (2005) (Thomas, J., concurring) (“[T]hough RLUIPA is entirely consonant with the Establishment Clause, it may well exceed Congress’ authority under either the Spending Clause or the Commerce Clause.”).

⁵⁴ See *id.* at 714–15 (majority opinion).

⁵⁵ See 42 U.S.C. §§ 2000bb-1(a)–(b), 2000cc-1(a).

“appropriate relief against a government.”⁵⁶ And both define the word “government” within that remedial clause to include, among others, “official[s]” and any “other person acting under color of law.”⁵⁷

Supreme Court opinions have resultingly described RFRA and RLUIPA as “twin” or “sister” statutes and used prior precedent regarding one statute to aid in their interpretation of the other.⁵⁸ For example, in *Holt v. Hobbs* the Court faced the question of whether a prison policy that forced a Muslim incarcerated person to shave his beard “substantially burden[ed]” his religious beliefs under RLUIPA.⁵⁹ The Court concluded that the policy *did* create a substantial burden since it forced Holt to “engage in conduct that seriously violates [his] religious beliefs.”⁶⁰ The *Holt* Court borrowed that articulation of a “substantial burden” from *Burwell v. Hobby Lobby Stores, Inc.*—but *Hobby Lobby* concerned RFRA, not RLUIPA.⁶¹ Similarly, *Hobby Lobby* itself used language that appears only in RLUIPA to support its conclusion that compliance with RFRA’s accommodations guarantee may require the government to incur out-of-pocket costs.⁶² Across these and other cases,⁶³ each statute has provided interpretive clarity for the other.

⁵⁶ Id. §§ 2000bb-1(c), 2000cc-2(a). RLUIPA’s full cause of action states that “[a] person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.” Id. § 2000cc-2(a). RFRA’s cause of action is functionally indistinguishable. See id. § 2000bb-1(c).

⁵⁷ Id. § 2000bb-2(1). RLUIPA limits its definition of “government” to state and local governments, but otherwise tracks RFRA’s definition. See id. § 2000cc-5(4) (“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 . . .”).

⁵⁸ *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2396 n.13 (2020) (Alito, J., concurring) (“twin”); *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022) (“sister”).

⁵⁹ *Holt v. Hobbs*, 574 U.S. 352, 356 (2015).

⁶⁰ Id. at 361 (alteration in original) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014)).

⁶¹ *Hobby Lobby*, 573 U.S. at 691.

⁶² Id. at 730 (“[T]his chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” (alteration in original) (quoting 42 U.S.C. § 2000cc-3(c))).

⁶³ See, e.g., *Ramirez*, 142 S. Ct. at 1277 (looking to *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 429–30 (2006), a case concerning RFRA, to determine how evidentiary burdens are allocated under RLUIPA).

C. Interpretations of RFRA's and RLUIPA's Remedial Provisions

RFRA and RLUIPA both empower injured parties to obtain “appropriate relief against a government” through an express cause of action.⁶⁴ In *Sossamon v. Texas (Sossamon II)*, the Supreme Court addressed whether RLUIPA’s text satisfies the “clear statement” rule required to waive state sovereign immunity to damages suits. The Court concluded that the language is too “open-ended and ambiguous” to provide a sufficiently clear waiver.⁶⁵ Damages are therefore unavailable for suits against government officials in their official capacity.⁶⁶

The petitioner in that case, Harvey Leroy Sossamon, III, presented two issues for the Supreme Court’s review: whether damages are available against state officials in (1) their *official* capacity and (2) their *individual* capacity.⁶⁷ The Court only granted certiorari on the former issue.⁶⁸ From 2007 to 2020, a steady trickle of opinions from ten circuits reached a unanimous conclusion as to the latter question: individual capacity suits are unavailable under RLUIPA.⁶⁹

As the circuit consensus against individual capacity suits under RLUIPA solidified in the late 2010s, the same question arose in the RFRA context. The Third Circuit in 2016, followed by the Second Circuit in 2018, held that individual capacity suits *are* available under RFRA.⁷⁰ The Supreme Court vindicated that stance in 2020, holding in *Tanzin v. Tanvir* that “RFRA’s express remedies provision permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities.”⁷¹

⁶⁴ 42 U.S.C. §§ 2000bb-1(c), 2000cc-2(a).

⁶⁵ 563 U.S. 277, 285–86 (2011).

⁶⁶ See *id.* at 282, 288.

⁶⁷ Petition for a Writ of Certiorari at 13, 16, *Sossamon II*, 563 U.S. 277 (No. 08-1438).

⁶⁸ *Sossamon v. Texas*, 560 U.S. 923 (2010).

⁶⁹ See *Washington v. Gonyea*, 731 F.3d 143, 145 (2d Cir. 2013) (per curiam); *Sharp v. Johnson*, 669 F.3d 144, 154–55 (3d Cir. 2012); *Rendelman v. Rouse*, 569 F.3d 182, 189 (4th Cir. 2009); *Sossamon I*, 560 F.3d 316, 328–29 (5th Cir. 2009); *Haight v. Thompson*, 763 F.3d 554, 567–70 (6th Cir. 2014); *Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009); *Scott v. Lewis*, 827 F. App’x 613, 613 (8th Cir. 2020) (per curiam); *Wood v. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014); *Stewart v. Beach*, 701 F.3d 1322, 1335 (10th Cir. 2012); *Smith v. Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007).

⁷⁰ *Mack v. Loretto*, 839 F.3d 286, 303–04 (3d Cir. 2016); *Tanvir v. Tanzin*, 894 F.3d 449, 466 (2d Cir. 2018), *aff’d*, 141 S. Ct. 486 (2020).

⁷¹ 141 S. Ct. at 493. The *Tanzin* Court did not, however, specify whether any kinds of monetary damages are unavailable under RFRA. Cf. Bethany Ao, Comment, Achieving Appropriate Relief for Religious Freedom Violations in Prisons After *Tanzin*, 90 U. Chi. L.

Justice Thomas, writing for a unanimous majority, found ample support in RFRA's text. The phrase "appropriate relief" is "open-ended" on its face.⁷² Further, the definition of "government" includes "officials" and "other person[s] acting under color of law."⁷³ This language suggests that individuals as well as entities were meant to be suable parties.⁷⁴ "[P]ersons acting under color of law" is also inspired by the text of 42 U.S.C. § 1983, a statute that allows for personal capacity damages suits against officials.⁷⁵ Historical context provides another layer of support, since RFRA was enacted to reinstate "both the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim."⁷⁶ And for cases in which damages are the only available relief, it would be counterintuitive to conclude that "appropriate relief" actually counsels in favor of *no* relief.⁷⁷ Finally, the Court distinguished its earlier contrary interpretation of "appropriate relief" in *Sossamon II*, stating that "[t]he obvious difference is that this case features a suit against individuals, who do not enjoy sovereign immunity."⁷⁸

Across the circuits, RFRA now provides damages against individual officers, but RLUIPA does not.⁷⁹ Given the way that RFRA and RLUIPA overlap, that outcome seems puzzling. Even after *Tanzin*, no circuit has fallen out of line, though many judges acknowledge that the doctrinal landscape is now more uncertain.⁸⁰ The following two Parts address the constitutional arguments behind the contrasting treatment of RFRA and RLUIPA.

Rev. 1967, 1989–90 (2023) (asserting that compensatory damages are included under RFRA because punitive and nominal damages alone do not constitute "appropriate relief").

⁷² See *Tanzin*, 141 S. Ct. at 491; *id.* (quoting *Sossamon II*, 563 U.S. at 286).

⁷³ *Id.* at 490 (alteration in original) (quoting 42 U.S.C. § 2000bb-2(1)).

⁷⁴ *Id.*

⁷⁵ *Id.* at 490–91.

⁷⁶ *Id.* at 492.

⁷⁷ *Id.*

⁷⁸ *Id.* at 492–93 (citing *Sossamon II*, 563 U.S. 277, 280, 282 (2011)).

⁷⁹ In addition to the Fifth Circuit, the Second, Sixth, Eighth, and Ninth Circuits have also readdressed and reaffirmed the unavailability of personal capacity suits under RLUIPA in light of *Tanzin*. See *Tripathy v. McKoy*, 103 F.4th 106, 115 (2d Cir. 2024); *Ali v. Adamson*, 132 F.4th 924, 930–31 (6th Cir. 2025); *Barnett v. Short*, 129 F.4th 534, 542–43 (8th Cir. 2025); *Fuqua v. Raak*, 120 F.4th 1346, 1360 (9th Cir. 2024).

⁸⁰ See *supra* notes 25–26.

II. RLUIPA AND “CLEAR NOTICE” OF PERSONAL CAPACITY DAMAGES SUITS

A. The Spending Clause “Contract” and Its “Clear Notice” Requirement

Under the Spending Clause of the United States Constitution, Congress possesses the “Power [t]o 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.”⁸¹ The Spending Clause allows Congress to place conditions on the disbursement of federal funds. Congress “further[s] broad policy objectives” by hinging the continued cash flow upon compliance with “statutory and administrative directives.”⁸² The nature of this interaction between Congress and the parties who agree to the conditions has led the Supreme Court to observe that “legislation enacted pursuant to the spending power is much in the nature of a contract.”⁸³ The “contract” analogy, born out of the Court’s opinion in *Pennhurst State School & Hospital v. Halderman*, has informed the Court’s Spending Clause jurisprudence.⁸⁴ Not only does spending power legislation often act like a contract, but in some ways it *must* act like a contract.

One requirement derived from that analogy is that the party “voluntarily and knowingly accept[] the terms of th[at] ‘contract.’”⁸⁵ Congress cannot spring a condition upon an unsuspecting party. The conditions must be unambiguous so that the party can make an informed decision whether to accept the funds and bind themselves to the terms.⁸⁶ This “clear notice” requirement governs not only conditions that detail the scope of permissible conduct, but also ones that lay out the available

⁸¹ U.S. Const. art. I, § 8, cl. 1.

⁸² *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980) (plurality opinion).

⁸³ *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

⁸⁴ *Id.*

⁸⁵ *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1570 (2022) (second alteration in original) (quoting *Barnes v. Gorman*, 536 U.S. 181, 186 (2002)). Not only must Spending Clause legislation make any conditions unambiguous, but three other prerequisites must also be met: (1) the statute must be in pursuit of the general welfare; (2) the conditions must be related “to the federal interest in particular national projects or programs”; and (3) the statute cannot violate any other constitutional provisions. *South Dakota v. Dole*, 483 U.S. 203, 207–08 (1987) (quoting *Massachusetts v. United States*, 435 U.S. 444, 461 (1978) (plurality opinion)).

⁸⁶ *Cummings*, 142 S. Ct. at 1570.

remedies in case of violation.⁸⁷ As the Court has noted, a party mulling its decision to accept federal funds would want to know “not only what rules it must follow, but also what sort of penalties might be on the table.”⁸⁸

B. Sossamon II and RLUIPA’s “Ambiguity”

Several circuits have used this “clear notice” requirement as grounds to reject the possibility that individual officials might be liable for damages under RLUIPA.⁸⁹ They assert that “appropriate relief against a government,” even with the added context that “‘government’ is defined to include ‘any . . . person acting under color of State law,’” is too ambiguous to alert an officer that their unlawful conduct could put them on the hook for monetary relief.⁹⁰ And that position has ostensible support from Supreme Court precedent. In *Sossamon II*, the Court examined RLUIPA’s remedial text to determine whether state sovereign immunity to damages suits had been waived.⁹¹ Waiver of state sovereign immunity, like conditions in the Spending Clause context, is subject to a “clear statement” rule.⁹² There must be an “unequivocal expression of state consent” to private suits for damages.⁹³ “[A]ppropriate relief against a government,” the Court concluded, does not meet that bar.⁹⁴ The language is “open-ended and ambiguous,” as well as “inherently context dependent.”⁹⁵ In *Haight v. Thompson*, the Sixth Circuit found *Sossamon*

⁸⁷ See *id.* at 1570–71.

⁸⁸ *Id.* at 1570.

⁸⁹ See, e.g., *Haight v. Thompson*, 763 F.3d 554, 569–70 (6th Cir. 2014); *Rendelman v. Rouse*, 569 F.3d 182, 189 (4th Cir. 2009).

⁹⁰ See *Rendelman*, 569 F.3d at 188–89 (alteration in original) (first quoting 42 U.S.C. § 2000cc-2(a); and then quoting *id.* § 2000cc-5(4)(A)(iii)).

⁹¹ 563 U.S. 277, 284–85 (2011).

⁹² See *id.* at 290 (“The requirement of a clear statement in the text of the statute ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter.”); see also Terry Jean Seligmann, *Muddy Waters: The Supreme Court and the Clear Statement Rule for Spending Clause Legislation*, 84 Tul. L. Rev. 1067, 1069 (2010) (discussing the use of the “clear statement” rule in the Spending Clause context as a limitation on congressional power).

⁹³ *Sossamon II*, 563 U.S. at 285.

⁹⁴ *Id.* (quoting 42 U.S.C. § 2000cc-2(a)).

⁹⁵ *Id.* at 286.

II dispositive.⁹⁶ If “appropriate relief” is too ambiguous for monetary relief in one context, surely it is too ambiguous in another.⁹⁷

The *Haight* court’s logic is appealing, but it rests on a flawed assumption—that all “clear statement” rules are created equal.⁹⁸ The clarity necessary for waiver of state sovereign immunity is far more demanding than that for the Spending Clause “clear notice” requirement.⁹⁹ The Supreme Court only recognizes two situations in which state sovereign immunity is waived: (1) “when a statute says in so many words that it is stripping immunity from a sovereign entity”; and (2) “‘when a statute creates a cause of action’ and explicitly ‘authorizes suit against a government on that claim.’”¹⁰⁰ When there is anything short of verbatim language or express authorization of the exact thing that state sovereign immunity forbids, there is no waiver.

In contrast, the Spending Clause “clear notice” requirement accepts less overt proof of notice. The Court has stated in the Spending Clause context that a party may be considered “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.”¹⁰¹ When juxtaposed with the standard for waiver of state sovereign immunity, the Spending Clause “clear notice” requirement is hardly on par. Not only is the language less exacting, but it also establishes that a funding recipient is on notice that traditional contract remedies will be available, regardless of whether those remedies are even

⁹⁶ *Haight v. Thompson*, 763 F.3d 554, 569 (6th Cir. 2014) (“Because the imperative of clarity applies in all of these settings and because *Sossamon* establishes that the phrase ‘appropriate relief’ does not clearly entitle a claimant to money damages, the claimants’ request for money damages must fail.”).

⁹⁷ *Id.*

⁹⁸ Cf. Daniel B. Listwa & Adam Flaherty, Contract Law for the Spending Clause, 81 N.Y.U. Ann. Surv. Am. L. 67, 81 n.71 (2025) (observing that Justice Sotomayor’s reference to Spending Clause cases in her *Sossamon II* dissent “appears to conflate” the sovereign immunity and Spending Clause “clear statement” tests).

⁹⁹ See *infra* note 120; *Barnett v. Short*, 129 F.4th 534, 542 (8th Cir. 2025) (“[T]he demand for clarity in these contexts are not identical, as . . . ‘[o]ur conclusion . . . that RLUIPA is sufficiently clear to be a valid exercise of Spending Clause power does not foreclose our consideration of whether RLUIPA is sufficiently clear to effectuate a knowing waiver of the state’s Eleventh Amendment sovereign immunity’” (second alteration in original) (quoting *Van Wyhe v. Reisch*, 581 F.3d 639, 652 (8th Cir. 2009))).

¹⁰⁰ *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 144 S. Ct. 457, 466 (2024) (quoting *Fin. Oversight & Mgmt. Bd. for P.R. v. Centro de Periodismo Investigativo, Inc.*, 143 S. Ct. 1176, 1179 (2023)).

¹⁰¹ *Barnes v. Gorman*, 536 U.S. 181, 187 (2002).

hinted at within the statute's text.¹⁰² The *Sossamon II* Court's conclusion that "appropriate relief" is an insufficiently clear waiver of state sovereign immunity¹⁰³ is not transferable to the Spending Clause context. Such an assumption is akin to a conclusion that a party cannot meet a clear and convincing evidence standard merely because it was previously held that they failed to provide proof beyond a reasonable doubt.

Courts that rely upon *Sossamon II* also mistakenly presume that the relevance of evidence across the two contexts is fungible. To give a hyperbolic example, statutory text that read "individual officers may be sued for damages in their personal capacity" would undoubtedly satisfy the Spending Clause "clear notice" requirement, but it would be useless language for sovereign immunity analysis. RLUIPA contains similarly asymmetrical evidence. RLUIPA's remedial provision is modeled off the text within 42 U.S.C. § 1983.¹⁰⁴ Supreme Court precedent has established that § 1983's text provides for individual capacity damages suits¹⁰⁵ but does not abrogate state sovereign immunity.¹⁰⁶ As the *Sossamon II* Court recognized, a text's meaning may be "context dependent,"¹⁰⁷ and these nuances are lost when a holding about a text's ambiguity in one context is uprooted and applied to discrete circumstances.

C. Applying the Court's "Clear Notice" Test to RLUIPA

1. The Presumption in Favor of Monetary Damages

Most circuits that have invoked the "clear notice" requirement to deny individual capacity damages suits have failed to deploy the Court's Spending Clause "clear notice" test, instead erroneously relying on *Sossamon II* to claim damages are unavailable in suits against individual officers.¹⁰⁸ But even before looking to RLUIPA itself, liable parties are

¹⁰² *Id.*

¹⁰³ *Sossamon II*, 563 U.S. 277, 285 (2011).

¹⁰⁴ Cf. *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020) (interpreting RFRA's identical remedial language as "draw[ing] on" § 1983).

¹⁰⁵ See, e.g., *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305–06 (1986).

¹⁰⁶ See *Quern v. Jordan*, 440 U.S. 332, 341 (1979) (concluding that Congress did not intend "to override the traditional sovereign immunity of the States" when enacting § 1983).

¹⁰⁷ *Sossamon II*, 563 U.S. at 286.

¹⁰⁸ See *Sharp v. Johnson*, 669 F.3d 144, 155 (3d Cir. 2012); *Haight v. Thompson*, 763 F.3d 554, 569 (6th Cir. 2014). Then-Chief Judge Cole, who concurred in the Sixth Circuit's opinion in *Haight*, recognized that *Sossamon II* is inapposite, and that courts must instead apply the "clear notice" test laid out in *Barnes*. See *id.* at 571 (Cole, C.J., concurring). Chief Judge Cole

on notice that they may have to provide compensatory damages to injured plaintiffs because such damages are a traditional remedy within contract law.¹⁰⁹ Even if RLUIPA's remedial provision were as clear as milk, someone who violated the statute's terms would still be on notice that they face monetary liability, so long as there was not "clear direction" to exclude damages as an available remedy.¹¹⁰

Invoking this presumption in favor of compensatory damages, the Fifth and Ninth Circuits permit damages suits against municipal entities under RLUIPA.¹¹¹ Their logic for doing so is simple. RLUIPA lists municipalities within its definition of "government," against whom "appropriate relief" can be attained.¹¹² And since there is a presumption in favor of compensatory damages unless the statute's text contains "clear direction" otherwise—and RLUIPA lacks such direction—monetary liability attaches.¹¹³ Both the Fifth and Ninth Circuits only mentioned *Sossamon II* to cabin its relevance to monetary relief against states and the waiver of state sovereign immunity.¹¹⁴ Puzzlingly, only two circuits have adopted this analytical approach to *individual* liability under RLUIPA, with others instead concluding that *Sossamon II* is an insurmountable obstacle.¹¹⁵

ultimately concluded that RLUIPA's text is insufficiently clear. *Id.* He rejected the plaintiff's invocation of the presumption in favor of compensatory damages within Spending Clause statutes, responding that the Court's recent Spending Clause jurisprudence had not invoked that presumption. *Id.* at 571 n.1. However, the Supreme Court has now relied upon that presumption as recently as 2022. See *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1570–71 (2022). Chief Judge Cole also downplayed the link between RLUIPA's remedial text and similar language in 42 U.S.C. § 1983. See *Haight*, 763 F.3d at 571 & n.1 (Cole, C.J., concurring). But the *Tanzin* Court asserted that the similarities between RFRA's identical text and § 1983 are not coincidental. See *Tanzin*, 141 S. Ct at 490–91.

¹⁰⁹ *Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (noting that because compensatory damages and injunctive relief are both traditionally available in contractual disputes, breaching parties are on notice that they may be liable for such remedies).

¹¹⁰ *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 65 (1992); see also *Tanvir v. Tanzin*, 894 F.3d 449, 467 (2d Cir. 2018) (holding that the *Franklin* presumption applies to statutes with express causes of action, not solely statutes whose causes of action are implied).

¹¹¹ See *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 290 (5th Cir. 2012); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1168–69 (9th Cir. 2011). The Eighth Circuit has also explicitly established the availability of damages suits against local government entities under RLUIPA. See *Barnett v. Short*, 129 F.4th 534, 542 (8th Cir. 2025).

¹¹² See *Centro Familiar*, 651 F.3d at 1168 (quoting 42 U.S.C. § 2000cc-2(1)).

¹¹³ See *id.*; *Opulent Life*, 697 F.3d at 290.

¹¹⁴ See *Opulent Life*, 697 F.3d at 289–90; *Centro Familiar*, 651 F.3d at 1168–69.

¹¹⁵ See *Barnett*, 129 F.4th at 541–42; *Smith v. Allen*, 502 F.3d 1255, 1270–71 (11th Cir. 2007). The Ninth Circuit has not raised the "clear notice" objection to individual capacity suits

Though the presumption of compensatory damages' availability helps put officials on notice regarding damages liability, this remedial floor for Spending Clause legislation would leave many RLUIPA plaintiffs wanting. "Compensatory damages" sounds capacious, but the Court has carved out the availability of punitive and emotional injury damages because they are not traditionally available in breach of contract suits.¹¹⁶ While plaintiffs that were physically harmed, like Landor, could still be compensated, official conduct that only inflicted emotional injury would be disregarded. For example, an incarcerated individual like Gregory Holt, the plaintiff in *Holt v. Hobbs*, could likely obtain no monetary relief for the prison policy that prevented him from growing a beard in compliance with his Muslim faith, no matter the emotional distress he suffered from being forced to act contrary to his beliefs.

2. The Arlington "Clear Notice" Statutory Analysis

If individual officers are to be personally liable for the full spectrum of damages remedies, then the required notice must come directly from the "explicitly provided" remedies in RLUIPA. Few Supreme Court Spending Clause cases have operationalized this prong of the notice test, since most of the statutes at issue had *implied* causes of action that lacked any express remedial language.¹¹⁷ But in *Arlington Central School District Board of Education v. Murphy*, the Supreme Court applied its

but instead invoked the argument that non-recipients of funds cannot be held liable under RLUIPA. See *Wood v. Yordy*, 753 F.3d 899, 903 (9th Cir. 2014). The Fifth Circuit similarly relied upon the non-recipient liability argument. See *Sossamon I*, 560 F.3d 316, 328 (5th Cir. 2009). However, in her concurrence in the denial for a rehearing en banc, Judge Clement intimated that even if the Fifth Circuit concluded that non-recipients of federal funds could be held liable for violating Spending Clause statutes, there would still be a "clear notice" issue because of *Sossamon II*. See *Landor v. La. Dep't of Corr. & Pub. Safety*, 93 F.4th 259, 261 (5th Cir. 2024) (Clement, J., concurring in the denial of rehearing en banc). But there is no reason why *Sossamon II* would be inapplicable in the municipality liability context yet relevant to individual officer liability.

¹¹⁶ See *Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (concluding that punitive damages are not presumptively available in suits for violations of Spending Clause statutes because they are not a traditional breach of contract remedy); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1576 (2022) ("There is thus no basis in contract law to maintain that emotional distress damages are 'traditionally available in suits for breach of contract'" (quoting *Barnes*, 536 U.S. at 187)).

¹¹⁷ See, e.g., *Cummings*, 142 S. Ct. at 1569 (first citing 29 U.S.C. § 794a(a)(2); and then citing 42 U.S.C. § 18116(a)) (evaluating the scope of available remedies under the Rehabilitation Act and Affordable Care Act, which both incorporate Title VI's implied right of action).

“clear notice” test to determine whether the fact that the Individuals with Disabilities Education Act (“IDEA”) granted courts the power to award prevailing plaintiffs “reasonable attorneys’ fees as part of the costs” further entitled those parties to recovery of all expert witness fees.¹¹⁸

The Court first turned to the text.¹¹⁹ The plaintiffs contended that the term “costs” is broad enough to cover expert fees, but the Court rejected the notion that the term is “open-ended.”¹²⁰ Use of a more expansive term like “expenses” would indicate a wider scope to the recoverable items.¹²¹ “Costs,” however, is narrowly defined in 28 U.S.C. § 1920—the general statute on taxation of federal court costs—to include only a small percentage of expert fees.¹²² Further, the IDEA contains “detailed provisions” regarding the determination of “reasonable attorney’s fees,” yet contains no such provisions for allocating expert fees.¹²³ This absence indicates that expert fees are not contemplated by the statute.¹²⁴

The Court then turned to its precedent interpreting “costs” in a different federal statute and the Federal Rules of Civil Procedure, both of which rely on the list provided in § 1920 to reach a narrow definition of the word.¹²⁵ These prior interpretations were “perhaps the strongest support”¹²⁶ for the Court’s conclusion, since it was reluctant to construe “virtually identical language . . . as having exactly the opposite meaning.”¹²⁷ The plaintiffs and the dissent urged the majority to look beyond text, context, and precedent, and instead inspect the IDEA’s

¹¹⁸ 548 U.S. 291, 296–97 (2006) (quoting 20 U.S.C. § 1415(i)(3)(B)).

¹¹⁹ Id. at 296 (“We have ‘stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.’” (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992))).

¹²⁰ Id. at 297. The *Arlington* Court’s reasoning indicates that in the Spending Clause “clear notice” context, a text’s “open-ended” nature helps it pass muster. Id. However, the *Sossamon II* Court labeled RLUIPA’s text as “open-ended” when describing why the statute had *failed* the sovereign immunity “clear statement” rule. See 563 U.S. 277, 285–86 (2011). This contrasting treatment of the same attribute is further evidence that the two tests are not equally rigorous.

¹²¹ *Arlington*, 548 U.S. at 297.

¹²² Id. at 297–98.

¹²³ Id. at 298.

¹²⁴ Id.

¹²⁵ Id. at 301–02 (first citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 439, 441–42 (1987) (interpreting “costs” within Federal Rule of Civil Procedure 54(d)); and then citing *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83 (1991) (interpreting “costs” as used in 42 U.S.C. § 1988)).

¹²⁶ Id. at 300.

¹²⁷ Id. at 302.

legislative history.¹²⁸ But the majority asserted that legislative history, on its own, “is simply not enough” to provide clear evidence that expert witness fees are recoverable by prevailing plaintiffs.¹²⁹

3. Applying *Arlington to RLUIPA*

RLUIPA’s remedial text makes clear that damages *are* available in suits against individual officers. First, as the *Sossamon II* Court acknowledged, “[a]ppropriate relief” is “open-ended.”¹³⁰ While historically the word “relief” may have been more closely associated with injunctive relief, the United States Code uses the word “relief” in reference to both monetary and equitable remedies.¹³¹ As the *Tanzin* Court highlighted, the fact that other federal statutes call for “appropriate equitable relief” demonstrates that “[h]ad Congress wished to limit the remedy to that degree, it knew how to do so.”¹³²

This expansive reading of the word “relief” is further encouraged by RLUIPA’s rules of construction, which instruct that “[t]his chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.”¹³³ In *Sossamon II*, the State of Texas made a “plausible” argument that this provision only applies to the substantive standards of

¹²⁸ Id. at 308–09 (Breyer, J., dissenting) (“Members of Congress did make clear their intent by . . . approving a Conference Report that specified that ‘the term “attorneys’ fees as part of the costs” include[s] reasonable expenses and fees of expert witnesses’ I can find no good reason for this Court to interpret the language of this statute as meaning the precise opposite of what Congress told us it intended.” (second alteration in original) (quoting H.R. Rep. No. 99-687, at 5 (1986) (Conf. Rep.))).

¹²⁹ Id. at 304 (majority opinion).

¹³⁰ *Sossamon II*, 563 U.S. 277, 286 (2011).

¹³¹ See 15 U.S.C. § 15e (describing the distribution rules for “[m]onetary relief” recovered in civil claims); 30 U.S.C. § 1427 (granting a cause of action for “equitable relief” against any person who violates the statutory provision).

¹³² *Tanzin v. Tanvir*, 141 S. Ct. 486, 492 (2020) (emphasis added); id. (quoting 29 U.S.C. § 1132(a)(3)). But see *Sossamon II*, 563 U.S. at 287 (noting that the failure to use narrower language like “injunctive or declaratory relief” may instead be because an RLUIPA violation can be used as grounds for “a claim or defense,” and equitable relief “is not ‘appropriate relief’ for a successful defense” (first quoting 42 U.S.C. § 2000cc-2(f); and then quoting id. § 2000cc-2(a))). Cf. id. (downplaying the inferential significance of the fact that a separate RLUIPA provision—regarding actions brought by the United States—is limited to “injunctive or declaratory relief,” since a more specific delineation of available remedies may have been chosen because state sovereign immunity does not apply to actions brought by the United States government, and Congress resultingly wanted to make clear that the United States could nevertheless not seek damages from states (quoting 42 U.S.C. § 2000cc-2(f))).

¹³³ 42 U.S.C. § 2000cc-3(g).

review within RLUIPA, not its cause of action and relief provisions.¹³⁴ But that interpretation artificially narrows the scope of the rule of construction, which applies to the *chapter*—RLUIPA in its entirety—and not any specifically delineated subsections. Though this rule of construction did not sway the Supreme Court in *Sossamon II*, the Court there deployed a more stringent “clear statement” rule and had less textual support for the desired construction. Here, the broad construction provision strengthens what is already the natural interpretation of “appropriate relief.”

RLUIPA’s definition of the word “government” also becomes superfluous if only equitable relief is available. Suits for injunctive or declaratory relief against government officials in their *official* capacity are understood to be, in effect, suits against the governmental entity they represent.¹³⁵ If damages actions are not available, it is impossible to file suit against an “official” or “*other person* acting under color of [state] law” under RLUIPA.¹³⁶ Thus, while the rest of the IDEA’s text appears to be ill-prepared for the allocation of expert fees to victorious plaintiffs, RLUIPA’s text becomes nonsensical when damages are *unavailable* against individuals.¹³⁷

Just as the *Arlington* Court deemed the word “costs” to reference a different federal statute, RLUIPA’s text is informed by context supplied by another civil rights statute, 42 U.S.C. § 1983. As the *Tanzin* Court noted, RFRA and RLUIPA’s definitions of the word “government” include “person[s] acting under color of law,” which is language directly borrowed from the text of § 1983.¹³⁸ The Supreme Court has “long interpreted” damages suits against individual government actors to be permissible under § 1983.¹³⁹ To the *Tanzin* Court, this “legal ‘backdrop . . . ’ confirm[ed] the propriety of individual-capacity suits.”¹⁴⁰

¹³⁴ *Sossamon II*, 563 U.S. at 287–88.

¹³⁵ See *supra* note 13 and accompanying text.

¹³⁶ See *Tanzin*, 141 S. Ct. at 490 (“The right to obtain relief against ‘a person’ cannot be squared with the Government’s reading that relief must always run against the United States.”).

¹³⁷ Brief of Seven Religious Liberty Scholars as Amici Curiae Supporting Petitioner at 12, *Landor v. La. Dep’t of Corr. & Pub. Safety*, No. 23-1197 (U.S. Sept. 3, 2025) [hereinafter Brief of Seven Religious Liberty Scholars].

¹³⁸ *Tanzin*, 141 S. Ct. at 490 (alteration in original) (quoting 42 U.S.C. § 2000bb-2(1)).

¹³⁹ *Id.*

¹⁴⁰ *Id.* (quoting *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005)).

Also, both compensatory damages for pure emotional harm and punitive damages are available under § 1983.¹⁴¹

For all the evidence the *Tanzin* Court provided to demonstrate the link between § 1983 and RFRA, RLUIPA is an even more direct descendant. Post-*City of Boerne v. Flores*, RFRA only applies to suits against federal officers. The cause of action for constitutional tort suits against federal officers is not supplied by § 1983, which only covers those acting under color of state law,¹⁴² but rather by the implied right of action created by the Supreme Court in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*.¹⁴³ *Bivens* actions only grant relief for a limited subset of constitutional torts, and violations of the Free Exercise Clause are not included within that group.¹⁴⁴ Though RFRA, as initially enacted, applied to both state and federal officials, that “legal backdrop” for its cause of action was one in which individual capacity suits would only be *partially* available.¹⁴⁵ RLUIPA, on the other hand, falls directly within § 1983’s remedial blueprint because it only applies to state and local officials.¹⁴⁶ The Supreme Court evidently does not demand a perfect fit, yet RLUIPA fits more snugly within § 1983’s scope than RFRA does.

To borrow language and reasoning from *Arlington*, the “strongest support” for a more expansive interpretation of “appropriate relief” also draws from Supreme Court precedent.¹⁴⁷ In *Tanzin v. Tanvir*, the Supreme Court was tasked with resolving the exact same issue that this Note addresses, but in the context of RLUIPA’s “twin,” RFRA. Their evaluation produced a “clear answer”: damages are available against

¹⁴¹ See *Carey v. Phipps*, 435 U.S. 247, 264 (1978) (compensatory damages for pure emotional harm); *Smith v. Wade*, 461 U.S. 30, 56 (1983) (punitive damages); cf. *Ao*, *supra* note 71, at 1994 (noting that while few courts have addressed the availability of punitive damages under RFRA, “at least one federal court has refused to dismiss the plaintiff’s claim for punitive damages in a case alleging RFRA violations”).

¹⁴² See 42 U.S.C. § 1983.

¹⁴³ 403 U.S. 388 (1971).

¹⁴⁴ See Nicole B. Godfrey, *Holding Federal Prison Officials Accountable: The Case for Recognizing a Damages Remedy for Federal Prisoners’ Free Exercise Claims*, 96 Neb. L. Rev. 924, 947 (2018) (noting that every court to address the question has concluded that a *Bivens* remedy is not available for federal officers’ violations of the Free Exercise Clause).

¹⁴⁵ Section 1983 provides a remedy for the constitutional torts of those acting under color of state law, but neither § 1983 nor *Bivens* provides for a remedy against the torts of those acting under color of federal law in the free exercise context.

¹⁴⁶ See 42 U.S.C. § 2000cc-5(4) (defining “government” to include states, counties, municipalities, officials of such entities, and any other person acting under color of state law).

¹⁴⁷ *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 300 (2006).

officers in their individual capacity.¹⁴⁸ As a result, the circuits that find RLUIPA's text insufficiently clear construe "virtually identical language" to have "the opposite meaning."¹⁴⁹ It is true that the *Tanzin* Court did not apply the "clear notice" test, since RFRA is not Spending Clause legislation—though it would be anomalous for the Supreme Court to find language it previously labeled "clear" to nevertheless fail a "clear statement" rule in the same context.¹⁵⁰ In any event, under the *Arlington* Court's test, *Tanzin* is further evidence suggesting that the "clear notice" test is satisfied.

Under the current Supreme Court regime, one would be unwise to try to sway a majority of Justices on a matter of statutory interpretation armed only with legislative history. To do so for a provision subject to a "clear statement" rule would be borderline malpractice. Indeed, the *Arlington* Court was not convinced by a committee report stating that the term "costs" within the IDEA covers "reasonable expenses and fees of expert witnesses."¹⁵¹ But while legislative history is insufficient when every other interpretive tool "overwhelmingly suggests that expert fees may not be recovered,"¹⁵² it can still supplement direct evidence from text and precedent. Indeed, other Supreme Court cases have used legislative history, in part, to guide their conclusions as to "clear notice."¹⁵³ The

¹⁴⁸ *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020).

¹⁴⁹ *Arlington*, 548 U.S. at 302.

¹⁵⁰ The Court generally holds identical language to maintain the same meaning across different statutes with the same purpose, but it has also suggested that text may take on a different meaning across statutes that invoke different congressional powers. Compare *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion) ("[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."), with *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) ("Where . . . the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law . . .").

¹⁵¹ *Arlington*, 548 U.S. at 304 (quoting H.R. Rep. No. 99-687, at 5 (1986) (Conf. Rep.)).

¹⁵² *Id.*

¹⁵³ See Seligmann, *supra* note 92, at 1118 (noting that the Supreme Court has, "with the notable exception of the *Arlington* decision, considered the light that legislative history throws on statutory meaning for notice purposes" (footnote omitted)). But see Samuel R. Bagenstos, *Spending Clause Litigation in the Roberts Court*, 58 *Duke L.J.* 345, 401 (2008) (describing the swing toward textualism after Justice Alito replaced Justice O'Connor on the Court, and positing that prior Spending Clause cases may have come out differently if Justice Alito had joined the bench earlier). The Supreme Court has not analyzed any express remedial provisions for "clear notice" since *Arlington*, so the continued relevance of legislative history is unclear.

House report for the legislative proposal that would later become RLUIPA explained that the cause of action and remedial provisions “track RFRA, creating a private cause of action for damages, injunction, and declaratory judgment.”¹⁵⁴ The report also cautioned that “the Act does not abrogate the Eleventh Amendment immunity of states.”¹⁵⁵ Instead, suits for violations should be brought “against state officials and employees.”¹⁵⁶ Since this legislative history comports with the text, structure, and prior interpretations of the remedial provision, it does not have to do any interpretive heavy lifting. The history instead serves as confirmation that the conclusions drawn from the text are natural.¹⁵⁷

RLUIPA plaintiffs are typically not even allowed to get out of the starting blocks under the Spending Clause’s “clear notice” test because circuit courts have erroneously deemed *Sossamon II* dispositive on the matter. When that test is properly applied, however, the statute provides a “clear answer.”¹⁵⁸ The full spectrum of damages is available against individual officers.¹⁵⁹

III. INDIVIDUAL OFFICERS AS NON-RECIPIENTS OF FEDERAL FUNDS

A. The Objection to the Personal Liability of Non-Recipients of Federal Funds Under Spending Clause Legislation

The Spending Clause “contract analogy” yields a second potential objection to individual damages liability under RLUIPA: only parties to the contract can be held personally liable for violating its terms.¹⁶⁰ RLUIPA is a contractual agreement between the federal government on

¹⁵⁴ H.R. Rep. No. 106-219, at 29 (1999) (Conf. Rep.).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 647 (1999) (making note of a publication by the National School Boards Association that adopted an interpretation of Title IX similar to that of the majority—even though a private entity’s publication could not provide an “indicium of congressional notice”—because it demonstrated the Court’s reading was not an inaccurate one (quoting *id.* at 671 (Kennedy, J., dissenting))).

¹⁵⁸ *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020).

¹⁵⁹ Though it is not the focus of this Note, the thrust of this Part’s “clear notice” analysis applies with equal force to municipal liability. Further, since local government entities often receive federal funds, the Spending Clause objections addressed in Part III are inapplicable. See *Fuqua v. Raak*, 120 F.4th 1346, 1358–59 (9th Cir. 2024).

¹⁶⁰ See *Washington v. Gonyea*, 731 F.3d 143, 145 & n.2 (2d Cir. 2013) (*per curiam*).

the one hand and state and local governments on the other.¹⁶¹ The federal government provides funding to correctional centers, and in return state and local governments agree to abide by RLUIPA's terms on pain of funding withdrawal or liability for equitable relief to ensure compliance.¹⁶² But individual governmental officials have not engaged in any bargain and do not directly receive any funds from the federal government.¹⁶³ They exist outside the scope of the contract and thus cannot be brought within the statute's ambit, except to induce the government's own liability.¹⁶⁴

A majority of circuits that have addressed the individual officer liability question have raised this objection, either by directly invalidating RLUIPA's remedial provision as unconstitutional or by invoking the canon of constitutional avoidance to construe RLUIPA's language in a way that does not provide for personal capacity damages suits.¹⁶⁵ But the constitutional avoidance doctrine is only applicable when the text in question is ambiguous.¹⁶⁶ The proper reading of RLUIPA's text may have once been debatable, but post-*Tanzin v. Tanvir* the meaning of "appropriate relief" is unambiguous. The only remaining question is whether that relief may be obtained without running afoul of the Spending Clause.

Unlike the "clear notice" test, which is an integral part of spending power jurisprudence, the Supreme Court has never endorsed the idea that non-recipients of federal funds cannot be held personally liable under Spending Clause statutes. The Court has construed Title IX, another piece of spending power legislation, to mandate that "[t]he Government's enforcement power may only be exercised against the funding

¹⁶¹ See *Smith v. Allen*, 502 F.3d 1255, 1275 (11th Cir. 2007) ("[I]t is clear that the 'contracting party' in the RLUIPA context is the state prison institution that receives federal funds . . .").

¹⁶² See *id.*

¹⁶³ See *id.*

¹⁶⁴ See *Wood v. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014).

¹⁶⁵ See, e.g., *Fuqua v. Raak*, 120 F.4th 1346, 1360 (9th Cir. 2024) (holding that "RLUIPA provides . . . no constitutionally valid damages remedy" because damages liability cannot be imposed on individual officials who do not themselves receive federal funds); *Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009) ("[A]s a matter of statutory interpretation, and to avoid the constitutional concerns that an alternative reading would entail, we decline to read RLUIPA as allowing damages against defendants in their individual capacities." (footnote omitted)).

¹⁶⁶ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) ("The so-called canon of constitutional avoidance is an interpretive tool, counseling that ambiguous statutory language be construed to avoid serious constitutional doubts.").

recipient.”¹⁶⁷ However, the Court was engaging in statutory interpretation of Title IX’s self-imposed limits on liability, not establishing a constitutional rule.¹⁶⁸ To support its assertion, the Court cited not the Spending Clause or its contract analogy jurisprudence, but rather § 1682 of Title IX, which explicitly circumscribed the federal government’s enforcement power under the statute to “termination of or refusal to grant or to continue assistance under such program or activity to any recipient.”¹⁶⁹ The fact that the Court engages in case-by-case statutory interpretation of a statute’s liability scheme, rather than handing down a bright-line constitutional rule, may only be evidence of constitutional avoidance at play. But it could also indicate that the Spending Clause imposes no independent barrier to non-recipient liability.

B. Supreme Court Cases Upholding Non-Party Liability

The Supreme Court has never said, in so many words, whether a funding non-recipient may be found personally liable for violations of Spending Clause statutes. On multiple occasions, however, it has *shown* that such liability is possible. For example, in *South Dakota v. Dole* the Court upheld the National Minimum Drinking Age Act (“NMDAA”), a Spending Clause statute that conditions federal highway funds upon states’ adopting a legal drinking age of twenty-one.¹⁷⁰ Nowhere in the *Dole* opinion did the Court struggle with the fact that private citizens, those who were prosecuted for underage drinking, would be liable despite making no bargain for highway money.

The Fifth Circuit, in *Sossamon v. Lone Star State of Texas* (*Sossamon*), rebuked comparisons between RLUIPA and the state statute in *Dole*, labeling the latter “indirect legislation” whose independent enactment by the state legislature meaningfully distinguishes it from RLUIPA.¹⁷¹ Indirect legislation like the NMDAA does not interfere with “important

¹⁶⁷ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 641 (1999).

¹⁶⁸ *Id.*; see also *Barnes v. Gorman*, 536 U.S. 181, 184–85 (2002) (stating that “§ 504 of the Rehabilitation Act prohibits discrimination against the disabled by recipients of federal funding” because 29 U.S.C. § 794(b)(3) defined the scope of the statute to only reach funds recipients).

¹⁶⁹ 20 U.S.C. § 1682 (emphasis added). The *Davis* Court then explained that the liability scheme’s scope could not exceed the federal government’s enforcement power. See *Davis*, 526 U.S. at 641.

¹⁷⁰ 483 U.S. 203, 211–12 (1987).

¹⁷¹ 560 F.3d 316, 329 (5th Cir. 2009).

representation interests protected by federalism.”¹⁷² On the other hand, legislation like RLUIPA, which directly regulates state citizens, would foster accountability issues.¹⁷³ If a state’s prison officials grew angry over their personal liability under RLUIPA, they would not know which sovereign to hold politically accountable.¹⁷⁴ Congress could foist blame onto the state since they accepted the funds with full awareness of the consequences for prison officials.¹⁷⁵ The state, in response, “could point its finger at the federal government for tying needed funds to an undesired liability.”¹⁷⁶

The Fifth Circuit’s differentiation between RLUIPA and NMDAA may be sound when *Dole* is examined in isolation. But the principle’s broader application is inconsistent with two Supreme Court cases that upheld the constitutionality of the federal criminal bribery statute, 18 U.S.C. § 666.

Section 666(a)(1), as relevant here, imposes criminal penalties on any “agent . . . of a State, local, or Indian tribal government, or any agency thereof” for “corruptly . . . accept[ing] or agree[ing] to accept . . . anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more.”¹⁷⁷ The term “agent” is defined to include state governmental employees.¹⁷⁸ Section 666(a)(2) is nearly identical to § 666(a)(1), differing only in the fact that it applies to those who give or offer bribes to government actors, not to the actors who accept them.¹⁷⁹ As a result, § 666(a)(2) applies to private citizens, not solely public officials or entities. The statute’s prohibitions only apply to bribes affecting governments or agencies that receive, “in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ 18 U.S.C. § 666(a)(1).

¹⁷⁸ Id. § 666(d)(1) (“[T]he term ‘agent’ . . . includes a servant or employee, and a partner, director, officer, manager, and representative . . .”).

¹⁷⁹ Id. § 666(a)(2) (imposing criminal liability upon anyone who “corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more”).

Federal assistance.”¹⁸⁰ This limitation ensures that the statute’s application does not exceed the scope of Congress’s spending power, which is the constitutional underpinning for its enactment.

In *Salinas v. United States*, Mario Salinas, a Hidalgo County, Texas sheriff’s deputy for a local prison receiving federal funds, challenged the constitutionality of his criminal bribery conviction under § 666(b)(1).¹⁸¹ Justice Kennedy, writing for a unanimous Court, held that there was “no serious doubt about the constitutionality of § 666(a)(1)(B) as applied to the facts of this case.”¹⁸² The bribery arrangement “was a threat to the integrity and proper operation of the federal program,” and the federal government can act to thwart such threats.¹⁸³

The *Salinas* Court did not specifically invoke the Spending Clause as § 666’s constitutional underpinning, but in *Sabri v. United States* the Court explicitly established that link.¹⁸⁴ The defendant, Basim Omar Sabri, a private citizen, had offered bribes to a Minneapolis city councilman who served on the Board of Commissioners of the Minneapolis Community Development Agency, which received around \$23 million in federal funds during the year in question.¹⁸⁵ Sabri made a facial challenge to § 666(a)(2)’s constitutionality, arguing that it exceeded Congress’s Spending Clause powers.¹⁸⁶ Unless it could be shown that his bribes led to the misdirection of federal funds, the Spending Clause could not regulate his conduct.¹⁸⁷

Eight Justices disagreed. The Court concluded that § 666 is valid under the Spending and Necessary and Proper Clauses.¹⁸⁸ The Necessary and Proper Clause grants Congress the authority “[t]o make all Laws which shall be necessary and proper for carrying into Execution” its enumerated powers.¹⁸⁹ In the case of § 666, the Necessary and Proper Clause supplemented Congress’s spending power “to appropriate federal moneys to promote the general welfare” by empowering it “to see to it that taxpayer dollars appropriated under that power are in fact spent for the

¹⁸⁰ Id. § 666(b).

¹⁸¹ 522 U.S. 52, 55 (1997).

¹⁸² Id. at 60.

¹⁸³ Id. at 61.

¹⁸⁴ 541 U.S. 600 (2004).

¹⁸⁵ Id. at 602–03.

¹⁸⁶ Id. at 604–05.

¹⁸⁷ Id.

¹⁸⁸ Id. at 607–08.

¹⁸⁹ U.S. Const. art. I, § 8, cl. 18.

general welfare, and not frittered away in graft.”¹⁹⁰ “Congress does not have to sit by and accept the risk of operations thwarted by local and state improbity,” but rather it can legislate to prevent interference with the purpose of its federal programs.¹⁹¹ Bribery undermines the goals of any federal spending program because “bribed officials are untrustworthy stewards of federal funds, and corrupt contractors do not deliver dollar-for-dollar value.”¹⁹² Neither the *Salinas* nor the *Sabri* Court labeled the defendants direct recipients of funds or raised such a distinction as a valid concern.¹⁹³ Instead, what mattered was that their conduct interfered with the goals of federal spending programs in an impermissible fashion.

Salinas and *Sabri* demonstrate that individual government officials, and even private citizens, can be held personally liable for conduct that jeopardizes the goals of Spending Clause legislation. This logic extends to personal capacity suits under RLUIPA. Congress designed RLUIPA to promote religious freedom in state and local correctional centers by prohibiting unjustified “substantial burden[s]” on religious exercise by carceral programs that receive federal financial assistance.¹⁹⁴ When prison officials in federally funded institutions violate inmates’ rights under RLUIPA, that money is “frittered away.”¹⁹⁵ RLUIPA becomes a wasteful venture that doles out funding yet fails to advance the general welfare. As the U.S. Solicitor General recognized in an amicus brief supporting the availability of individual capacity damages suits under RLUIPA, Congress “is empowered to prevent third parties from interfering with a fund recipient’s compliance.”¹⁹⁶ Congress can thus

¹⁹⁰ *Sabri*, 541 U.S. at 605.

¹⁹¹ *Id.*

¹⁹² *Id.* at 601.

¹⁹³ And if *Salinas*, a local prison official working at an institution receiving federal funds, is considered a federal funds recipient, then so should every prison official properly sued under RLUIPA.

¹⁹⁴ See 42 U.S.C. § 2000cc-1(a), (b)(1).

¹⁹⁵ *Sabri*, 541 U.S. at 605.

¹⁹⁶ Brief for the United States as Amicus Curiae at 13, *Sossamon II*, 563 U.S. 277 (2011) (No. 08-1438). The Solicitor General reaffirmed its position in a recent amicus brief urging the Supreme Court to grant certiorari in *Landor*. See Brief for the United States as Amicus Curiae at 18–19, *Landor v. La. Dep’t of Corr. & Pub. Safety*, 145 S. Ct. 2814 (2025) (No. 23-1197). The Sixth Circuit has also pushed back against the argument that non-parties cannot be held liable under Spending Clause statutes, asserting that Congress could impose third-party liability if it spoke with sufficient clarity. See *Haight v. Thompson*, 763 F.3d 554, 570 (6th Cir. 2014).

attach civil liability to third-party conduct to ensure that “federal funds are not spent contrary to the purposes of the statute.”¹⁹⁷

Though *Salinas* is rarely mentioned by RLUIPA plaintiffs seeking approval for personal capacity suits, *Sabri* has been frequently invoked.¹⁹⁸ But circuit after circuit has distinguished § 666 from RLUIPA. Section 666 was enacted “to protect its *expenditures* against local bribery and corruption,” which is a natural extension of the spending power.¹⁹⁹ On the other hand, RLUIPA’s aim is not to protect federal expenditures, but rather to preserve the rights of religious incarcerated individuals.²⁰⁰ RLUIPA’s relationship with federal dollars is more tangential and thus cannot be justified through invocation of the Necessary and Proper Clause.²⁰¹

This circumscription of *Sabri* departs from the reasoning in both *Sabri* and *Salinas*. The *Sabri* Court asserted that the Necessary and Proper Clause grants Congress the power to ensure that taxpayer dollars are spent in pursuit of the general welfare.²⁰² Preventing bribery is, of course, one way of doing that. But taxpayer dollars are also “frittered away” when they are given to state and local governments to guarantee religious accommodations for incarcerated persons, only for those religious accommodations to be ignored by the governments’ employees. The return on investment is poor in either scenario. This interpretation was adopted by the contemporaneous scholarship written in the wake of *Sabri*, which recognized its watershed quality and the extent to which it was an unprecedented expansion of the spending power.²⁰³

¹⁹⁷ Brief for the United States as Amicus Curiae, supra note 196, at 13 (citing *Sabri* as an illustration of third-party liability for those who interfere with recipients’ compliance with spending programs).

¹⁹⁸ See, e.g., *Landor v. La. Dep’t of Corr. & Pub. Safety*, 82 F.4th 337, 345 (5th Cir. 2023); *Tripathy v. McKoy*, 103 F.4th 106, 114 (2d Cir. 2024).

¹⁹⁹ *Sharp v. Johnson*, 669 F.3d 144, 155 n.15 (3d Cir. 2012) (emphasis added).

²⁰⁰ *Id.*

²⁰¹ See *Wood v. Yordy*, 753 F.3d 899, 903 (9th Cir. 2014).

²⁰² *Sabri v. United States*, 541 U.S. 600, 605 (2004). Though RLUIPA does not explicitly invoke Congress’s powers under the Necessary and Proper Clause, “the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948).

²⁰³ See, e.g., Neil S. Siegel, *A Theory in Search of a Court, and Itself: Judicial Minimalism at the Supreme Court Bar*, 103 Mich. L. Rev. 1951, 1976 (2005) (“*Sabri v. United States* does not warrant extended discussion in this setting because the majority opinion’s unqualified endorsement of broad federal spending power is manifestly nonminimalist.” (footnote omitted)); Peter J. Smith, *Federalism, Instrumentalism, and the Legacy of the Rehnquist Court*, 74 Geo. Wash. L. Rev. 906, 919–20 (2006) (highlighting that the *Sabri* Court ignored or

Further, the *Salinas* Court justified § 666's constitutionality because *Salinas*'s conduct threatened the "proper operation of the federal program."²⁰⁴ The *Sabri* Court expressed a similar sentiment that Congress can act to guarantee that federal programs' operations are not "thwarted by local and state improbity."²⁰⁵ A federal program's proper operation is certainly harmed by government officials' noncompliance, just as it is by fund diversion. The narrow rule that the circuits have divined is inconsistent with the capacious reasoning set forth by the *Sabri* and *Salinas* Courts.

Dole, *Salinas*, and *Sabri* all uphold the imposition of individual liability on non-recipients of federal funds through Spending Clause legislation. *Dole* and *Sabri* have been distinguished by circuit courts that conclude that, generally, non-recipients of federal funds cannot be held personally liable for violation of Spending Clause statutes.²⁰⁶ But the Supreme Court has never identified these cases as exceptions or suggested that there remains a general rule to the contrary.²⁰⁷ The Court has, however, cautioned against the presumption "that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise."²⁰⁸ The Supreme Court is only a fair-weather fan of the contract analogy. And precedent illustrates that the notion that only parties to a contract can be liable for breach is not one that applies to Spending Clause statutes. Lower courts have expanded the contract analogy to a context in which the Supreme Court has demonstrated it is inapposite.²⁰⁹

rejected all of the defendant's "weighty federalism arguments" and did not even require a link between federal funds and the unlawful bribe).

²⁰⁴ *Salinas v. United States*, 522 U.S. 52, 61 (1997).

²⁰⁵ *Sabri*, 541 U.S. at 605.

²⁰⁶ See, e.g., *Sossamon I*, 560 F.3d 316, 329 (5th Cir. 2009); *Barnett v. Short*, 129 F.4th 534, 543 (8th Cir. 2025).

²⁰⁷ See Bagenstos, *supra* note 153, at 389 (asserting that *Sabri* rebukes the "strong contract theory" of the Spending Clause—a theory that bars invocation of the Necessary and Proper Clause to bind third parties to conditional spending laws). Professor Bagenstos contrasted the "strong contract theory" with the "weak contract theory," exemplified by the "clear notice" requirement, which *has* been adopted by Supreme Court precedent. *Id.* at 384–85.

²⁰⁸ *Sossamon II*, 563 U.S. 277, 290 (2011) (quoting *Barnes v. Gorman*, 536 U.S. 181, 189 n.2 (2002)).

²⁰⁹ See *Haight v. Thompson*, 763 F.3d 554, 570 (6th Cir. 2014) (rejecting sister circuits' rule that non-recipients of federal funds cannot be sued for damages under the Spending Clause, since such an idea is "not consistent with *Dole* or *Arlington Central* or *Pennhurst* itself").

IV. REAL-WORLD IMPLICATIONS OF THE CURRENT DOCTRINAL LANDSCAPE

A. The Turner Free Exercise Standard and RLUIPA

At no point in litigation of Damon Landor’s claim has the reprehensibility of the RLCC officials’ conduct been questioned. The Fifth Circuit panel stressed that it “*emphatically* condemn[ed]” what had taken place.²¹⁰ The nine judges who concurred in the denial of a rehearing en banc began their opinion by acknowledging the “stark and egregious manner” in which RLCC officials inflicted a “grave legal wrong” upon Landor.²¹¹ Even the State of Louisiana, in its brief in opposition to a writ of certiorari, condemned the actions “in the strongest possible terms,” denouncing them as “antithetical to religious freedom and fair treatment of state prisoners.”²¹²

The State of Louisiana, in their acknowledgement of fault, may have been a bit too harsh on themselves. While what Louisiana state officials did to Damon Landor is antithetical to *RLUIPA*, it is not in conflict with the Fifth Circuit’s conception of incarcerated persons’ “religious freedom” under the First Amendment. The Fifth Circuit, for all its handwringing, has *twice* upheld the forcible cutting of a Rastafarian incarcerated person’s hair when challenged under the Free Exercise Clause.²¹³ Across the circuits, judges have routinely ruled identical conduct permissible under the *Turner* standard but prohibited by *RLUIPA*.²¹⁴ Any two standards of review applying different levels of scrutiny will inevitably reach, at times, opposite conclusions as to the same facts. But the gap between *Turner v. Safley* and *RLUIPA* is wider than most. While the Supreme Court has eroded the *Smith* test to a hollow doctrine that is nearly indistinguishable from the *Sherbert* regime, *Turner* remains as stingy toward religious accommodation claims as ever.²¹⁵

²¹⁰ Landor v. La. Dep’t of Corr. & Pub. Safety, 82 F.4th 337, 345 (5th Cir. 2023).

²¹¹ Landor v. La. Dep’t of Corr. & Pub. Safety, 93 F.4th 259, 260 (5th Cir. 2024) (per curiam).

²¹² Brief in Opposition at 1, Landor v. La. Dep’t of Corr. & Pub. Safety, No. 23-1197 (U.S. Aug. 7, 2024).

²¹³ Scott v. Miss. Dep’t of Corr., 961 F.2d 77, 82 (5th Cir. 1992); Hicks v. Garner, 69 F.3d 22, 25 (5th Cir. 1995).

²¹⁴ See Shapiro, *supra* note 35, at 1023 n.384 (collecting cases).

²¹⁵ Note, Pandora’s Box of Religious Exemptions, 136 Harv. L. Rev. 1178, 1182–84 (2023) (arguing that the Supreme Court’s recent decisions in *Fulton v. City of Philadelphia*, 141 S. Ct.

Outside of the restriction on incarcerated persons' right to marry at issue in *Turner* itself, not a single prison regulation has been overturned by the Supreme Court under *Turner* since the decision was handed down in 1987.²¹⁶ And lower courts have often provided prison officials' judgments more deference than even *Turner* requires, leading Professor David M. Shapiro to label the *Turner* test "lenient in theory and dumb in fact."²¹⁷ Yet, because RLUIPA does not currently offer a damages remedy, a § 1983 suit making a First Amendment challenge under *Turner* is the only route to monetary relief for incarcerated persons' religious accommodation claims.

*B. State RFRA*s

RLUIPA was the federal government's response to *City of Boerne v. Flores*'s invalidation of RFRA as applied to state and local governments. Not to be outdone, many state governments enacted their own versions of RFRA to apply within their jurisdictions. More than half of all states now have RFRA either codified by statute or enshrined in their state constitutions.²¹⁸

But state RFRA's do not resolve the dilemmas posed by RLUIPA's contracted remedial scope. In most cases, they "have religious liberty enshrined as an ideal on the books" but "are simply not providing" actionable legal guarantees.²¹⁹ Many RFRA's erect onerous procedural hurdles,²²⁰ state courts further exacerbate the situation by construing the elements of a claim in a defendant-friendly manner,²²¹ and statutes often make monetary relief unavailable.²²² And there are further impediments

1868 (2021), and *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam), among others, have gone "far beyond reversing *Smith*" in their expansion of free exercise claims).

²¹⁶ Shapiro, *supra* note 35, at 1026 ("As matters now stand, *Turner* was the first and last time that the Supreme Court struck down a regulation under *Turner*."). A Westlaw legal database search for cases since January 1, 2015, revealed that, as this Note went to press, *Turner* had not been used by the Supreme Court to strike down any prison regulations in the eight-plus years since Professor Shapiro's article was published.

²¹⁷ *Id.* at 977.

²¹⁸ See Federal & State RFRA Map, Becket Fund for Religious Liberty, <https://www.becketlaw.org/research-central/rfra-info-central/map/> [<https://perma.cc/R46Y-B3TJ>] (last visited Aug. 3, 2025).

²¹⁹ Christopher C. Lund, Religious Liberty After *Gonzales*: A Look at State RFRA's, 55 S.D. L. Rev. 466, 469 (2010).

²²⁰ *Id.* at 490.

²²¹ *Id.* at 485.

²²² See, e.g., Va. Code Ann. § 57-2.02(D) (2025); 71 Pa. Cons. Stat. § 2405(f) (2025).

that apply *only* to incarcerated persons. For example, Louisiana makes it easier for prison regulations to be deemed to further a compelling interest,²²³ Pennsylvania subjects inmate claims to a *Turner*-like standard rather than strict scrutiny, and Virginia excludes its Department of Corrections from the statute's definition of "government" so that no inmates can bring suits.²²⁴ These gerrymandered statutes do not adequately replace RLUIPA's robust scheme.

C. The (Un)availability of Equitable Relief Under RLUIPA

In *Tanzin v. Tanvir*, the Court emphasized that not only is an individual capacity damages suit against a government official "'appropriate' relief" under RFRA, but "[i]t is also the *only* form of relief that can remedy some RFRA violations."²²⁵ If government officials destroyed religious property or conducted an autopsy in violation of the decedent's religious beliefs, equitable relief would be unappealing to plaintiffs, who would not want prospective remedies for their retrospective injuries.²²⁶

Plaintiffs filing under RLUIPA grapple with the same shortcomings injunctive relief presents to RFRA plaintiffs. And the transient nature of incarceration makes injunctive relief's availability under RLUIPA even more slippery. Whether through release or transfer, incarcerated persons often do not stay at a given facility for long.²²⁷ Once they leave, all claims for equitable relief against the facility are moot.²²⁸ Injunctive and declaratory relief were unavailable to Damon Landor. He was only three weeks away from release when his rights were violated, and by the time his case came before a federal district court judge, he had been released from prison.²²⁹

Since transfer and release occur so frequently, RLUIPA plaintiffs must race against the clock to gain equitable relief. Civil claim adjudication in

²²³ La. Stat. Ann. § 13:5235(B) (2024).

²²⁴ See Lund, *supra* note 219, at 491.

²²⁵ *Tanzin v. Tanvir*, 141 S. Ct. 486, 492 (2020).

²²⁶ *Id.* (first citing *DeMarco v. Davis*, 914 F.3d 383, 390 (5th Cir. 2019); and then citing *Yang v. Sturner*, 728 F. Supp. 845 (D.R.I. 1990), *withdrawn*, 750 F. Supp. 558 (D.R.I. 1990)).

²²⁷ Brief of Seven Religious Liberty Scholars, *supra* note 137, at 11 (citing Danielle Kaeble, Bureau of Just. Stat., U.S. Dep't of Just., Time Served in State Prison, 2018, at 1 (2021), <https://bjs.ojp.gov/document/tssp18.pdf> [<https://perma.cc/HYX6-HCAT>]) (noting U.S. Department of Justice statistics that establish that inmates released in 2018 spent, on average, 2.7 years in prison and only 26 days in jail).

²²⁸ *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001).

²²⁹ *Landor v. La. Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 340 (5th Cir. 2023).

federal district court, however, takes a median length of twenty-seven months to go from filing to trial.²³⁰ The Prison Litigation Reform Act (“PLRA”), which erects a mandatory exhaustion requirement for incarcerated persons’ federal claims challenging prison conditions, makes getting into court a time-consuming process as well. Before an incarcerated person can file a claim in court, they have to pursue all available administrative remedies, which can take months.²³¹ For the over ninety percent of prison litigants who file *pro se*,²³² this process is further slowed by a lack of educational resources, as well as literacy and English-language barriers.²³³ For the RLUIPA plaintiffs sprinting to the finish line to gain relief, institutional obstacles lurk behind every corner. But if damages were available under RLUIPA, plaintiffs could seek nominal damages as a form of quasi-declaratory relief in cases where prospective relief is mooted by transfer or release.²³⁴

The availability of personal capacity suits against government officials would not be a panacea for all RLUIPA violations. The PLRA constructs a separate barrier to compensatory damages for civil claims brought by incarcerated persons regarding any aspect of prison life. No compensatory damages may be recovered for mental or emotional injuries that are not parasitic to physical harm.²³⁵ But even in these cases, a more robust RLUIPA would forge a path to relief. First, the PLRA’s strictures only apply to those currently incarcerated, not those like Landor who file suit

²³⁰ Brief of Professor Byron R. Johnson as Amicus Curiae in Support of Petitioner at 5–6, *Landor v. La. Dep’t of Corr. & Pub. Safety*, No. 23-1197 (U.S. Sept. 3, 2025) (citing Joanna R. Lampe, Cong. Rsch. Serv., IF11349, *Lawsuits Against the Federal Government: Basic Federal Court Procedure and Timelines* (2020), <https://www.congress.gov/crs-product/IF11349> [<https://perma.cc/6KPC-8YML>]).

²³¹ See *McPherson v. Lamont*, 457 F. Supp. 3d 67, 79 (D. Conn. 2020) (explaining that the exhaustion process in Connecticut takes anywhere between 75 and 105 business days to complete).

²³² Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019, Admin. Off. of the U.S. Cts. (Feb. 11, 2021), <https://www.uscourts.gov/data-news/judiciary-news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019> [<https://perma.cc/9G5X-J69P>].

²³³ Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners’ Access to the Courts*, 23 *Geo. J. Legal Ethics* 271, 278–80 (2010).

²³⁴ See *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) (“[A] request for nominal damages satisfies the redressability element of standing where a plaintiff’s claim is based on a completed violation of a legal right.”).

²³⁵ 42 U.S.C. § 1997e(e) (“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 or the commission of a sexual act . . .”).

after being released.²³⁶ Also, for those filing while still in prison, punitive damages would be available for the most flagrantly violative conduct.²³⁷

CONCLUSION

As far as remedial provisions are concerned, RFRA and RLUIPA should be regarded as identical and not fraternal “twins.” The *Tanzin* Court authorized personal capacity damages suits under RFRA, and RLUIPA should be interpreted in the same fashion. Though federal circuit courts have expressed strong reservations to this treatment on constitutional grounds, their concerns are misguided. There is “clear notice” for individual liability under RLUIPA because of its text and context, judicial precedent, and legislative history. And the objection that non-recipients of federal funds cannot be held personally liable for contravention of Spending Clause statutes is contradicted by Supreme Court precedent. But because federal appellate courts have not followed *Tanzin* to its logical conclusion, RLUIPA remains a watered-down tool for enforcement of religious accommodations. As a consequence, two distinct levels of religious freedom exist across this country’s correctional centers. In federal prisons, incarcerated persons enjoy the full spectrum of relief under RFRA and can fully vindicate their rights when violated. However, those incarcerated in state and local institutions—like Damon Landor was—face an often-hostile prison apparatus with the unfortunate knowledge that, if their rights are violated, the legal system may offer only its condolences.

²³⁶ See *Talamantes v. Leyva*, 575 F.3d 1021, 1024 (9th Cir. 2009) (holding that “only those individuals who are prisoners . . . at the time they file suit must comply” with the PLRA).

²³⁷ *Hoever v. Marks*, 993 F.3d 1353, 1355–56 (11th Cir. 2021) (en banc) (joining all other federal circuit courts in holding that 42 U.S.C. § 1997e(e) “permits claims for punitive damages without a showing of physical injury”).