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 OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in protecting meaningful access to the courts and ensuring adherence to the text and history of important federal statutes and therefore has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the face of ambiguous statutory text, this Court has at times relied on a contract-law analogy to fill gaps about the type of relief available for violations of statutes enacted pursuant to Congress's spending authority. The Fifth Circuit did something entirely different. It purported to incorporate the law of contract wholesale to displace an express remedy that Congress provided in the Religious Land Use and Institutionalized Persons Act. In so doing, the court below got contract law itself wrong, misunderstanding the extraordinary flexibility of contract arrangements. But along the way, it also misapplied this Court's precedents analyzing Spending Clause statutes and underestimated the scope of Congress's power to set funding conditions and craft remedies for violations of those conditions.

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) was Congress's second attempt to restore heightened protections for religious exercise in the wake of this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that individuals' religious beliefs do not exempt them from compliance with laws of general applicability, *id.* at 878-79. After *Smith*, Congress enacted the Religious Freedom Restoration Act (RFRA) to reinstate "the pre-*Smith* substantive protections of the First Amendment *and* the right to vindicate those protections by a claim." *Tanzin v. Tanvir*, 592 U.S. 43, 50 (2020) (emphasis in original). RFRA originally applied against the federal government and the states, but this Court held RFRA unconstitutional as applied to the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997), concluding that it exceeded Congress's power under Section 5 of the Fourteenth Amendment.

Congress responded with RLUIPA. Enacted pursuant to Congress's Spending Clause and Commerce Clause authorities, RLUIPA provides the same substantive protections and remedies as RFRA but, as relevant here, it extends only to "program[s] or activit[ies] that receive[] Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1). Critically, both RFRA and RLUIPA provide that a person may sue and "obtain appropriate relief against a government," *id.* § 2000bb-1(c) (RFRA); *id.* § 2000cc-2(a) (RLUIPA), and both define the term "government" to include any "person acting under color of" law, *id.* § 2000bb-2(1) (RFRA); *id.* § 2000cc-5(4)(A)(iii) (RLUIPA).

Five years ago in *Tanzin*, this Court interpreted the above provisions of RFRA and held that it was "clear" that (1) "injured parties can sue Government officials in their personal capacities," 592 U.S. at 47, and (2) "appropriate relief" in personal-capacity suits

includes damages, *id.* at 48-49. That same conclusion should apply to the *identical* text of RLUIPA, RFRA's "sister" statute, *Holt v. Hobbs*, 574 U.S. 352, 356 (2015).

But instead of following *Tanzin* and the text of RLUIPA, the court below embarked on a convoluted journey of constitutional avoidance, treating the contract-law analogy as license to rewrite RLUIPA's express cause of action. Ultimately, the court below concluded that RLUIPA could not possibly authorize relief against state employees because "Spending Clause legislation operates like a contract, so only the grant recipient—the state—may be liable for its violation." Pet. App. 6a (citation omitted). This analysis was wrong at every step.

First, Congress has broad authority to craft remedies for the misuse of federal funds under the Spending Clause and the Necessary and Proper Clause. The Spending Clause authorizes Congress to spend for the "general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. Though once subject to debate, this Court long ago settled that Alexander Hamilton's interpretation of the Clause as "not limited by the direct grants of legislative power found in the Constitution" is "the correct one." *United States v. Butler*, 297 U.S. 1, 66 (1936). Thus, this Court has repeatedly explained that "objectives not thought to be within Article I's enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (citation omitted).

Incident to that power is the authority to craft remedies for violations of funding conditions. After all, the Spending Clause was put in the Constitution to enhance Congress's fiscal powers vis-à-vis the states. The Clause would be an empty promise if it granted

Congress discretion to condition federal funding on compliance with statutory terms but denied it discretion to craft statutory remedies for noncompliance with those terms. Put simply, when Congress grants a state federal funds, the Spending Clause allows it to ensure that those funds are not "expended to support the intentional actions it sought by statute to proscribe." *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992).

The Necessary and Proper Clause only makes that point clearer. By granting Congress the authority "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers," U.S. Const. art. I, § 8, cl. 18, the Clause gives "the national legislature" substantial "discretion, with respect to the means by which the powers it confers are to be carried into execution," enabling "that body to perform the high duties assigned to it, in the manner most beneficial to the people." *McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316, 421 (1819). It is thus unsurprising that this Court held explicitly in *Sabri v. United States*, 541 U.S. 600 (2004), that "Congress has authority under the Spending Clause to appropriate federal moneys to promote the general welfare, Art. I, § 8, cl. 1, and it has corresponding authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare." *Id.* at 605.

To be sure, Congress's spending power—though broad—is not unlimited. Because funding recipients may only be bound by conditions that they voluntarily and knowingly accept, this Court has occasionally invoked a contract-law analogy to ensure that funding recipients had sufficient notice of the specific conduct prohibited, and to fill in statutory gaps about the types of relief available. But this Court has repeatedly

rejected attempts to employ the contract-law analogy to displace or invalidate clear statutory text. *See, e.g.*, *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 178 (2023). And it has cautioned against "incorporating the law of contract . . . wholesale," *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 226 (2022), for doing so risks "arrogating legislative power" by rewriting a statute, *id.* (quoting *Hernandez v. Mesa*, 589 U.S. 93, 100 (2020)). Moreover, invoking contract-law principles to rewrite RLUIPA's express cause of action is especially improper because that statute's cause of action is modeled on 42 U.S.C. § 1983, *Tanzin*, 592 U.S. at 48, for which this Court has relied on interpretive principles borrowed from tort law, not contract law. *See, e.g.*, *Talevski*, 599 U.S. at 179-80.

Second, even if it were appropriate to invoke contract-law principles here, and even if contract law principles did provide *some* limitation on Congress's authority to regulate individuals other than the direct recipients of funding, *but see Sabri*, 541 U.S. at 600 (upholding under the Spending Clause and the Necessary and Proper Clause a bribery statute that imposed criminal liability on individuals who were not recipients of federal funds), such a limitation makes little sense with respect to the *employees* of the funding recipient. For one thing, state employees are in a direct chain of privity with the federal government through their employment contracts with the state, which in turn "contracts" with the federal government. Their salaries are paid in part with federal funding, making them indirect funding recipients, and the state may even indemnify them in personal-capacity suits arising out of actions taken in the course of employment.

Moreover, for over a century, the default rule has been that individuals who accept jobs working for the

state may be personally liable for violating people's federal rights under Section 1983. Every state employee is thus on notice that he or she will be liable for depriving people of their federal rights under color of state law pursuant to Section 1983, as this Court explained in *Tanzin*. 592 U.S. at 48-50. RLUIPA did nothing to obviate that notice—rather, it merely extended it with respect to the heightened free-exercise right contained in RLUIPA's substantive provision.

Finally, this Court held in *Talevski* that a Spending Clause statute could confer a private right enforceable via Section 1983 even where the statute itself contained no private right of action. 599 U.S. at 192. Because there is no question that a Section 1983 claim may be brought against a state official for damages in that official's personal capacity, Congress instead could have relied on Section 1983 for enforcement of the heightened free exercise right enshrined in RLUIPA—as it did prior to *Smith*. *See Tanzin*, 592 U.S. at 50. The Fifth Circuit's decision thus effectively penalized Congress for its clarity in RLUIPA—that is, for writing an express private right of action against state employees directly into the statute. Somehow, under the logic of the court below, a suit against a state employee for damages for violating RLUIPA would exceed Congress's spending power, yet the same exact suit for damages brought via Section 1983 against a state employee for violating the statute at issue in *Talevski* would not. That makes no sense.

In sum, the decision of the court below to rely on contract-law principles to rewrite RLUIPA's express private right of action is at odds with constitutional text, history, and precedent. This Court should reverse.

ARGUMENT

I. Congress Has Broad Discretion to Make Federal Funding Contingent on Statutory Conditions and Craft Remedies for Violations of Those Conditions.

A. Congress's spending authority is embedded in the first enumerated power conferred on the legislature: 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." U.S. Const. art. I, § 8, cl. 1. This Clause was crafted in response to the failure of the Articles of Confederation to grant the federal government authority to tax and spend for the defense and general interests of the union, creating such an ineffectual central government that, according to George Washington, it nearly cost Americans victory in the Revolutionary War. *See* Letter to Joseph Jones (May 31, 1780), *in* 18 *The Writings of George Washington from the Original Manuscript Sources 1745-1799*, at 453 (John C. Fitzpatrick ed., 1931). Indeed, it was the need "to provide adequate fiscal powers for the national government" that motivated the Framers to write a new Constitution. Bruce Ackerman, *Taxation and the Constitution*, 99 Colum. L. Rev. 1, 6 (1999).

By the time of the Constitutional Convention, "[i]t was uncontroversial that the powers to raise and disburse public money would reside in the Legislative Branch." *CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 431 (2024). Nevertheless, the Founders espoused "sharp differences of opinion" as to the extent of Congress's power to spend for the general welfare. *Butler*, 297 U.S. at 65.

At one extreme, James Madison asserted that the Spending Clause "amounted to no more than a

reference to the other powers enumerated in the subsequent clauses of the same section." *Id.* In his view, "the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress." *Id.*; *see also Helvering v. Davis*, 301 U.S. 619, 640 (1937) (other "great statesmen" shared Madison's view).

In contrast, Alexander Hamilton deemed the phrase "general Welfare" "as comprehensive as any that could have been used." *Report on the Subject of Manufactures* (Dec. 5, 1791), *in* 10 *Papers of Alexander Hamilton* 230, 303-04 (H. Syrett ed., 1966). According to Hamilton, the Clause granted Congress the power to raise and "appropriate money" for *all* objects of "General" (as opposed to "local") importance. *Id.*; *see also The Federalist No. 30*, at 188 (Clinton Rossiter ed., 1961) (Hamilton) (deeming the power to raise and spend funds "an indispensable ingredient in every constitution"); *The Federalist No. 31*, *supra*, at 195 (Hamilton) (calling "revenue" "the essential engine by which the means of answering the national exigencies must be procured").

Hamilton's view "gained ground" over time. *Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219, 2230 (2025). Perhaps most notably, Joseph Story "espouse[d] the Hamiltonian position" in his *Commentaries* on the original meaning of the Constitution. *Butler*, 297 U.S. at 66. Story understood the Spending Clause to authorize Congress to "appropriate to *any purpose*, which is for the common defence or general welfare." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1269, at 150 (1833) (emphasis added). Eventually, this Court put the debate to rest in *United States v. Butler*, concluding that the Hamiltonian view "is the correct one." 297 U.S. at 66; *see also Helvering*, 301 U.S. at 640 ("The conception of

the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison.").

Consistent with Hamilton's vision of the Clause, this Court has repeatedly held that Congress has substantial discretion to define "the concept of the general welfare" and exercise its spending power accordingly. *Helvering*, 301 U.S. at 640-41; *see, e.g.*, *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) ("Congress has broad power to set the terms on which it disburses federal money to the States."); *Lyng v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988) ("[T]he discretion about how best to spend money to improve the general welfare is lodged in Congress rather than the courts."); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013) ("The Clause provides Congress broad discretion to tax and spend for the 'general Welfare.'").

Incident to Congress's discretion in this area, "objectives not thought to be within Article I's enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds." *Dole*, 483 U.S. at 207 (citation omitted). In other words, "Congress may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take." *Coll. Sav. Bank v. Fl. Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 686 (1999). These cases reinforce "[t]he breadth of [Congress's spending] power" under Article I. *Dole*, 483 U.S. at 207.

B. When Congress grants federal funds to a state subject to conditions it deems to be in furtherance of the general welfare, it also has significant discretion to ensure *compliance* with those conditions, including

by using its legislative power to craft remedies for non-compliance, such as private rights of action.

That principle accords with the original meaning of the Spending Clause. After all, the Clause was put in the Constitution to enhance Congress's fiscal powers vis-à-vis the states and free the federal government from dependence on the states for the raising of funds, which had given the states a chokehold on the federal government. *See, e.g.*, *Lane County v. Oregon*, 74 U.S. 71, 76 (1868) (Confederation Congress could only raise money by "requisitions upon the States"); 26 *Journals of the Continental Congress 1774-1789*, at 299 (Gaillard Hunt ed., 1928) (states frequently refused to provide funds, and all Congress could do was "remind" them of their duties). The Clause would hardly accomplish that purpose if, once Congress raised funds and distributed them to the states in exchange for compliance with statutory conditions, it gave up discretion over the means of ensuring compliance with those conditions. As Alexander Hamilton observed, a "most palpable defect of the . . . Confederation [was] the total want of a *sanction* to its laws." *The Federalist No. 21*, *supra*, at 138.

The Spending Clause, along with basic principles of federal supremacy, corrected for this deficiency, empowering Congress to fund programs that further the "general Welfare of the United States," U.S. Const. art. I, § 8, cl. 1, and to condition that funding on state compliance with the "supreme Law of the Land," *id.* art. VI, cl. 2. Thus, this Court has repeatedly held that statutes enacted pursuant to Congress's spending power preempt inconsistent state legislation, *see, e.g.*, *Blum v. Bacon*, 457 U.S. 132, 138 (1982); *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 270 (1985); *Ark. Dep't of Health & Hum. Servs. v. Ahlborn*, 547 U.S. 268, 279-80 (2006); *Wos v. E.M.A. ex*

rel. Johnson, 568 U.S. 627, 636 (2013), even in cases in which the state is not the direct funding recipient, *see e.g.*, *Bennett v. Arkansas*, 485 U.S. 395, 396 (1988) (per curiam) (holding that state statute permitting seizure of prisoners' property to offset prison costs was preempted to the extent that it permitted seizure of property received as Social Security).

These cases underscore that, as this Court made explicit in *Talevski*, Spending Clause statutes are no less "laws" than any other type of statute, *Talevski*, 599 U.S. at 172. It thus follows that, "as a rule," Congress "'has the power to enforce' the conditions it attaches to its grants." *Medina*, 145 S. Ct. at 2231 (quoting *Emigrant Co. v. County of Adams*, 100 U.S. 61, 69 (1879)). To be sure, a "federal spending-power statute" must "provide 'clear and unambiguous' notice that it creates a personally enforceable right" if Congress chooses to rely on private enforcement as a remedy for noncompliance. *Id.* at 2234 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002)). But Congress's discretion to craft remedies for noncompliance once funding is accepted is part and parcel of its discretion to ensure its funding is in fact used in pursuance of the general welfare.

The Necessary and Proper Clause only underscores Congress's discretion in this area. That Clause gives Congress the authority "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18.

At the Founding, Alexander Hamilton explained the Necessary and Proper Clause's import to President Washington in his famous exegesis on the constitutionality of a national bank: "[t]he means by which

national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means." *The Papers of George Washington Digital Edition* (Theodore J. Crackel ed., 2008) (Letter from Alexander Hamilton to George Washington, Opinion on the Constitutionality of an Act to Establish a Bank, 1791). In Hamilton's view, "[i]f the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the constitution; it may safely be deemed to come within the compass of the national authority." *Id.* President Washington ultimately agreed with this conception of the Necessary and Proper Clause, approving the bill to establish a national bank over the objections of other members of his Cabinet, including Secretary of State Thomas Jefferson. 8 *The Papers of George Washington Presidential Series* 359 (W.W. Abbot et al. eds., 1987) (Letter to David Humphreys, July 20, 1791).

Like Washington, this Court also adopted Hamilton's view of federal power under the Necessary and Proper Clause. Chief Justice John Marshall explained in *McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819), that Congress should be granted significant deference regarding what laws it considers to be appropriate in carrying out its constitutional duties. In language very similar to Hamilton's, the Court in *McCulloch* explained, "[l]et the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." 17 U.S. (4 Wheat.) at 421.

More recently, in *Sabri*, this Court made explicit how the Spending Clause and the Necessary and Proper Clause work in conjunction to grant Congress the discretion to craft remedies for violations of spending conditions. This Court explained that "Congress has authority under the Spending Clause to appropriate federal moneys to promote the general welfare, Art. I, § 8, cl. 1, and it has corresponding authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare." *Sabri*, 541 U.S. at 605. In other words, Congress has discretion to craft remedies to safeguard its federal funds and protect against substantive violations of its spending conditions.

Critically, in *Sabri*, this Court unanimously upheld the constitutionality of a bribery statute under those two constitutional provisions, even though the statute imposed *criminal* liability on individuals who were not direct recipients of federal funds—indeed, were not recipients of that funding at all. Explaining that "Congress does not have to sit by and accept the risk of operations thwarted by local and state improbity," this Court deemed the bribery statute a "rational means[] to safeguard the integrity of state . . . recipients of federal dollars." *Id.*

In sum, under the original meaning of the Spending Clause and the Necessary and Proper Clause, Congress has broad discretion to impose conditions on federal funding. Nothing in the text or history of those Clauses or this Court's precedents interpreting them suggests a substantive limitation on Congress's authority to craft remedies for noncompliance with statutory funding conditions. The Fifth Circuit created that limitation out of whole cloth.

II. In a Series of Errors, the Court Below Purported to Import Contract Law "Wholesale" to Rewrite RLUIPA's Express Private Right of Action.

A. Despite its breadth, "[t]he spending power is of course not unlimited." *Dole*, 483 U.S. at 207. This Court has stated that because "legislation enacted pursuant to the spending power is much in the nature of a contract, . . . [t]he legitimacy of Congress'[s] power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms" set forth in the statutory text. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

Federal funding recipients "cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain.'" *Arlington Cent. Sch. Dist.*, 548 U.S. at 296 (quoting *Pennhurst*, 451 U.S. at 17). This Court has therefore used contract-law principles in two limited scenarios: to ensure that funding recipients had sufficient notice of the specific conduct prohibited, *e.g.*, *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999), and to fill in statutory gaps about the type of relief available, *e.g.*, *Cummings*, 596 U.S. at 218-20; *Barnes v. Gorman*, 536 U.S. 181, 187-88 (2002).

When it comes to statutory gap-filling, this Court has been exceedingly careful to invoke contract law only *after* a finding of statutory silence or ambiguity. For instance, in *Cummings*, this Court turned to contract law after it determined that the relevant statutory text was "silent as to available remedies." *Cummings*, 596 U.S. at 220-21. *But see id.* at 230 (Kavanaugh, J., joined by Gorsuch, J., concurring)

(explaining why they would not turn to contract law *at all* to resolve this case).

So too in *Barnes*, which involved an implied rather than express private right of action, meaning there was no statutory cause of action at all to indicate the remedies available in such a suit. *Barnes*, 536 U.S. at 185-86 (same). This Court in *Barnes* emphasized that "[a] funding recipient is generally on notice that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract." *Id.* at 187 (majority opinion). In other words, contract law could supply additional remedies for violation of Spending Clause statutes in the absence of statutory text expressly conferring them.

At the same time, this Court has refused to employ the contract-law analogy to displace or invalidate clear statutory text. Most recently, in *Talevski*, this Court rejected the argument that "'Spending Clause statutes do not give rise to privately enforceable rights under Section 1983' because contracts were not 'generally' enforceable by third-party beneficiaries at common law." 599 U.S. at 178. This Court reasoned that accepting such an argument would require it to "rewrite § 1983's plain text," *id.*—that is, displace clear statutory text with substantive contract law principles.

It is thus no surprise that this Court has repeatedly emphasized that the contract-law analogy does not sanction "incorporating the law of contract . . . wholesale." *Cummings*, 596 U.S. at 226. After all, "suits under Spending Clause legislation" are not "literal 'suits in contract.'" *Id.* at 225 (quoting *Sossamon v. Texas*, 563 U.S. 277, 290 (2011)); *see, e.g.*, *Medina*, 145 S. Ct. at 2231 ("agreements between state and federal governments are not exactly the same as contracts 'between individuals'" (quoting *Searight v. Stokes*, 44

U.S. (3 How.) 151, 167 (1845))); *Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 669 (1985) (federal grant programs "cannot be viewed in the same manner as a bilateral contract governing a discrete transaction," even if they have "a contractual aspect"). Accordingly, this Court has "been careful not to imply that *all* contract-law rules apply to Spending Clause legislation." *Barnes*, 536 U.S. at 186 (emphasis in original).

B. Consistent with this Court's precedents, the contract-law analogy has limited utility in this case: it simply raises the question of whether state funding recipients had sufficient notice when they accepted federal funds that their employees may be held individually liable for damages if they violate RLUIPA's substantive provisions.

As Petitioner describes in detail, *see* Pet. Br. 16-28, the answer to that question is yes. RLUIPA provides 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," 42 U.S.C. § 2000cc-2(a), and it defines "[t]he term 'government'" to include "any other person acting under color of State law," *id.* § 2000cc-5(4)(A)(iii). Interpreting substantively *identical* statutory provisions of RFRA in *Tanzin*, this Court held that they unambiguously authorize suit against state officials in their personal capacities, 592 U.S. at 47-48, and that the "plain meaning" of "appropriate relief" in individual-capacity suits includes damages, *id.* at 48-49.

The court below supplied no principled reason to interpret the text of RLUIPA any differently. And there is none. As Judge Oldham explained in his dissent from the denial of rehearing en banc, "[t]he operative provisions of RFRA and RLUIPA are *in haec verba*," Pet. App. 25a; this "Court has called RLUIPA and RFRA 'sister' or 'twin' statutes," *id.* at 28a (citing

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 730 (2014) ("sister"); *Hobbs*, 574 U.S. at 356 ("sister"); *Ramirez v. Collier*, 595 U.S. 411, 424 (2022) ("sister"); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 703 n.13 (2020) (Alito, J., joined by Gorsuch, J., concurring) ("twin")); and this Court "has repeatedly interpreted one statute by looking to its precedent interpreting the other," *id.* (collecting cases). In short, this Court's decision in *Tanzin* compels the conclusion that states accepting federal funding have clear notice that their employees may answer to individual-capacity suits for damages if they violate RLUIPA.

C. That should have been enough for the Fifth Circuit. Congress validly exercises its spending power when it provides funding recipients with clear statutory notice of the conditions it places on federal funds and the remedies for violations of those conditions, allowing the funding recipient to make an informed decision about whether to "contract" with the federal government. *See, e.g.*, *Medina*, 145 S. Ct. at 2234.

But rather than follow RLUIPA's text, the court below purported to import contract law "wholesale," *Cummings*, 596 U.S. at 214, declaring that because "Spending Clause legislation operates like a contract, . . . only the grant recipient—the state—may be liable for its violation." Pet. App. 6a (citation omitted). In other words, even though RLUIPA has an express cause of action against state employees, and even though it unambiguously authorizes damages as relief in those actions as *Tanzin* recognized, the court below invoked contract law to *displace* express statutory text through a contorted exercise in constitutional avoidance. *Cf. U.S. Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 61 (2024) ("[T]he canon of constitutional avoidance has no application in the

absence of statutory ambiguity." (alteration in original) (quoting *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 (2001))); Pet. App. 32a (Oldham, J., dissenting) (*Tanzin* "now foreclose[s]" application of constitutional avoidance).

The Fifth Circuit's overly simplistic statement of contract law is wrong on its face, as Petitioner explains. *See* Pet. Br. 47-49 (describing how contracts are extraordinarily flexible and in fact *can* be used to bind the agents of a counterparty). But the court below was wrong to rely on contract law in this way in any event. Its approach uses contract law as a license to rewrite Spending Clause statutes rather than fill statutory gaps, "arrogating legislative power," *Cummings*, 596 U.S. at 226 (quoting *Hernandez*, 589 U.S. at 100). The Spending Clause, together with the Necessary and Proper Clause, gives Congress, not the courts, authority to craft remedies for state defiance of funding conditions. *See Salinas v. United States*, 522 U.S. 52, 60 (1997) (displacing clear statutory text in the name of avoiding a constitutional problem "would trench upon the legislative powers vested in Congress" (citation omitted)). This Court's occasional use of a contract-law analogy in the face of statutory *ambiguity* respects that balance of power, but invoking contract law to *displace* statutory text unsettles it, elevating courts to the role of legislators.

D. Adding insult to injury, the court below invoked contract law to displace statutory text even though RLUIPA's cause of action is modeled on Section 1983, which has a tort-law—not contract-law—backdrop.

RLUIPA's private right of action extends to all "person[s] acting under color of law." 42 U.S.C. § 2000cc-5(4)(A)(iii). This phrase "draws on one of the most well-known civil rights statutes: 42 U.S.C.

§ 1983." *Tanzin*, 592 U.S. at 48; *see* 42 U.S.C. § 1983 (making liable for damages and other forms of relief "[e]very person who, under color of [state law]" deprives another person "of any rights, privileges, or immunities secured by the Constitution and laws" of the United States). Because RLUIPA "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.'" *Tanzin*, 592 U.S. at 48 (quoting Antonin Scalia & Brian Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012)).

And because Congress "borrowed general tort principles" in crafting Section 1983, *Heck v. Humphrey*, 512 U.S. 477, 484 n.4 (1994), this Court has often filled in the gaps of the statute with rules "conforming in general" to common-law tort principles, *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *see, e.g., Monroe v. Pape*, 365 U.S. 167, 187 (1961) (Section 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions"). But this Court has never suggested that *contract* law principles should play a gap-filling role in Section 1983 cases, nor in cases premised on causes of action plainly modeled on Section 1983. In *Talevski*, this Court made that point explicit, refusing to endorse the notion that "the principles governing [contract] suits should be read to displace the plain scope of § 1983's 'species of tort liability.'" *Talevski*, 599 U.S. at 179-80 (alteration in original) (quoting *Heck*, 512 U.S. at 483).

III. There Is No Principled Reason that State Employees in Particular May Not Be Personally Liable for Damages Under RLUIPA.

As discussed above, in *Sabri*, this Court rejected the proposition that Congress may regulate only *direct*

funding recipients, upholding a Spending Clause statute that imposed criminal penalties on a member of the general public. 541 U.S. at 604-07; *see supra* part I.B. But even assuming that, *contra Sabri*, there is *some* limit on Congress's authority to regulate individuals other than the direct recipients of federal funding, that limitation makes little sense in this case for at least three reasons.

A. First, unlike the bribery statute upheld in *Sabri*, RLUIPA does not impose liability on just anyone for violating its terms. It imposes liability on *employees of the state*.

In a case closely analogous to this one, this Court held that there was "no serious doubt about the constitutionality" of imposing criminal penalties on a sheriff's deputy who accepted bribes while working for a county jail that received federal funds. *Salinas*, 522 U.S. at 60. "Whatever might be said about [the bribery statute's] application in other cases," this Court held that its application to the officer of a facility that accepted conditional federal funding plainly "did not extend federal power beyond its proper bounds." *Id.* at 61. In other words, this Court found no substantive limitation on Congress's authority to impose personal liability specifically on a federal funding recipient's agents, officers, or employees.

This makes perfect sense. After all, state employees are in privity with the direct recipient of federal funding—the state—through their employment contracts. This makes them far more than mere beneficiaries of federal funding—their salaries are *paid* with that funding. *See Sabri*, 541 U.S. at 606 ("Money is fungible."); *cf. Grove City Coll. v. Bell*, 465 U.S. 555, 564 (1984) (holding that Title IX applies to private colleges that do not directly receive federal funds, finding

"no hint" of a "distinction between direct and indirect aid").

The state thus acts as an "intermediary" between the federal government and state employees through a vertical chain of privity. *Nat'l Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 468 (1999). The state may even choose to indemnify state employees for violations of RLUIPA, as states frequently did in actions at common law around the time of Section 1983's enactment. *See* James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1906-07 (2010); *Tracy v. Swartwout*, 35 U.S. (10 Pet.) 80, 98-99 (1836) ("Some personal inconvenience may be experienced by an officer who shall be held responsible in damages for illegal acts done under instructions of a superior; but, as the government in such cases is bound to indemnify the officer, there can be no eventual hardship.").

Put simply, state employees have a special relationship with the direct funding recipient—the state. Through that relationship, they are in a chain of privity with the federal government and become indirect recipients of federal funds. And they are uniquely positioned as state actors to be held liable for actions in violation of funding terms that the state knowingly accepted. After all, "[u]nlike the English sovereign perhaps, an American State can act only through its officials." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 114 n.25 (1984).

B. Moreover, for over a century, the default rule has been that individuals who accept jobs working for the state may be personally liable for damages for violating people's federal rights under Section 1983. Every state employee knows—or should know—this. *See Tanzin*, 592 U.S. at 48, 50 ("[T]his Court has long

interpreted [Section 1983] to permit suits against officials in their individual capacities," including for "damages."). RLUIPA did nothing to alter that notice—rather, it merely extended it with respect to the heightened free exercise right contained in the statute's substantive provision. *See* 42 U.S.C. § 2000cc-1(a) (restoring the pre-*Smith* compelling-interest test for free exercise claims).

And Section 1983 itself incorporated the longstanding common-law principle that in tort suits against state officials, damages may be "awarded as appropriate relief," *Tanzin*, 592 U.S. at 49, heightening the notice to state employees that they may be answerable for damages in RLUIPA actions. In English common law and early American cases, government actors were strictly liable for their legal violations, George W. Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 La. L. Rev. 476, 480 (1953), and various writs "allowed individuals to test the legality of government conduct by filing suit against government officials" for damages "payable by the officer." Pfander & Hunt, *supra*, at 1871-75 & n.52 (2010); *see, e.g.*, *Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804); *Wise v. Withers*, 7 U.S. (3 Cranch) 331 (1806); *Elliot v. Swartwout*, 35 U.S. (10 Pet.) 137 (1836). This Court thus held in *Tanzin*, analyzing the identical cause of action in RFRA, that a damages remedy is "'appropriate' relief as viewed through the lens of suits against Government employees." 592 U.S. at 51; *see also id.* (noting that in many cases—much like Mr. Landor's—damages are the "*only*" form of relief that can remedy a statutory violation).

C. Finally, it is worth noting that just two years ago in *Talevski*, this Court reaffirmed that Spending Clause statutes, like all other federal laws, may give rise to privately enforceable rights pursuant to Section

1983 even where Congress does not include a cause of action in the statute itself. *See Talevski*, 599 U.S. at 192 (refusing to "impose a categorical font-of-power condition [on Section 1983] that the Reconstruction Congress did not"). This means that rather than write an express private right of action against state employees into RLUIPA, Congress instead could have "'clear[ly] and unambiguous[ly]' use[d] 'rights-creating terms'" in RLUIPA, *Medina*, 145 S. Ct. at 2229 (quoting *Gonzaga*, 536 U.S. at 284), with the expectation that individuals harmed by state employees' RLUIPA violations would invoke Section 1983 to seek damages from those officials.

But Congress instead chose a more straightforward approach. It explicitly authorized private parties to enforce RLUIPA against state officials by importing Section 1983's language into RLUIPA's express cause of action. *See* 42 U.S.C. § 2000cc-2(a); *id.* § 2000cc-1(4)(A)(iii).

Rather than honor that statutory text, the Fifth Circuit effectively penalized Congress for its clarity. Somehow, under the logic of the court below, a suit against a state employee for damages for violating RLUIPA would exceed Congress's spending power, yet the same exact suit for damages brought via Section 1983 against a state employee for violating the statute at issue in *Talevski* would not. *Compare Talevski*, 599 U.S. at 177-80 (no Spending Clause problem when Spending Clause statute creates private rights that are then enforced through Section 1983), *with* Pet. App. 6a (panel decision below) (Spending Clause violated when Spending Clause statute *itself* creates private right of action for damages against state employee). There is simply no principled reason for that distinction.

* * *

In sum, Congress has significant discretion to craft remedies for violations of spending conditions under the Spending Clause and the Necessary and Proper Clause. That is precisely what it did when it wrote RLUIPA's express cause of action making state employees personally liable for damages for violations of RLUIPA. The court below thus erred in purporting to import contract law to displace the plain meaning of the statute that Congress wrote, and it misapplied the clear-notice requirement from contract law in any event.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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