No. 23-1197

In the Supreme Court of the United States

DAMON LANDOR,
Petitioner
v.

LOUISIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY, ET AL.,
Respondents

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

BRIEF AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

The American Center for Law and Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty. The ACLJ has appeared before this Court in many cases advocating for the freedoms of religious groups and individuals, as counsel for a party, *e.g., Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004), or for amicus, *e.g., Carson v. Makin*, 596 U.S. 767 (2022); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

This case presents a critical question about whether individuals can obtain meaningful relief when government officials violate their religious liberty rights. The ACLJ has a substantial interest in ensuring that federal civil rights statutes, including the Religious Land Use and Institutionalized Persons Act (RLUIPA), provide effective remedies for violations of religious freedom. The ACLJ files this brief on behalf of the churches and religious institutions it represents, dependent on RLUIPA when officials violate their rights. RLUIPA's land use provisions protect churches, synagogues, mosques, and other religious institutions from discriminatory zoning laws, and damages are necessary to ensure they are effectively protected.

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[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

When Congress uses the same language in sister statutes enacted for the same purposes, that language should mean the same thing. When it defines "government" to include individual officials and authorizes "appropriate relief" against them, that relief should include the most basic remedy our legal system provides: money damages.

This Court has settled that question, holding unanimously that RFRA's identical language clearly permits individual-capacity damages. This Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020), demonstrated that Congress clearly intended individual-capacity damages under RLUIPA's sister statute, RFRA; that identical language in RLUIPA reflects the same congressional intent. *Tanzin* rested on statutory text, historical context, practical necessity, and the fundamental principle that victims of federal violations deserve meaningful remedies. Every word of that reasoning applies to RLUIPA. The text is identical. The historical context is identical.

The court below somewhat acknowledged *Tanzin*'s textual analysis but rejected individual-capacity damages under RLUIPA on constitutional grounds. The court claimed Congress lacks Spending Clause authority to impose personal liability on individual state employees. This constitutional theory fails to reckon with this Court's decision in *Sabri v. United States*, 541 U.S. 600 (2004).

In *Sabri*, this Court upheld individual criminal liability under a federal anti-corruption statute enacted pursuant to the Spending and Necessary and Proper Clauses. The defendant was not a direct

federal fund recipient, and his corrupt conduct bore no direct connection to federal expenditures. Yet this Court held that Congress possessed constitutional authority to impose individual liability for bribing agents of federally funded entities—period. The Court explicitly "dispose[d] of" any requirement that the government "require proof of connection with federal money as an element of the offense." *Id.* at 605. In *Sabri*, the defendant had offered bribes to a local government official. 541 U.S. at 602-03. If Congress has the power to forbid a private citizen from offering a bribe to such an official, *a fortiori* it has the power to prohibit such official from accepting the bribe. Congress therefore plainly possesses the constitutional authority under the Spending Clause and Necessary and Proper Clause to impose individual-capacity liability on state officials.

Louisiana's correctional system receives federal funding. Respondent officials are agents of that federally funded entity. Under *Sabri*, no additional nexus between their religious discrimination and federal funds is required. If Congress can constitutionally impose individual liability to protect federally funded programs from corruption, it can likewise impose individual liability to protect those same programs from religious discrimination.

Absent individual-capacity damages, government officials could violate federal religious liberty protections with impunity, knowing that any judgment will not come from their own pockets. That eliminates the personal accountability that makes rights real rather than merely aspirational. The impact extends beyond prison walls. RLUIPA's land use provisions protect churches, synagogues,

mosques, and other religious institutions from discriminatory zoning laws. If individual officials face no personal liability, religious institutions will find themselves at the mercy of hostile local bureaucrats who can impose discriminatory requirements while hiding behind governmental immunity.

This Court should hold what *Tanzin*'s textual analysis and *Sabri*'s constitutional framework make clear: RLUIPA, like RFRA, permits individual-capacity damages against officials who violate religious exercise rights. When Congress uses identical language for identical purposes, that language should produce identical results.

ARGUMENT

I. Congress Spoke Clearly: RLUIPA and RFRA Use Identical Language for Identical Purposes.

RLUIPA and RFRA stand as sister statutes—companions on the same quest, bearing identical language to safeguard religious liberty. When Congress uses the same words in related statutes addressing the same subject, this Court presumes it intends the same meaning. Here, that presumption points inexorably toward permitting individual-capacity damages under RLUIPA, just as this Court held, they are permitted under RFRA.

A. RFRA and RLUIPA Use Identical Language and Carry the Same Meaning.

Congress could hardly have been clearer. The textual parallel between RFRA's and RLUIPA's remedies provisions is exact. Both statutes authorize aggrieved persons to "obtain appropriate relief against a government." *Compare* 42 U.S.C. § 2000bb-1(c) (RFRA) with 42 U.S.C. § 2000cc-2(a) (RLUIPA). Both statutes define "government" to include individual "official[s]" and "other person[s] acting under color of law." *Compare* 42 U.S.C. § 2000bb-2(1) (RFRA) with 42 U.S.C. § 2000cc-5(4)(A) (RLUIPA).

This identical language reflects Congress's deliberate choice to provide the same remedial framework under both statutes. When Congress uses identical language in related statutes, this Court presumes the language bears the same meaning. *Smith v. City of Jackson, Miss.*, 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."); *see Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932). This presumption is particularly strong when, as here, the statutes address the same subject matter and were enacted as part of a comprehensive scheme.

In *Tanzin*, this Court held that "RFRA's text provides a clear answer" to whether "injured parties can sue Government officials in their personal capacities": "They can." 592 U.S. at 47. The Court reached this conclusion based on textual features that

are identical in RLUIPA. Both statutes permit suits "against a government," which is expressly defined to include individual "official[s]." *Id.* at 47-48. The Court explained that the term "official" refers not just to an office but to "the actual person who is invested with an office," and that the phrase "persons acting under color of law" draws directly from Section 1983, which this Court has "long interpreted" to "permit suits against officials in their individual capacities." *Id.* "Because RFRA uses the same terminology as §1983 in the very same field of civil rights law, 'it is reasonable to believe that the terminology bears a consistent meaning.'" *Id.* (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)).

The Court held that "appropriate relief" includes monetary damages based on the phrase's "plain meaning at the time of enactment." 592 U.S. at 48-49. The Court explained that "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief." *Id.* at 49. Before *Employment Division v. Smith*, 494 U.S. 872 (1990), federal courts regularly awarded damages against government officials for violations of the Free Exercise Clause, and "damages against federal officials remain an appropriate form of relief today." *Id.*

This Court's decision in *Tanzin* compels the conclusion that RLUIPA authorizes suits against governmental officials in their individual capacities. Every textual basis for its conclusion is identical here. RLUIPA provides a private cause of action "against a government," 42 U.S.C. 2000cc-2(a), and expressly defines " 'government' " to include a governmental

"official" as well as any "other person acting under color" of law, 42 U.S.C. 2000cc-5(4)(A). In *Tanzin*, this Court found identical language in RFRA to "clear[ly]" authorize individual-capacity suits. 592 U.S. at 47. RFRA shares all those textual features with RLUIPA.

The Court emphasized that this conclusion was supported by the statutory text: Congress "made clear" that individual-capacity damages should be available. *Id.* at 51.

B. RFRA and RLUIPA Are "Sister Statutes" Designed to Provide Parallel Protection for Religious Exercise.

This Court has consistently characterized RFRA and RLUIPA as "sister statutes" that work together to safeguard religious liberty. *Ramirez v. Collier*, 595 U.S. 411, 424 (2022); *Holt v. Hobbs*, 574 U.S. 352, 356 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014). As this Court has explained, Congress designed these statutes "in order to provide very broad protection for religious liberty." *Holt*, 574 U.S. at 356 (quoting *Hobby Lobby*, 573 U.S. at 693).

RLUIPA allows affected churches and prisoners "to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006). It "mirrors RFRA" in providing that government actions that substantially burden religion must further a compelling government interest and must be the least restrictive means of furthering that interest. *Holt*, 574 U.S. at 357–58.

Congress enacted RFRA in direct response to *Smith*, 494 U.S. 872, where this Court ruled that

"neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment." *Holt*, 574 U.S. at 356-57. When this Court later struck down RFRA's application to state and local governments in *City of Boerne v. Flores*, 521 U.S. 507 (1997), Congress responded by enacting RLUIPA to restore those protections in targeted areas, including correctional institutions and churches.

Congress's decision to restore the pre-*Smith* regime reflects more than just policy preference—it reflects constitutional wisdom. *Employment Division v. Smith* was wrongly decided from the start, and its defects have only become more apparent with time. *Smith* "produced a firestorm of criticism." Bradley P. Jacob, *Free Exercise in the "Lobbying Nineties,"* 84 Neb. L. Rev. 795, 814 (2006). A broad coalition of religious communities and civil liberties organizations petitioned Congress to overturn *Smith* by statute, leading to RFRA and then RLUIPA. *Id.* at 815.

Justices of the Court, past and present, have repeatedly suggested revisiting *Smith*. *Fulton v. City of Philadelphia*, 593 U.S. 522, 545 (2021) (Alito, J., joined by Thomas & Gorsuch, JJ., concurring); *Kennedy v. Bremerton Sch. Dist.*, 139 S. Ct. 634, 637 (2019) (Alito, J., joined by Thomas, Gorsuch, and Kavanaugh, JJ., concurring in denial of certiorari) (*Smith* "drastically cut back on the protection provided by the Free Exercise Clause"); *City of Boern*e, 521 U.S. at 566 (Breyer, J., dissenting) ("[T]he Court should direct the parties to brief the question whether [*Smith*] was correctly decided[.]"); *id.* at 544–

45, 565 (O'Connor, J., joined by Breyer, J., dissenting) ("[I]t is essential for the Court to reconsider its holding in *Smith* . . . ."); *see also Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1734 (2018) (Gorsuch, J., concurring) ("*Smith* remains controversial in many quarters.").

Congress recognized these problems when it passed RFRA and RLUIPA by overwhelming bipartisan majorities. These statutes restore the pre-*Smith* requirement that government justify its interference with religious practice. If *Smith* had been correctly decided, such legislation would have been unnecessary. RFRA and RLUIPA are necessary and provide the robust results they do for the same reason: remedying this Court's decision in *Smith*.

The Court emphasized that "appropriate relief" plainly includes damages because "[i]n the context of suits against Government officials, damages have long been awarded as appropriate relief." *Tanzin, 592 U.S.* at 49. Before *Employment Division v. Smith*, damages were available under Section 1983 against state and local officials for violations of the compelling interest test. Because RFRA restored "pre-*Smith* protections and rights," parties suing under RFRA "must have at least the same avenues for relief against officials that they would have had before *Smith*," including damages. *Id.* at 50-51.

It would be inappropriate to read RLUIPA more narrowly than RFRA when the two are "sister statutes" enacted by Congress to extend the same rights and analyzed using the "same standard." *Gonzales*, 546 U.S. at 436. *Tanzin*'s interpretation of "appropriate relief against a government" was based on comprehensive statutory analysis—examining the

precise language Congress chose, the historical backdrop of civil rights enforcement, and the statutory definitions Congress provided. *Tanzin,* 592 U.S. at 47-51. Because RLUIPA uses identical language with identical definitions, *Tanzin*'s textual analysis incontrovertibly demonstrates that Congress intended to provide the same remedies against state government officials under RLUIPA as it provided against federal officials under RFRA.

II. The Circuit Courts Have Rejected RLUIPA's Individual Damages Remedy Based on a Fundamental Misreading of *Sabri v. United States.*

The circuit courts' rejection of RLUIPA's individual-capacity damages remedy rests on a fundamental misreading of *Sabri v. United States*, 541 U.S. 600 (2004), where this Court upheld individual criminal liability under the Spending and Necessary and Proper Clauses against a defendant who was not a direct federal fund recipient and whose conduct did not directly implicate federal expenditures. Circuit courts have erroneously attempted to distinguish *Sabri* by claiming it applies only when individual misconduct directly threatens federal funds—a nexus requirement that *Sabri* explicitly rejected. RLUIPA represents an entirely appropriate use of Congress's spending power to combat assaults on religious liberty in federally funded programs, just as *Sabri* approved statutory protection of federal grant recipients from corruption. Indeed, the constitutional case for RLUIPA is easier than in *Sabri,* as RLUIPA applies to federal funding

recipients themselves, while the law in *Sabri* applied to third parties who sought to bribe federal funding recipients.

A. RLUIPA Constitutes an Appropriate Use of Congress's Spending Power.

The Spending Clause grants Congress the power "to pay the Debts and provide for the . . . general Welfare of the United States." U.S. Const., Art. I, § 8, cl. 1.

"Congress has broad power to set the terms on which it disburses federal money to the States." *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291, 296 (2006). In *South Dakota v. Dole*, 483 U.S. 203 (1987), this Court reiterated four "general restrictions" on Congress's power to attain objectives "through the use of the spending power and the conditional grant of federal funds." *Id.* at 207 (citation omitted). Specifically, conditions on the grant of funds must be (1) "in pursuit of 'the general welfare'"; (2) "unambiguously" expressed; (3) related "to the federal interest in particular national projects or programs"; and (4) not in violation of "other constitutional provisions." *Id.* at 207-08 (citations omitted).

Congress may authorize private rights of action, including for money damages, to enforce the conditions it has imposed on the receipt of federal funds, as long as the "funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220 (2022) (citation omitted). RLUIPA's language unambiguously

provides for—and puts grant recipients on notice about—money damages liability in individual capacity suits.

B. *Sabri* Explicitly Rejected Any Nexus Requirement Between Individual Misconduct and Federal Funds.

The constitutional framework that governs this case matches the framework this Court approved in *Sabri*. The constitutional analysis is straightforward. In *Sabri*, this Court allowed criminal prosecution of individuals who interfered with federally funded programs. This case involves civil damages for individuals who interfere with federally funded programs. Both cases involve Congress using its Spending and Necessary and Proper Clause powers to safeguard the integrity of federally funded entities, in one case against corruption, in the other against interference with religious exercise. The only difference is that *Sabri* involved criminal liability while this case involves civil damages—a distinction that strengthens, rather than weakens, the constitutional case for individual-capacity damages.

In *Sabri*, the defendant challenged 18 U.S.C. § 666(a)(2) "on the ground that [it] is unconstitutional on its face for failure to require proof of a connection between the federal funds and the alleged bribe, as an element of liability." 541 U.S. at 603-04. This Court "readily dispose[d] of this position that, to qualify as a valid exercise of Article I power, the statute must require proof of connection with federal money as an element of the offense." *Id.* at 605.

Circuit courts addressing individual-capacity RLUIPA claims have attempted to distinguish *Sabri* by claiming that it applies only when individual misconduct directly threatens federal expenditures. See *Wood v. Yordy*, 753 F.3d 899, 903 (9th Cir. 2014) ("The point in *Sabri* was to protect the financial integrity of the governmental entity that did receive the federal funds."); *Sharp v. Johnson*, 669 F.3d 144, 155 n.15 (3d Cir. 2012) ("In *Sabri*, Congress enacted the statute at issue, . . . to protect its expenditures against local bribery and corruption. . . . Here, however, Congress did not enact RLUIPA to protect its own expenditures[.]"). This distinction rests on a fundamental misreading of *Sabri*'s holding and creates an artificial constitutional barrier that prevents people from obtaining meaningful relief for violations of their religious rights.

This *rejection* of any nexus requirement in *Sabri* was the central holding necessary to resolve the circuit split that prompted certiorari. See *Sabri,* 541 U.S. at 604 (noting split between circuits requiring nexus and those rejecting it). The Court established that Congress may impose individual-capacity damages under § 666 based solely on two requirements: (1) bribery of a government agent, who (2) works for a governmental entity that receives more than $10,000 in federal funds. *See Sabri*, 541 U.S. at 602-03. The Court expressly rejected the proposition that "proof of connection with federal money [had to be] an element of the offense." *Id.* at 605. Congress, the Court said, has the "power to keep a watchful eye on expenditures *and on the reliability of those who use public money*," *id.* at 608 (emphasis

added).

Violations of religious freedom call into question the "reliability of those who use public money." RLUIPA's individual-capacity damages remedy thus operates under *Sabri*'s enunciation of federal spending power. Indeed, this case is easier than *Sabri*, as *Sabri* regulated private third parties who received no federal money, while RLUIPA regulates the federal funding recipients themselves.

Here, Louisiana's correctional system receives substantial federal funding, and the defendant officers are agents of that federally funded entity. Under *Sabri*'s framework, no additional nexus between the officers' religious discrimination and federal expenditures is required to establish constitutional authority for individual-capacity damages.

Sabri held that federal funding comes with conditions that safeguard the general welfare—conditions that Congress may enforce through individual-capacity damages even when the misconduct bears no direct connection to federal funds. In *Sabri*, this constitutional framework took the specific form of prosecuting corruption by individuals who threatened federally funded programs. Here, it takes the specific form of preventing religious discrimination by state prison officials who administer federally funded correctional programs. Both applications serve the constitutional purpose of ensuring that federal spending programs are not undermined by individual misconduct.

C. *Sabri* Establishes That Congress May Use Spending Power to Promote the Integrity of Federal Programs.

The lower court's rejection of RLUIPA's individual-capacity damages remedy rests on a fundamental mischaracterization of *Sabri*'s constitutional analysis. Under *Sabri*'s framework, RLUIPA's individual capacity damages remedy is constitutional because religious liberty protection serves the general welfare. This Court has repeatedly recognized that protecting religious exercise serves compelling governmental interests. See *Cutter v. Wilkinson*, 544 U.S. 709, 722-23 (2005) (noting Congress's findings that RLUIPA serves "compelling governmental interests").

Sabri provides a specific analogy that supports RLUIPA's individual-capacity damages remedy. The Court analogized congressional authority under § 666 to the principle established in *McCulloch v. Maryland*: the "power to 'establish post-offices and post-roads' entails authority to 'punish those who steal letters.'" 541 U.S. at 605 (citing *McCulloch v. Maryland*, 17 U.S. 316, 417 (1819)).

This analogy provides an important framework for analyzing RLUIPA's constitutional validity. Just as mail theft undermines the postal system's core function of delivering correspondence, religious discrimination in correctional facilities undermines a core function of corrections systems, namely, rehabilitation. And just as Congress may reach individual postal employees who steal letters, Congress may reach individual correctional officers who violate religious rights.

Under the *McCulloch* principle as applied in *Sabri*, Mr. Landor's federal individual-capacity damages claim is constitutional. Louisiana's Department of Corrections receives federal funding to operate rehabilitation programs. When correctional officers prevent inmates from practicing their faith, they directly undermine the rehabilitative mission that justifies federal investment. Congress may therefore impose individual-capacity damages on such officers to protect federal programmatic goals, just as it may impose individual-capacity damages on postal workers who steal mail.

Sabri explicitly rejected requiring any direct nexus between prohibited conduct and federal funds. Religious liberty protection serves the integrity of federal programs just as much as anti-corruption measures. There is no constitutional principle that permits Congress to impose individual criminal liability to protect against corruption but prohibits individual civil damages liability to protect against religious discrimination.

III. This Case Will Have Broader Impacts for Religious Institutions.

Without a damages remedy, government officials can violate federal law with impunity, knowing that their victims have no meaningful recourse. That's not what Congress intended when it sought to restore "pre-*Smith* protections and rights" and "the right to vindicate those protections by a claim." *Tanzin*, 592 U.S. at 50.

This case's impact extends well beyond prison walls. RLUIPA's land use provisions protect

churches, synagogues, mosques, and other religious institutions from discriminatory zoning laws and regulatory harassment. If individual officials face no personal liability for violating these protections, religious institutions will find themselves increasingly at the mercy of hostile local bureaucrats.

Consider the local zoning official who denies a synagogue's building permit based on anti-Semitic animus, *see Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183 (2d Cir. 2014), or the city planner who imposes costly architectural requirements solely on churches. Under the lower court's current rule, these officials can violate federal law free from any risk of damages liability. Individual liability serves a crucial deterrent function that official-capacity suits cannot match. When public officials know they may be personally responsible for violating religious liberty, they are more likely to think twice before trampling constitutional rights.

This deterrent effect is particularly important given the rise in religious discrimination at the local level. From suburban communities that zone out synagogues to college towns that harass campus ministries, religious institutions increasingly face hostility from local authorities. Many violations go unchallenged because religious groups lack the resources for protracted litigation against government entities. But the prospect of personal liability changes the calculus, making officials more cautious about violating clear federal protections.

RLUIPA passed overwhelmingly in both houses of Congress because lawmakers recognized that religious freedom requires more than paper

protections—it requires meaningful enforcement mechanisms. Individual damages serve as both sword and shield: they compensate victims of religious discrimination and deter future violations. Religious institutions across America have a vital stake in ensuring that federal protections have real teeth.

CONCLUSION

This Court should reverse the decision below and hold that RLUIPA provides a cause of action for damages.

Respectfully submitted,

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