24-5301

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Case No._____

DEREK J. DEGROOT,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF CORRECTIONS,

and MARIO CANZIANI,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

ON PETITION FOR A WRIT OF CERTIORARI TO THE FEDERAL COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Derek J. DeGroot #664542

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QUESTIONS PRESENTED FOR REVIEW

1. Given that there are no equitable exceptions to jurisdictional limitations, and the doctrine of mootness includes a "capable of repetition yet evading review" exception, should the doctrine of mootness still be considered a jurisdictional limitation?

2. Is it permissible for a federal court to make a *sua sponte* determination that a case is moot where the defendants have presumptively ceased the challenged conduct for the moment, but have made no attempt to show that they will refrain from repeating the challenged conduct in the future?

3. Does the "RLUIPA," like the "RFRA," allow a plaintiff to recover damages against defendants who are sued in their individual capacities?

LIST OF PARTIES AND RELATED CASES

All of the parties involved appear in the caption. The last reasoned decision of this case is reported at *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 1631416 (7th Cir. 2024) and is reproduced at Appendix A.

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Appendix A - Decision of the Federal Court of Appeals for the Seventh Circuit affirming the district court's dismissal of the Petitioner's complaint.

Appendix B - Decision for the Federal District Court of the Western District of Wisconsin denying the Petitioner's Fed.R.Civ.P. 59(e) motion.

Appendix C - Decision of the Federal District Court for the Western District of Wisconsin dismissing the Petitioner's complaint with prejudice.

Appendix D - Decision of the Federal Court of Appeals for the Seventh Circuit denying rehearing and rehearing *en banc.*

Appendix E- Executive Emergency Order, signed by Wisconsin Governor Evers "relating to Requiring Face Coverings."

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Read this, I pray thee, and find that this petition for a writ of certiorari does not meet denial.

OPINIONS BELOW

The reasoned opinion of the Federal Court of Appeals appears at Appendix A to the petition and is found at *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 1631416 (7th Cir. 2024)

The reasoned opinion of the federal district court denying the Petitioner's Fed.R.Civ.P. 59(e) motion appears at Appendix B to the petition and is found at *DeGroot v. Wisconsin Department of Corrections*, 2023 WL 4198558 (W.D. Wisconsin 2023)

The reasoned opinion of the federal district court dismissing the Petitioner's complaint with prejudice appears at Appendix C to the petition and is found at *DeGroot v. Wisconsin Department of Corrections*, 2022 WL 20289177 (W.D. Wisconsin 2023)

The order of the Federal Court of Appeals for the Seventh Circuit denying rehearing, and rehearing *en banc*, appears at Appendix D and is found at *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 2155353.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The date on which the Federal Court of Appeals for the Seventh Circuit declined a rehearing, and a rehearing *en banc*, was on May 14th, 2024. A copy of that decision appears at Appendix C and is found at *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 2155353 (7th Cir. 2024).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.A. Const. Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

U.S.C.A. Const. Art. III § 2, cl. 1

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

STATUTORY PROVISIONS INVOLVED

42 U.S.C.A. § 2000bb ("RFRA")

"[T]he framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution...governments should not substantially burden religious exercise without compelling justification...."

42 U.S.C.A. § 2000cc ("RLUIPA")

§ 2000cc-1

"No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--"

§ 2000cc-1(b)

"This section applies in any case in which-- (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance...."

§ 2000cc-2

"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. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution."

§ 2000cc-3(c)

"Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise."

§ 2000cc-3(g)

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

INTRODUCTION

DeGroot believes the "Lion of Judah" is salvation. But the Respondents believe the face-mask is salvation. Having been imprisoned by a fictional tale that began with the existence of a door[1], and a preference for masks[2], DeGroot's salvation took a collision course with the Respondents' salvation.

At the pinnacle of DeGroot's Judeo-Christian faith, there's a blessing. Twist the kaleidoscope back-one-slide, and you'll see a beautiful layout of constellations. Look! It's every Christian's best pal—"Leo!" Pardon the ancient feline, he routines the night sky

[1] "[B]ut we looked at those pictures ... there weren't any doors." (*DeGroot v. Buesgen*, 22-CV-546: Dkt.13-5:100)

[2] "...about a mask, a disguise [DeGroot] wears ... about his belief in Christianity...." (*DeGroot v. Buesgen*, 22-CV-546: Dkt.13-4).

without a lime[3]. There's a legend that someday he'll upset the celestial balances by cleaving to the musician's prop; and following the sharp pause, the principal æon will bleed into the divide.

But on the muddy grounds below, where the Respondents lurk, there's a curse. Look! It's a state government forcing carbon dioxide[4] re-uptaking contrivances on its people! There's a legend that a corona virus particle is ~1/10th of a micron in size, and the space in between the Respondent's fabric threads of salvation is 1,000 times larger than that particle. Accordingly, there doesn't appear to be any doors blocking the way.

This is a case about competing "truths," and the federal courts' divergence from their sacred position of neutrality. It's a case about how medical science was eclipsed by the enigmatic parlance of state actors whose confounded messages[5], and abuse of power[6], proved more effective at spreading fear[7] than slowing the spread of a virus. The boundary lines of jurisdictional rules and burdens of proof have lost their clarity, and the

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[3] *Also* "lyam" - a leash.

[4] Carbon dioxide is soluble in moisture. *E.g.* "Soda." As relevant here, the moisture from a person's breath which is retained by a "face-mask."

[5] Governor Evers created an exception to the face-mask mandate for "incarcerated individuals," but the Department of Health and Human Services and Respondent Mario Canziani negated that exception. (*See* Appendix E / F).

[6] *Fabick v. Evers*, 396 Wis.2d 231, 956 N.W.2d 856 (2021) ("[G]overnor exceeded his statutory emergency management powers when he proclaimed two emergencies for COVID-19 after prior emergency for COVID-19 had existed for 60 days and was not extended by legislature."

[7] *See A SYSTEM OF PRACTICAL MEDICINE by American Authors, Pathology and General Diseases*, Volume I: Entered according to Act of Congress, in the year 1885 by LEA BROTHERS & CO., in the Office of the Librarian of Congress. (Noting fatalities produced in mankind by fear of being infected with a virus, where no disease-producing-virus actually existed; and calling the fatal fear "Lyssophobia")

"RLUIPA" is in want of the relief of the "RFRA."[8] This Court should substitute a remedy for confusion, and grant this petition for a writ of certiorari.

PROCEDURAL HISTORY OF THE CASE

IN LATE 2019, a highly transmissible respiratory illness caused by a corona virus ("COVID-19 / SARS-CoV-2") began its journey to infamy. In an effort to prevent the transmission of this virus, many states, through their empowered officials, issued a mandate that every person wear a face-mask. Persons confined at Stanley Correctional Institution in Wisconsin were made to wear face-masks constructed from underwear and tablecloth fabric. (Dkt.17).

IN MID 2020, Respondent Mario Canziani, the Deputy Warden at Stanley Correctional Institution, under the authority of Respondent Wisconsin Department of Corrections, Governor Tony Evers, and Secretary Kevin A. Carr, issued a memo with an order stating "all State employees and PIOC[9] will be required to wear face-masks at all times while indoors in state facilities."[10] The Petitioner Derek DeGroot objected to this mandate on religious and medical grounds, and was sent to punitive segregation.

IN EARLY 2021, DeGroot filed a complaint pursuant to 42 USC § 1983, alleging that the Wisconsin Department of Corrections, and Mario Canziani had violated his

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[8] *Tanzin v. Tanvir*, 592 U.S. 43, 141 S.Ct. 486, 208 L.Ed.2d 295 (2020) (allowing monetary damages against state officials sued in their individual capacities)

[9] PIOC is Wisconsin's politically correct way of saying prisoner or inmate -- it stands for "Person[s] In Our Care."

[10] See Appendix F

rights. He filed an amended complaint shortly thereafter to cure a factual pleading deficiency.

IN LATE 2022, the District Court for the Western District of Wisconsin finally screened DeGroot's Amendment complaint, and "DISMISSED [it] for failure to state a claim upon which relief can be granted." (Appendix C)

IN MID 2023, the District Court for the Western District of Wisconsin denied the Petitioner's Rule 59(E) motion, and DeGroot timely appealed to the Federal Court of Appeals for the Seventh Circuit. (Appendix B)

IN EARLY 2024, the Federal Court of Appeals for the Seventh Circuit affirmed the district court's dismissal of DeGroot's complaint based on "mootness" grounds. (Appendix A).

IN MID 2024, the Federal Court of Appeals for the Seventh Circuit denied DeGroot's motion for a rehearing and a rehearing *en banc.* (Appendix D)

FACTS OF THE CASE

During the beginning of the pandemic, DeGroot was confined to a prison. At this time, the governor of Wisconsin and the State Department of Health and Human Services had declared a state of emergency. (Appendix E). This resulted in all Wisconsin prisoners having to submit to a mandatory COVID-19 test. When DeGroot told prison officials that he wasn't sick and there was no need for them to test him for illness, the prison officials quarantined him anyway. DeGroot completed the quarantine and showed no signs or

symptoms of respiratory illness. Once he left quarantine, DeGroot was told by a prison supervisor that all inmates must wear a face-mask to be protected, and protect others, from the corona virus. DeGroot objected to wearing the face-mask indicating that such a mask would violate both his religious holdings, and exacerbate a chronic illness he suffers from. The prison supervisor then sent DeGroot to segregation for disobeying orders. (Dkts.5:1; 20:1). DeGroot exhausted his administrative remedies, (Dkt.5:2,3), and filed his initial complaint in the United States District Court for the Western District of Wisconsin. (Dkts.1; 4). Judge William Conley screened the complaint and found a legal basis for the lawsuit stating, "Because these allegations also implicate RLUIPA, the court will consider that statute here as well." But Judge Conley determined that DeGroot did not include enough facts to support a First Amendment or RLUIPA claim pursuant to Fed.R.Civ.P. 8. He then allowed DeGroot to amend his complaint to meet the pleading requirements. (Dkt.14). *See DeGroot v. Evers*, 2022 WL 843853 (W.D. Wisconsin 2022). DeGroot submitted an amended complaint with sufficient facts, and accompanied the amended complaint with a motion for preliminary injunctive relief. (Dkts.17;19;20). A different judge, James D. Peterson, screened the amended complaint. But unlike Judge Conley, he found that there was neither First Amendment grounds, nor RLUIPA grounds for DeGroot to proceed on stating, "DeGroot cannot proceed under either theory." Judge Peterson entered summary judgment in favor of the Respondents. (Dkt.22:21,22). *See DeGroot v. Wisconsin Department of Corrections, et al.*, 2022 WL 20289177 (W.D. Wisconsin 2022). Judge Peterson further denied DeGroot's motion for reconsideration pursuant to Fed.R.Civ.P. 59(e). (Dkt.24). *See DeGroot v. Wisconsin Department of*

Corrections, et al., 2023 WL 4198558 (W.D. Wisconsin 2023). The Seventh Circuit adopted Judge Peterson's contention that "only injunctive relief was available under RLUIPA." And without the Respondents having ever submitted a single document to the courts regarding mootness, the Seventh Circuit affirmed Judge Peterson's dismissal of the case stating, "[w]e need only address the district court's conclusion with which we agree, that DeGroot's claim for injunctive relief is moot." *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 1631416. It subsequently denied a rehearing, and rehearing *en banc.* DeGroot now petitions this Court to issue a writ of certiorari.

SUMMARY OF THE ARGUMENT

In this case, both the district court and the court of appeals relieved the Respondents of their burden to prove that the challenged conduct furthered a compelling state interest and was the least restrictive means of doing so, and that the challenged conduct wouldn't recur in the future.

DeGroot filed a lawsuit against the Respondents alleging that their actions violated his sincerely held religious beliefs. Under the RLUIPA, the Respondents were required to prove that: 1) their mask-mandate furthered a compelling interest; 2) the mask was the least restrictive means of doing so; and 3) that an exemption for DeGroot would have impaired the achievement of that compelling interest. Under the doctrine of mootness, the Respondents were required to prove that the controversy over the mask mandate would remain moot, and that the challenged conduct wouldn't recur.

The district court, however, relieved the Respondents of their burden to prove that forcing a face-mask onto DeGroot was reasonable and the least restrictive means of furthering a compelling interest. Without any input from the Respondents, the district court concluded that masks are a "rational way" to stop COVID-19, and that DeGroot could not plausibly suggest any less restrictive measures for the Respondents to have used in response to the pandemic. It also inexplicably suggested that if the Respondents had granted an exemption to the mask mandate for DeGroot, that exemption would have imposed unjustified burdens on other persons and jeopardized the functioning of the institution.

Rather than address DeGroot's appeal on the merits, the Seventh Circuit affirmed the district court's dismissal of DeGroot's case on mootness grounds. However, the Respondents reimplemented the mask mandate during the pendency of the appeal, and therefore, clearly, the controversy was never moot. Accordingly, the Respondents were relieved of their burden under the RLUIPA, and their burden to prove mootness.

Under the RLUIPA, once the individual has established that the challenged conduct violated his or her sincerely held religious beliefs, the burden shifts to the defendants to show that their actions furthered a compelling state interest and were the least restrictive means of doing so. *Holt v. Hobbs*, 574 U.S. 352, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015), at 863. This case is a perfect illustration of how the legislative intent of the RLUIPA isn't being fulfilled. This is due, in part, to the way the federal courts of

appeals are interpreting this Court's decision in *Sossaman v. Texas*, 563 U.S. 277, 131 S.Ct. 1651, 179 L.Ed.2d 700 (2011).

Federal courts have construed *Sossaman* as extending the State's immunity against monetary damages to its officials. Monetary damages, however, are a necessary court remedy; and as demonstrated in this case, they might be the only way to protect a litigant against the doctrine of mootness. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) at 720 ("Meredith sought damages in her complaint, which is sufficient to preserve our ability to consider the question."); *See also Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 136 S.Ct. 663, 193 L.Ed.2d 571 (2016) (Justice THOMAS's, concurring opinion.). Moreover, this Court has already decided that RLUIPA's sister statute "RFRA" allows for monetary damages against state officials sued in their individual capacities. Thus, there is no reason that the relief available under the RFRA shouldn't extend to the RLUIPA as well. *See Tanzin v. Tanvir*, 592 U.S. 43, 141 S.Ct. 486, 208 L.Ed.2d 295 (2020).

Another issue frustrating the meaningful adjudication of cases arising out of the RLUIPA, and all controversies for that matter, is confusion over the applicability of the doctrine of mootness. Federal courts continue to hold that the doctrine of mootness divests a court of its jurisdictional power over a case. The doctrine of mootness, however, contains a "capable of repetition yet evading review exception." *United States v. Sanchez–Gomez*, 584 U.S. 381, 138 S.Ct. 1532, 200 L.Ed.2d 792 (2018), at 391. Jurisdictional rules contain no such exceptions. *Santos-Zacaria v. Garland*, 598 U.S. 411,

143 S.Ct. 1103, 215 L.Ed.2d 375 (2023). Also, it is a burden that a defendant must affirmatively prove. *FBI v. Fikre*, 601 U.S. 234, 144 S.Ct. 771, 218 L.Ed.2d 162 (2024). A court's *sua sponte* invocation of mootness only displaces it from its position of neutrality and relieves the defendant of his or her "formidable burden" of proof. *Id.*

This Court should grant certiorari and declare that the RLUIPA allows for monetary damages against officials sued in their individual capacities, and decide that "standing" is the only jurisdictional rule under Article III.

ARGUMENT

I. IN ORDER TO PROPERLY HOLD DEFENDANTS TO THEIR BURDEN TO PROVE MOOTNESS, THIS COURT SHOULD DECLARE THAT "MOOTNESS" IT IS NOT A JURISDICTIONAL LIMITATION. CERTIORARI SHOULD BE GRANTED SO THIS COURT CAN MAKE A CLEAR DISTINCTION BETWEEN JURISDICTIONAL RULES, AND JUSTICIABILITY ISSUES SUCH AS MOOTNESS.

This Court has stressed the importance of terming a rule "jurisdictional" throughout its jurisprudence. *See Fort Bend County, Texas v. Davis*, 587 U.S. 541, 139 S.Ct. 1843 (2019), at 1849. "Characterizing a rule as jurisdictional renders it unique in our adversarial system." *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145, 133 S.Ct. 817, 184 L.Ed.2d 627 (2013), at 824. Rules on jurisdiction are absolute, and "may be raised . . . at any point in the litigation, and courts must consider them *sua sponte*." *Fort Bend County, Texas, supra*, at 1849 (internal quotation marks). "[N]ormal mootness rules," however, have exceptions for any "controversy that is capable of repetition." *United States v. Sanchez–Gomez*, 584 U.S. 381, 138 S.Ct. 1532, 200 L.Ed.2d 792 (2018), at 391; *See also Kingdomware Technologies Inc*, 579 U.S. 162, 136 S.Ct. 1969, 195

L.Ed.2d 334 (2016). But if "[c]ourts are not able to ... grant equitable exceptions to jurisdictional rules," *Santos-Zacaria v. Garland*, 598 U.S. 411, 143 S.Ct. 1103, 215 L.Ed.2d 375 (2023), how then can "mootness" be a jurisdictional rule limiting a court's jurisdiction?

In *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67, 104 S.Ct. 373, 78 L.Ed.2d 58 (1983), this Court held that "[f]ederal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies." (*citing DeFunis v. Odegaard*, 416 U.S. 312, 316, 94 S.Ct. 1704, 1705, 40 L.Ed.2d 164 (1974)). And likewise, in *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 133 S.Ct. 721, 184 L.Ed.2d 553 (2013), this Court drew the same conclusion. It implicitly held that a federal court lacks jurisdiction where the controversy isn't "live" stating, "[a] case becomes moot—and therefore no longer a "Case" or "Controversy" for purposes of Article III—"when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."" *See also Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n.3, 84 S.Ct. 391, 11 L.Ed.2d 347 (1964) ("Our lack of jurisdiction to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy."). But just because a case is moot (dead), it's still a case inasmuch as a body is still a body whether it's dead or alive. There are plenty of cases that were "no longer live" which courts had retained jurisdiction over; primarily because the plaintiff had asked for "monetary damages" as part of the relief requested. *See Parents Involved in Community Schools v. Seattle School Dist. No.*

1, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) at 720 ("Meredith sought damages in her complaint, which is sufficient to preserve our ability to consider the question."); *See also Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 136 S.Ct. 663, 193 L.Ed.2d 571 (2016) (2016) (Justice THOMAS's, concurring opinion.).

"[T]here is a significant difference between determining whether a federal court has 'jurisdiction of the subject matter' and determining whether a cause over which a court has subject matter jurisdiction is 'justiciable.'" *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). A moot case is not likely one that would be justiciable for a court to proceed to adjudicate unless the challenged conduct is "capable of repetition, yet evad[es] review." *Kingdomware Technologies Inc,* 579 U.S. 162, 136 S.Ct. 1969, 195 L.Ed.2d 334 (2016). But this does not necessarily mean that there is a jurisdictional rule precluding a court's adjudication of the case. Indeed, the equitable exception to mootness does not support such a conclusion. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 143 S.Ct. 1103, 215 L.Ed.2d 375 (2023) ("[C]ourts are not able to ... grant equitable exceptions to jurisdictional rules."). Nonetheless, the circuits still explicitly hold that mootness is a rule barring a court's jurisdiction over a case.[11]

[11] *In re Sundaram*, 9 F.4th 16, 20 (1st Cir. 2021) ("Our analysis begins — and ends — with a threshold question. That threshold question is jurisdictional in nature. Federal courts lack jurisdiction to adjudicate moot cases. . . ."); *Klein on behalf of Qlik Technologies, Inc. v. Qlik Technologies, Inc.*, 906 F.3d 215 (2nd Cir. 2018) ("A district court determining whether a case has become moot maintains jurisdiction to determine whether a substitute plaintiff would avoid that result."); *Lutter v. JNESO*, 86 F.4th 111, 130 (3d. Cir. 2023) ("Our lack of jurisdiction to review moot cases derives from the requirement of Article III of the Constitution...[and] mootness, like standing, may be raised at any time, but unlike standing, mootness depends on the state of things after the lawsuit commenced." (citations omitted); *Porter v. Clarke*, 852 F.3d 358 (4th Cir. 2017) ("the litigation is moot, and the court's subject matter jurisdiction ceases to exist also." (quote source omitted)); *Herndon v. Upton*, 985 F.3d 443, 446 (5th Cir. 2021) ("Whether an appeal is moot is a jurisdictional matter, since it implicates the Article III requirement that

Accordingly, the word jurisdiction, still, "is a word of many, too many, meanings." *Fort Bend County, Texas v. Davis*, 587 U.S. 541, 139 S.Ct. 1843 (2019), at 1848.

To solve the paradox revolving around Article III jurisdiction, the Petitioner proposes that this Court turn to its reasoning in *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). In that case, this Court drew exact distinctions between two different standards of review regarding the "actual innocence" exception to AEDPA's one year deadline. This Court distinguished between the words "could" and "would." It found the former goes to the *power* of the fact-finder, and the latter goes to the *likely decision* of the fact-finder. Accordingly, using that same logic, this Court should clear up the confusion by declaring that "jurisdiction" goes to the court's *power to adjudicate a case*, and that "mootness" goes to the *likelihood of whether it would be justiciable* for a court to exercise that power. In sum, the lack of standing should be the only jurisdictional rule relative to Article III.

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there be a live case or controversy."); *In re Kramer*, 71 F.4th 428, 438 (6th Cir. 2023) ("And when an issue is constitutionally moot, we don't have jurisdiction to consider it."); *Chicago Joe's Tea Room, LLC v. Village of Broadview*, 894 F.3d 807, 814 (7th Clr. 2018) ("Mootness strips a federal court of subject-matter jurisdiction."); *Dalton v. JJSC Properties, LLC*, 967 F.3d 909, 913 (8th Cir. 2020) ("A federal court lacks subject-matter jurisdiction if a claim becomes moot."); *Foster v. Carson*, 347 F.3d 742, 747 (9th Cir.2003) ("We do not have the constitutional authority to decide moot cases."); *Prison Legal News v. Federal Bureau of Prisons*, 944 F.3d 868 (10th Cir. 2019) ("We have no subject-matter jurisdiction if a case is moot." (quote source omitted); *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) ("Because mootness is jurisdictional, we are required to resolve any question implicating the doctrine before we assume jurisdiction over an appeal."); *Rothe Development Corp. v. Department of Defense*, 413 F.3d 1327 (Federal Circuit 2005) ("We hold that we do have jurisdiction to consider the facial constitutionality of the present reauthorization of section 1207 but that the record is inadequate to decide the issue because the district court declined to provide the necessary opportunity to expand the record despite explicit remand instructions."); *Howell ex rel. D.H. v. District of Columbia*, 522 F.Supp.2d 57, n.2, 228 Ed. Law Rep. 110 (D.C. 2007) ("Because mootness is a jurisdictional issue, on a finding that the plaintiff's claims are moot, the court may sua sponte dismiss the complaint.")

In *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693 (2000), this Court confronted some of the confusing issues on Article III jurisdiction, and reversed the Fourth Circuit's decision. This Court held that the Fourth Circuit "incorrectly conflated our case law on initial standing to bring suit." *Id.,* at at 180–81. But even since *Friends,* the confusion over jurisdictional rules still remains. This Court should therefore explicitly hold that a "jurisdictional rule" for Article III purposes encompasses *only* "standing." Because unlike the "capable of repetition, yet evading review" exception for mootness, "[s]tanding admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum." *Id.,* at 699. Mootness, therefore, should be an affirmative defense that the defendants must prove — enough to show that it would not be *justiciable* for a court to proceed to move forward on a particular case. *See Federal Bureau of Investigation v. Fikre*, 528 U.S. 167, 120 S.Ct. 693 (2000). It should not be referred to as a rule depriving a court of its jurisdictional *power.* Unless this Court declares that mootness is not a jurisdictional rule which a court can raise *sua sponte*, defendants will continue to be relieved of their burden to prove mootness whenever it *appears* that the controversy has become moot, and the neutrality of the courts will continue to be displaced.

II. A FEDERAL COURT SHOULD NOT BE PERMITTED TO REMOVE BURDENS OF PROOF FROM THE RESPONDENTS *SUA SPONTE.*

A. This Court had recently decided a case that unequivocally puts the burden on the Respondents to prove mootness by demonstrating that their challenged conduct cannot be expected to recur. The district court removed this burden from the Respondents.

In *Federal Bureau of Investigation v. Fikre*, this Court explicitly held that it "is the defendant's "burden to establish" that it cannot reasonably be expected to resume its challenged conduct—whether the suit happens to be new or long lingering, and whether the challenged conduct might recur immediately or later at some more propitious moment." 601 U.S. 234, 144 S.Ct. 771 (2024), at 243. This Court held that the Ninth Circuit had properly found that the "government's declaration" that it would cease the challenged conduct, and no longer resume it in the future, was insufficient to meet this "formidable burden." *Id.*

In DeGroot's case, the Respondents failed to make any such declaration. Nevertheless, the district court found the controversy to be moot *sua sponte.* Shortly thereafter, during the pendency of the appeal, the Respondents proceeded to re-implement the mask-mandate. But in spite of the reimplementation, the Seventh Circuit affirmed the district court's decision on appeal. It agreed with the district court that "only injunctive relief was available under RLUIPA," and concluded that the controversy was moot. Although the Seventh Circuit cited this Court's recent decision in *FBI v. Fikre*, it did so with complete disregard the holding. The Seventh Circuit stated:

> "[W]e need only address the district court's conclusion, with which we agree, that DeGroot's claim for injunctive relief is moot. A court must dismiss a claim as moot if the plaintiff obtained

> "outside of litigation all the relief he might have won in it." *FBI v. Fikre*, 144 S.Ct. 771, 777 (2024)."
>
> *DeGroot v. Wisconsin Department of Corrections*, 2024 WL 1631416, at *2 (7th Cir. 2024).

The pitfalls of assuming mootness are therefore manifest; and the concerns of the four dissenting Justices in *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 133 S.Ct. 1523, 185 L.Ed.2d 636 (2013), with regards to assumptions on the mootness of a case, would appear to be justified.

Here, the burden to prove mootness required the Respondents to demonstrate that they would never again enforce a face-mask mandate in response to an outbreak of respiratory illness. *See FBI v. Fikre*, 144 S.Ct. 771 (2024). But an outbreak of respiratory illness is bound to recur. Colds and flus for example, are common and seasonal. And the corona virus may very well become seasonal like the illness caused by the Rhinovirus and Influenza virus respectively. It makes sense, therefore, that "[s]ome courts have held that the Supreme Court in *Roman Catholic Diocese of Brooklyn v. Cuomo*, —— U.S. —— , 141 S. Ct. 63, 208 L.Ed.2d 206 (2020), abrogated *Jacobson's* relevance in all constitutional cases arising from a pandemic." *Moxie Owl, Inc. v. Cuomo*, 527 F.Supp.3d 196, n.1 (N.D. New York 2021). Indeed, it would be extremely difficult for the defendants to demonstrate that they would never again reinstate the mask mandate, especially in light of the fact that they had actually done so after the district court found the case to be moot.

Both the district court and Seventh Circuit erred. The burden to prove mootness fell on the Respondents. *FBI v. Fikre*, 144 S.Ct. 771, 777 (2024). It was therefore

unreasonable for the courts to have made a conclusive finding that the controversy was moot without holding the Respondents to their burden of proof. This Court should grant certiorari, and summarily reverse the Seventh Circuit's decision based on this Court's *actual* holding in *FBI v. Fikre*, 144 S.Ct. 771, 777 (2024).

B. The RLUIPA puts the burden on the Respondents to prove that their violations of the Petitioner's religious beliefs had furthered a compelling state interest. The district court removed this burden from the Respondents.

The lower courts accepted that the mask-mandate violated DeGroot's religious beliefs and thus, having made the requisite showing, the burden was supposed to shift to the Respondents. *Cutter v. Wilkinson*, 544 U.S. 709, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005). This burden requires more than simply showing that a compelling interest exists. The burden requires the Respondents show that their actions were made "in furtherance of a compelling governmental interest...and [wa]s the least restrictive means of furthering that compelling governmental interest.'" *Id.,* at 712 (source omitted). And even if the Defendants could show that their actions furthered that compelling interest, they then must show that less restrictive alternatives were unavailable, or if available, would fail to achieve that objective.

The Respondents believe that respiratory illness, specifically the illness caused by the corona virus, could be stopped by requiring all inmates to wear a face-mask. But they also had less restrictive alternatives to achieve this "compelling interest." Yet, they did not consider or use any of them. These alternatives were grounded in long-standing science, and certainly more effective at impeding the corona virus's ability to cause

severe respiratory illness. For example, the Defendants could have provided inmates with zinc lozenges.[12] They could have allowed inmates to go outside and socially distance in the sunlight[13] during the day. But instead, the Respondents kept inmates inside buildings for long periods of time, and required all inmates to wear face-masks made from underwear and table cloth fabric at all times, with the exception of during meals. Inmates were required to eat in close proximity to one another where the transmission risk was high — and of course, they had to remove the face-mask in order to eat. DeGroot was given a conduct report for "socially distancing" when he took his meal to his cell to avoid the irrational policy that required inmates to eat next to each other at the tables.

The Respondents, if held to their burden, would have had a tough time proving that their actions actually furthered a compelling interest; especially in light of the above-mentioned less restrictive alternatives that were available to combat respiratory illness but not used. *See Cutter v. Wilkinson*, 544 U.S. 709, at 712. "[A] regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational." *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), at 80-90. It's hard to imagine policies more restrictive than covering a person's face and mouth with a mask. And "[p]olicies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice...." *Lawson v.*

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[12] *ZINC FOR THE PREVENTION AND TREATMENT OF SARS-COV-2 AND OTHER ACUTE VIRAL RESPIRATORY INFECTIONS: A RAPID REVIEW,*" Susan Arentz, *et al.*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7395818

[13] *ULTRAVIOLET RADIATION FROM THE SUN KILLS VIRUSES,* https://www.cbsnews.com/news/coronavirus-crisis-far-uvc-light-microbe-blasting-uv-technology-could-kill-covid-19-public-places/

Singletary, 85 F.3d 502, 509 (11th Cir. 1996) (*quoted by Davis v. Davis*, 826 F.3d 258, 265 (5th Cir. 2016) (original source omitted)).

The plain text of the RLUIPA bars the government from violating a person's religious beliefs "unless the government demonstrates that imposition of the burden on the person ... is in furtherance of a compelling governmental interest..." 42 USCA 2000cc-1. More specifically, the government must "demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" *Holt v. Hobbs*, 574 U.S. 352, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015), at 863. That means that here, the Respondents were required to prove that granting a religious exemption for DeGroot would have "interfere[d] with the performance" of state officials in achieving their compelling interest. *See Cutter v. Wilkinson*, 544 U.S. 709, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005), at 722. The RLUIPA "makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress." *Holt v. Hobbs*, at 864. Accordingly, the burden the Respondents face under the RLUIPA is just as formidable as the burden they face to prove mootness. *See Federal Bureau of Investigation v. Fikre*, 528 U.S. 167, 120 S.Ct. 693 (2000). And "courts must hold prisons to their statutory burden, and they must not assume a plausible, less restrictive alternative would be ineffective." *Holt v. Hobbs*, 574 U.S. 352, 135 S.Ct. 853 (2015), at 369 (internal quotations and source omitted). "[T]he resolution of RLUIPA claims in the prisoner context requires a case-specific consideration of the particular circumstances and

claims." *Ramirez v. Collier*, 595 U.S. 411, 142 S.Ct. 1264, 212 L.Ed.2d 262 (2022), at 435.

Because DeGroot had met his burden to prove the challenged conduct violated his religious beliefs, the Respondents were required to bear both the burden to prove their actions were made "in furtherance of a compelling governmental interest...," *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005) (source omitted), and that the controversy would remain moot. The lower courts erred when they did not hold the Respondents to these burdens.

III. THIS COURT SHOULD GRANT CERTIORARI AND EXTEND ITS DECISION IN *TANZIN* SO THAT AN INDIVIDUAL CAN SEEK MONETARY DAMAGES AGAINST A STATE ACTOR SUED IN HIS OR HER INDIVIDUAL CAPACITY UNDER BOTH "RFRA" AND "RLUIPA."

As it stands, the circuits are virtually unanimous in holding that monetary damages cannot be sought against a defendant sued in their individual capacity under the RLUIPA. *See Walker v. Baldwin*, 74 F.4th 878, n.1 (7th Cir. 2023) (collecting cases); *Landor v. Louisiana Department of Corrections and Public Safety*, 82 F.4th 337, n.5 (5th Cir. 2023) (collecting cases). But this Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43, 141 S.Ct. 486, 208 L.Ed.2d 295 (2020) undermines the reliability of those holdings.

In *Tanzin*, this Court was asked to determine whether or not monetary damages were available under the Religious Freedom Restoration Act of 1993 "RFRA" (42 U.S.C.A. § 2000bb) — the sister statute of the Religious Exercise in Land Use and by Institutionalized Persons "RLUIPA" act (42 U.S.C.A. § 2000cc). This Court agreed with the Second Circuit and found that a plaintiff could "obtain money damages against

federal officials in their individual capacities." *Id.* It distinguished its earlier decision in *Sossaman*, by noting that the "obvious difference" was that *Tanzin* was a "case featur[ing] a suit against individuals who do not enjoy sovereign immunity." *Id.*, at 492-493. It agreed with the Second Circuit that ""appropriate relief" encompasses money damages against officials." *Id.*, at 489. There is no adequate reason not to extend the same reasoning to the RLUIPA.

The RLUIPA was constructed to protect prisoners' religious practices under the First Amendment to "the maximum extent...."42 U.S.C.A. § 2000cc-3(g). The statute clearly authorizes "a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 U.S.C.A. § 2000cc-3(c). And the statute unambiguously gives the states fair notice that "the substantial burden is imposed in a program or activity that receives Federal financial assistance...." 42 U.S.C.A. § 2000cc-1(b). The "terms of the 'contract'" are quite clear. Accordingly, there should be no concern about whether Congress had exceeded its authority under the "Spending Clause" of the Constitution in allowing for monetary damages under the RLUIPA. "The legitimacy of Congress' power to legislate under the spending power [ ] rests on whether the State voluntarily and knowingly accept[ed] the terms of the 'contract.'" *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), at 17.

Without the availability of monetary damages, the RLUIPA is without teeth. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127

S.Ct. 2738, 168 L.Ed.2d 508 (2007) at 720 (Because monetary damages were sought the Court did not dismiss it.). DeGroot waited over a year and a half just for a final screening order from the federal district court. That leaves way too much room for the Respondents to repeat the challenged conduct and evade review. The time and expenses involved in litigation is costly. Allowing for monetary relief under the RLUIPA, like the RFRA, ensures that a prevailing litigant is able to both recover the costs associated with litigation, and be compensated for the wrong done to him or her notwithstanding mootness. *Id.*

The Seventh Circuit's contention that "only injunctive relief [i]s available under RLUIPA" is erroneous. There is nothing in 42 U.S.C.A. § 2000cc-2 that could be construed as precluding a plaintiff from obtaining a declaratory judgment. The plain language of 42 U.S.C.A. § 2000cc-2 (RLUIPA) allows for "appropriate relief." It is not limited to "injunctive" relief. The statute was written to be construed broadly in order to provide maximum protection to a prisoner's religious rights. And the statutory language in RLUIPA is nearly identical to that in RFRA which this Court had interpreted to allow for monetary relief. *See Tanzin, supra.* This Court should extend its decision in *Tanzin* to apply to the RLUIPA as well.

DeGroot had sued one of the Respondents, Mario Canziani, in his personal capacity under both the First Amendment and the RLUIPA. And he also alleged that he incurred actual harm from Canziani's violation of his religious rights. But as illustrated above, Canziani, along with the Wisconsin Department of Corrections, were relieved of

their statutory burden under the RLUIPA to prove that their violations of DeGroot's religious beliefs had furthered a compelling state interest. Likewise, they were relieved of their burden to prove mootness. Accordingly, DeGroot was deprived of all legal redress, and enforcement of his rights.

CONCLUSION

This Court should issue a writ of certiorari and reverse the Seventh Circuit's decision.

Dated this 15th of August 2024

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