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 FOR RESPONDENTS

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INTRODUCTION AND SUMMARY OF ARGUMENT

For a quarter century, the States have accepted federal funds each year on a settled understanding: That acceptance does not trigger the availability of individual-capacity claims for damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Fifth Circuit settled it for Louisiana 16 years ago. *See Sossamon v. Lone Star State of Tex.*, 560 F.3d 316 (5th Cir. 2009). It is "unanimously" settled in nine other Circuits. Pet.23–24 (collecting cases). And when petitioner entered the Louisiana prison system, the United States itself had just told this Court that RLUIPA does not "authorize[] damages remedies against state ... officials sued in their personal capacities." Cert. Reply Br. 9, *Tanzin v. Tanvir*, No. 19-71 (U.S. Oct. 30, 2019); Merits Br. 37, 38, *Tanzin v. Tanvir*, No. 19-71 (U.S. Jan. 6, 2020).

That settled understanding is correct. Petitioner's only serious argument otherwise is that this Court's decision in *Tanzin v. Tanvir*, 592 U.S. 43 (2020)—which recognized individual-capacity claims for damages against *federal* officials under the Religious Freedom Restoration Act of 1993 (RFRA)—changes everything. By his telling, the Court need only copy-and-paste *Tanzin* to reach the same conclusion as to *State* officials under RLUIPA. He is mistaken, not least because his attempt to "[c]asually graft[]" *Tanzin* (which had nothing to do with the Spending Clause) onto RLUIPA (which is Spending Clause legislation) is fundamentally misguided. *Ali v. Adamson*, 132 F.4th 924, 932 (6th Cir. 2025) (Sutton, C.J.).

RFRA permits "[a] person whose exercise of religion has been unlawfully burdened [to] 'obtain appropriate relief against a government.'" *Id.* at 46–47 (quoting 42 U.S.C. § 2000bb-1(c)); *see* 42 U.S.C. § 2000cc-2(a). *Tanzin* was able to find a personal-capacity cause of action against federal officials in RFRA only because RFRA defines "government" to include "official[s]" and any "other person acting under color of law"—"nonofficials," the Court called them. 592 U.S. at 47–48. That "other person acting under color of law" definition was critical because it allowed the Court to infer that the term "official" meant a "person" who may be sued in his personal capacity, particularly given how the Court historically has understood similar "under color of any statute" language in 42 U.S.C. § 1983. *Id.*

A materially identical definition of "government" appears in RLUIPA, 42 U.S.C. § 2000cc-5(4)(A)—so petitioner tries to run the same play by using RLUIPA's reference to nonofficials acting under color of State law to suggest that "official" includes officials in their personal capacities. But, unlike with RFRA, RLUIPA is unconstitutional insofar as it permits a cause of action against nonofficials. That is because of "the way Spending Clause 'statutes operate': by 'conditioning an offer of federal funding on a promise by the recipient ... in what amounts essentially to a contract between the Government and the recipient of funds.'" *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022) (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998)). The very "'legitimacy'" of Congress' exercise of its spending power thus depends "on 'whether the [recipient] voluntarily and knowingly accepts the terms of th[at]

contract.'" *Id.* (quoting *Barnes v. Gorman*, 536 U.S. 181, 186 (2002)) (alterations from *Cummings*; internal quotation marks omitted).

Nonofficials, however, are not parties to the spending contract because they are not recipients of federal funding. If Congress nonetheless could impose conditions on non-recipient nonofficials, then this Court's Spending Clause cases—which are concerned with whether "a grant recipient" may be held liable for "violat[ing] the terms of spending-power legislation," *Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219, 2239 (2025)—would make little sense. That is why courts of appeals across the Nation have refused to recognize a cause of action against non-recipients—and perhaps why Congress apparently has never tried to use its Spending Clause authority to create such a cause of action.

The upshot is that RLUIPA's definition of "government" to include "any other person acting under color of State law," 42 U.S.C. § 2000cc-5(4)(A)(iii), is unconstitutional to the extent that it purports to authorize suits against such nonofficials. Under RLUIPA's severability provision, *id.* § 2000cc-3(i), the proper route is to treat that definition as void and severed while leaving the remainder intact.

By eliminating that "nonofficials" linchpin of *Tanzin*, this case becomes eminently straightforward. Does RLUIPA create a right of action against *officials* in their private capacities for damages? No, for three reasons.

First, the ordinary Spending Clause clear-statement rule is uniquely heightened in this context given

the parallel operation of the federalism canon implicated by Congress' intrusion into State prisons; the unprecedented nature of a putative cause of action against private individuals under Spending Clause legislation; and Congress' quarter-century silence in the face of a nationwide refusal to recognize such a cause of action under RLUIPA.

Second, Congress did not unambiguously define "government" to include officials in their personal capacities. The ordinary meaning of "official" alone—a person "invested with an office"—does not signal one way or the other in what capacity he may be sued. 592 U.S. at 47. And without the "acting under color of law" language and § 1983 context on which *Tanzin* relied, that definition does not become any clearer. Through RLUIPA, therefore, Congress did not unambiguously authorize "injured parties [to] sue [State] officials in their personal capacities." *Id.*

Third, even if RLUIPA did permit personal-capacity suits against State officials, the term "appropriate relief" does not clearly and unambiguously authorize a damages remedy. That term "is open-ended and ambiguous about what types of relief it includes"—and it "is inherently context dependent." *Sossamon v. Texas*, 563 U.S. 277, 286 (2011). Four aspects of the RLUIPA context control here: *one*, the Court has deemed it "plausible" that "relief" refers only to equitable relief, *id.* at 288; *two*, spending contracts under RLUIPA are "contracts with a sovereign," which "do not traditionally confer a right of action for damages to enforce compliance," *id.* at 290; *three*, Congress' reference to injunctive and declaratory relief elsewhere creates further ambiguity about what "appropriate relief"

means; and *four*, creating a damages right of action under spending-power legislation would be unprecedented. Given these realities, Chief Judge Sutton was exactly right to hold that Congress did not "'clearly,' 'expressly,' 'unequivocally,' and 'unambiguously'" authorize damages awards against State officials in their individual capacities under RLUIPA. *Ali*, 132 F.4th at 933 (citations omitted).

But, even if Congress had spoken clearly, affirmance would remain proper for two reasons. *First*, individual-capacity actions against non-recipients exceed Congress' spending power, regardless of whether the non-recipient is an official or a nonofficial. And *second*, petitioner cannot change history: The States have executed spending contracts for a quarter century against the backdrop of a widespread consensus foreclosing individual-capacity claims under RLUIPA. Accordingly, their contracts should be presumed to reflect that consensus view.

Finally, affirming on any of the foregoing grounds would avoid a much larger constitutional question lurking in the background—namely, whether RLUIPA itself exceeds Congress' spending power. In *NFIB v. Sebelius*, seven Justices recognized that a condition based on the potential forfeiture of a State's federal Medicaid funds was unconstitutionally coercive. 567 U.S. 519 (2012), Here, federal Medicaid funding is, in part, what triggers RLUIPA coverage at State prisons. But, if a State can avoid RLUIPA only by withdrawing from Medicaid, then that would be precisely the same condition the *NFIB* Court struck down. Again, the Court need not reach this issue, but it should be aware

given petitioner's representation (Br.35) that "[t]here is no commandeering or coercion."

The judgment below should be affirmed.

ARGUMENT

I. RLUIPA Does Not Clearly and Unambiguously Authorize Personal-Capacity Claims Against State Officials for Damages.

RLUIPA authorizes a person to "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). Relevant here, Congress defined "government" to mean:

> (i) a State, county, municipality, or other governmental entity created under the authority of a State;
>
> (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
>
> (iii) any other person acting under color of State law.

Id. § 2000cc-5(4)(A). Similar to the threshold question in *Tanzin*, the threshold question here is whether the term "official" in clause (ii) includes a State official in his personal capacity such that "appropriate relief against a government" includes appropriate relief against a State official in his personal capacity. Unlike in *Tanzin*, however, the answer in this Spending Clause context is no.

Tanzin relied on language identical to clause (iii)—"nonofficials" acting under color of law—to read the

term "official" in RFRA as including an official in his individual capacity. 592 U.S. at 48. In RLUIPA, however, clause (iii)'s provision for suits against nonofficials, however, is unconstitutional because it exceeds Congress' spending authority to impose conditions on actual funding recipients. And without clause (iii)'s authorization of suits against *nonofficials*, a *Tanzin*-style analysis comes up short, making this is a straightforward case: Congress did not unambiguously permit suits against *officials* in their personal capacities, much less suits for damages. If it had, such a cause of action would be unconstitutional for all the reasons the authorization for suits against nonofficials is unconstitutional. And in all events, that the States have entered into spending contracts for decades based on the settled understanding that individual-capacity suits are unavailable under RLUIPA independently requires affirmance.

A. RLUIPA Is Unconstitutional to the Extent That It Authorizes a Cause of Action Against Nonofficials.

Tanzin depended "first" on a determination that "injured parties can sue Government officials in their personal capacities." 592 U.S. at 47. That determination rested on RFRA's definition of "government": "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States." 42 U.S.C. § 2000bb-2(1). And the Court gave three reasons for interpreting "official" to include federal officials in their personal capacities.

One, a common definition of "official" refers "to the actual person 'who is invested with an office.'" *Tanzin*,

592 U.S. at 47 (citation omitted). But, the Court appeared to recognize, that definition alone did not clearly signal one way or the other whether "official" included the official in his personal capacity. So, the Court offered second and third reasons. *Two*, the "other person acting under color of law" parenthetical shows that (a) relief may run against "a person" as opposed to the actual government and (b) "officials," too, are "persons"—"[i]n other words, the parenthetical clarifies that 'a government' includes both individuals who are officials acting under color of law *and* other, additional individuals who are nonofficials acting under color of law." *Id.* at 47–48. And *three*, the "other person acting under color of law" parenthetical "draws on one of the most well-known civil rights statutes: 42 U.S.C. § 1983"—which "this Court has long interpreted [] to permit suits against officials in their individual capacities." *Id.* at 48.

The "other person acting under color of law" parenthetical—which the Court took to mean "nonofficials acting under color of law"—was thus integral to *Tanzin*'s reasoning. *Id.* RLUIPA, too, similarly defines "government" to include "any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A)(iii). Thus, RLUIPA—as a condition attached to federal funds—likewise creates a cause of action against "nonofficials acting under color of [State] law," *Tanzin*, 592 U.S. at 48, who violate RLUIPA.

That is unconstitutional. This Court's Spending Clause precedents inherently limit the imposition of spending-power conditions to funding recipients who are parties to the spending contract—not non-party "nonofficials." The courts of appeals have held as much

over the past three decades. That view also is justified by serious constitutional concerns raised by a contrary rule. And petitioner has no authority to justify such a rule. Accordingly, the proper route is to treat as void and severed, 42 U.S.C. § 2000c-3(i), the "any other person acting under color of State law" definition, *id.* § 2000cc-5(4)(A)(iii), to the extent that it informs who is a "government" defendant.

1. Non-recipients are not parties to the spending contract.

Three years ago, this Court reaffirmed a central feature of its spending-power jurisprudence: "A particular remedy is [] 'appropriate relief' in a private Spending Clause action 'only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature." *Cummings*, 596 U.S. at 220 (quoting *Barnes*, 536 U.S. at 187) (emphasis omitted). That rule assumes that only *a funding recipient* may be liable for a breach of the spending contract, and even then, only if the actual recipient is on notice that it has exposed *itself* to such liability. Those assumptions are fundamental—because, without them, the Court's spending-power jurisprudence would fall apart.

The Court's cases turn on a consent-based understanding of Spending Clause legislation. "[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Id.* at 216 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)) (alterations in original). That is important because, "[u]nlike [with] ordinary legislation," legislation enacted under

Congress' spending power does not rest on sovereign congressional authority. *Id.* at 219. Spending-power legislation instead derives its "legitimacy" solely from the consent Congress extracts from "the recipient of funds." *Id.* (citations omitted). For that reason, "the 'legitimacy of Congress' power' to enact Spending Clause legislation" ultimately "rests ... on 'whether the [recipient] voluntarily and knowingly accepts the terms of th[at] contract.'" *Id.* (citation and quotation marks omitted).

Because Spending Clause legislation is illegitimate without a funding recipient's consent, this Court's cases center on the recipient. The legislation at issue, for example, "must [be] view[ed] ... from the perspective of a state official who is engaged in the process of deciding whether the State should accept [the] funds." *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). At that time, would recipients "'clearly understand ... the obligations' that would come along with doing so"? *Cummings*, 596 U.S. at 219 (quoting *Arlington*, 548 U.S. at 296). Only if the answer is yes may those "funding recipients"—"the receiving entit[ies] of federal funds"—"be held liable." *Id.* (citations omitted).

As the Court recently summed things up, this contract analogy "regularly" serves two purposes. *Id.* (quoting *Barnes*, 536 U.S. at 186). It "defin[es] the scope of conduct for which funding recipients may be held liable for money damages." *Id.* (quoting *Barnes*, 536 U.S. at 186). And it "similarly limits 'the scope of available remedies.'" *Id.* (quoting *Gebser*, 524 U.S. at 287). "After all, when considering whether to accept federal funds, a prospective recipient would surely

wonder not only what rules it must follow, but also what sort of penalties might be on the table." *Id.* at 220.

Perhaps because the Court's cases confine Congress' spending power to conditions imposed on actual recipients, neither petitioner nor his *amici* cite a single case where Congress tried to impose a spending-power condition on a non-recipient. Petitioner repeatedly cites (Br.3, 12, 26) *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992), as an example of the Court permitting damages against "non-sovereign defendants." But there is nothing remarkable about the enforcement of spending-power conditions against public and private *recipients* of federal funding alike—they are parties to the spending contract. *Non-recipients*, by contrast, are not.

2. The courts of appeals have foreclosed personal-capacity claims against non-recipients.

An overwhelming majority of the courts of appeals have enforced this fundamental feature of the Court's Spending Clause cases—and, each year over the past quarter century, the States have entered into spending contracts under RLUIPA against that backdrop.

a. Before Congress enacted RLUIPA, the courts of appeals agreed that Congress' spending power is limited to imposing conditions upon recipients of federal funding. That issue commonly arose in the context of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681—also Spending Clause legislation—which prohibits discrimination in education programs and activities that receive federal financial assistance.

Take *Smith v. Metropolitan School District Perry Township*, 128 F.3d 1014 (7th Cir. 1997). In that case, a high school student sued her principal and assistant principal in their individual capacities over a sexual relationship instigated by a male teacher. The Seventh Circuit determined that no such individual-capacity claims were viable, including for a core reason relevant here: "The fact that Title IX was enacted pursuant to Congress's spending power is evidence that it prohibits discriminatory acts *only by grant recipients*." *Id.* at 1019 (quoting *Rowinsky v. Bryan Indep. Sch. Dist.*, 80 F.3d 1006, 1012 (5th Cir. 1996) (alteration omitted)).

In so reasoning, the Seventh Circuit agreed with the Fifth Circuit's own perspective—that, "[a]s an exercise of Congress's spending power, Title IX makes funds available to a recipient in return for the recipient's adherence to the conditions of the grant." *Id.* (quoting *Rowinsky*, 80 F.3d at 1012–13 (cleaned up by the Seventh Circuit)); *accord Pederson v. La. State Univ.*, 213 F.3d 858, 876 (5th Cir. 2000) (citing *Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 654 (5th Cir. 1997)). As in other cases predating this Court's decision in *Davis ex rel. LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629, 640 (1999), both circuits entertained the "plausib[ility]" of a grant recipient also being liable for "discriminatory behavior by third parties." *Smith*, 128 F.3d at 1019 (quoting *Rowinksy*, 80 F.3d at 1013). But they thought that "the more probable inference is that the condition prohibits certain behavior by the grant recipients themselves." *Id.* (quoting *Rowinksy*, 80 F.3d at 1013). In that way, the courts recognized that, regardless of

the basis for a grant recipient's liability (its own conduct or others' conduct or some combination), only grant recipients themselves may be subject to Spending Clause conditions.

The Eleventh Circuit thereafter agreed with the Fifth and Seventh Circuits. "Congress intended Title IX to be a typical contractual spending-power provision," the Eleventh Circuit wrote. *Floyd v. Waiters*, 133 F.3d 786, 789 (11th Cir. 1998), *vacated* 525 U.S. 802 (1998), *reinstated* 171 F.3d 1264 (11th Cir. 1999). "So, recipients—local school districts—that accept these federal funds agree to abide by the conditions placed on the funds, which, in essence, forms a 'contract.'" *Id.* And that is the kicker: "From what we have already written about the contractual nature of the liability, we think it follows that, because the contracting party is the grant-receiving local school district, a 'Title IX claim can only be brought against a grant recipient [—that is, a local school district—] and not an individual.'" *Id.* (quoting *Smith*, 128 F.3d at 1019, and citing *Rowinsky*, 80 F.3d at 1012–13 (alteration added by the Eleventh Circuit)); *accord Hartley v. Parnell*, 193 F.3d 1263, 1270 (11th Cir. 1999) ("Individual school officials ... may not be held liable under Title IX.").

The Eighth Circuit likewise agreed. It emphasized that "Title IX operates to condition 'an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.'" *Kinman v. Omaha Pub. Sch. Dist.*, 171 F.3d 607, 610–11 (8th Cir. 1999) (quoting *Gebser*, 524 U.S. at 286). "Agreeing with" the other circuits, therefore, the

Eighth Circuit held that, "because they are not grant recipients, school officials may not be sued in their individual capacity under Title IX." *Id.* at 611.

b. These precedents are the foundation for the wall of post-RLUIPA precedents foreclosing individual-capacity claims.

Start with the Eleventh Circuit's unequivocal rejection of such claims nearly 20 years ago, which was based on its earlier decisions in *Hartley* and *Floyd*:

> Our court, in addressing other federal statutes that emanate directly from Congress' Spending Power—that is, federal statutes that condition a state's receipt of federal funding on the state's adherence to certain conditions—has repeatedly held that Congress cannot use its Spending Power to subject a non-recipient of federal funds, including a state official acting [in] his or her individual capacity, to private liability for monetary damages.

Smith v. Allen, 502 F.3d 1255, 1273 (11th Cir. 2007) (citing *Hartley*, 193 F.3d at 1270). That basic rule, the Eleventh Circuit continued, stems from the contract-based nature of spending-power legislation: "[T]he courts have consistently recognized the limited reach of Congress' Spending Power legislation, concluding that statutes passed under the Spending Clause may, as a condition of funding, subject the grant *recipient* to liability in a private cause of action, but that the Spending Power cannot be used to subject individual defendants, such as state employees, to individual liability in a private cause of action." *Id.* at 1274 (citing *Hartley*, 193 F.3d at 1270; *Rosa H.*, 106 F.3d at 654).

And under those precedents, "section 3 of RLUIPA—a provision that derives from Congress' Spending Power—cannot be construed as creating a private action against individual defendants for monetary damages." *Id.* at 1275; *accord Hathcock v. Cohen*, 287 F. App'x 793, 798 (11th Cir. 2008).

Two years later, the Fifth Circuit followed suit. In *Sossamon v. Lone Star State of Texas*, the Fifth Circuit reprised the Eleventh Circuit's reasoning in *Smith*: that "Spending Clause legislation is not legislation in its operation; instead, it operates like a contract, and individual RLUIPA defendants are not parties to the contract in their individual capacities." 560 F.3d 316, 328 (5th Cir. 2009) (footnote omitted). Like the Eleventh Circuit, the Fifth Circuit "decline[d] to read Congress's permission to seek 'appropriate relief against a government' as permitting suits against RLUIPA defendants in their individual capacities." *Id.* at 329. And, in reaching that conclusion, the Fifth Circuit likewise called back to its own Title IX precedents, which recognize liability only for "the recipient of federal funds." *Id.* at 328 n.35 (quoting *Pederson*, 213 F.3d at 876 (emphasis omitted), in turn citing *Rosa H.*, 106 F.3d at 654).

Just a few months after *Sossamon*, the Seventh Circuit added its agreement. *See Nelson v. Miller*, 570 F.3d 868 (7th Cir. 2009). The Seventh Circuit reiterated its prior observation that "the fact that a statute 'was enacted pursuant to Congress's spending power is evidence that it prohibits discriminatory acts only by grant recipients.'" *Id.* at 888 (quoting *Smith*, 128 F.3d at 1019, in turn quoting *Rowinsky*, 80 F.3d at

1012). Citing "serious questions" about whether Congress would "exceed[] its authority under the Spending Clause" by authorizing individual-capacity claims for damages, the Seventh Circuit thus joined the Fifth and Eleventh Circuits in "declin[ing] to read RLUIPA as allowing damages against defendants in their individual capacities." *Id.* at 889.

Similarly, the Eighth Circuit reached the same conclusion by citing its prior decision in *Kinman*. *See Barnett v. Short*, 129 F.4th 534, 542 (8th Cir. 2025). A prison official in her individual capacity, the Eighth Circuit explained, "has not consented to any conditions of federal funding, so it's hard to understand how Congress's spending power can be brought to bear on her directly." *Id.* The Eighth Circuit emphasized that it had "reached the same conclusion for claims brought under Title IX" in *Kinman*—and although "Title IX's remedial scheme differs from RLUIPA's," "we anchored our conclusion in *Kinman* to the fact that the spending power doesn't permit individual-capacity claims against officials who aren't funding recipients." *Id.* at 543 (citing *Kinman*, 171 F.3d at 611). "So too with RLUIPA." *Id.*

All the same for the Third, Ninth, and Tenth Circuits. *See, e.g.*, *Wood v. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014) (RLUIPA "does not authorize suits against a person in anything other than an official or governmental capacity, for it is only in that capacity that the funds are received."); *Sharp v. Johnson*, 669 F.3d 144, 154–55 (3d Cir. 2012) ("RLUIPA cannot impose direct liability on Defendants, who were not parties to the contract created between Pennsylvania and the federal government."); *Stewart v. Beach*, 701 F.3d 1322,

1335 (10th Cir. 2012) ("[T]here is no cause of action under RLUIPA for individual-capacity claims.").

The Second Circuit's precedents warrant special attention because that court addressed this issue in the very decision that this Court affirmed in *Tanzin*. Prior to *Tanzin*, the Second Circuit had held that RLUIPA "was enacted pursuant to Congress' spending power, which allows the imposition of conditions, such as individual liability, only on those parties actually receiving the state funds." *Washington v. Gonyea*, 731 F.3d 143, 145 (2d Cir. 2013) (internal citation omitted). In *Tanvir v. Tanzin*, 894 F.3d 449 (2d Cir. 2018), the Second Circuit recognized that its "holding that RFRA permits the recovery of money damages against federal officers sued in their individual capacities [could be seen to] conflict with our decision in ... *Gonyea*." *Id.* at 465. But the Second Circuit explained why that was not so: *Gonyea*'s conclusion in the RLUIPA context is attributable to "the constitutional basis upon which Congress relied in enacting RLUIPA"—the Spending Clause power, which is limited to imposing conditions on actual funding recipients. *Id.* Because RFRA is not subject to the same framework, *Tanzin* and *Gonyea* "are entirely consistent." *Id.* at 466.

After this Court's decision in *Tanzin*, moreover, numerous circuits have reaffirmed their view of RLUIPA, expressly distinguishing RFRA based on the different sources of constitutional authority underpinning the two statutes. *See Barnett*, 129 F.4th 534; *Fuqua v. Raak*, 120 F.4th 1346 (9th Cir. 2024); *Tripathy v. McKoy*, 103 F.4th 106 (2d Cir. 2024); Pet.App.1a–13a.

c. Consistent with this nationwide consensus, Louisiana has accepted myriad federal funds over the past decades—and the Fifth Circuit repeatedly has rejected any notion that Louisiana thereby triggered the availability of individual-capacity claims under RLUIPA. *See, e.g.*, *Coleman v. Lincoln Par. Detention Ctr.*, 858 F.3d 307, 309 & n.7 (5th Cir. 2017) (per curiam) (citing *Sossamon*, 560 F.3d at 329–31); *LaVergne v. Stutes*, 2021 WL 2877789, at *6 (5th Cir. July 8, 2021).[1]

3. Subjecting non-recipients to spending-power conditions would raise serious constitutional problems.

Although the Court's Spending Clause precedents alone explain—and confirm the validity of—the courts of appeals' refusal to permit individual-capacity claims against non-recipients, that rule is independently warranted in light of striking constitutional concerns that would otherwise arise if such claims were permitted.

a. "The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting

[1] The federal district courts in Louisiana are in accord. *See, e.g.*, *Thomas v. Cooley*, 2024 WL 4537088, at *5 (W.D. La. Sept. 27, 2024), *report and recommendation adopted* 2024 WL 4537152 (W.D. La. Oct. 21, 2024); *Sterling v. Narcisse*, 2024 WL 4356267, at *5 (E.D. La. June 27, 2024), *report and recommendation adopted* 2024 WL 4346535 (E.D. La. Sept. 30, 2024); *Garcia v. LeBlanc*, 2022 WL 193019, at *6 (M.D. La. Jan. 20, 2022); *Porter v. Manchester*, 2021 WL 389090, at *4 (M.D. La. Jan. 4, 2021), *report and recommendation adopted* 2021 WL 388831 (M.D. La. Feb. 3, 2021); *Milon v. LeBlanc*, 496 F. Supp. 3d 982, 985, 988 (M.D. La. 2020).

the people, from whom all governmental powers are derived." *Bond v. United States*, 564 U.S. 211, 221 (2011). And while federalism on the one hand "preserves the integrity, dignity, and residual sovereignty of the States," on the other hand it also "secures to citizens the liberties that derive from the diffusion of sovereign power." *Id.* (citation omitted). In particular, it "ensur[es] that laws enacted in excess of delegated governmental power cannot direct or control their actions." *Id.* at 222. "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power." *Id.* "When government acts in excess of its lawful powers, that liberty is at stake." *Id.*

One "vital constitutional principle [that] must not be forgotten," however, is that "[l]iberty requires accountability." *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 56–57 (2015) (Alito, J., concurring). "When citizens cannot readily identify the source of legislation or regulation that affects their lives, Government officials can wield power without owning up to the consequences." *Id.* at 57. Similarly, "[i]f a person could be deprived of [] private rights on the basis of a rule (or a will) not enacted by the legislature, then he [is] not truly free." *Id.* at 76 (Thomas, J., concurring in the judgment).

b. Permitting a funding recipient to subject nonparties to the conditions of a spending contract—simply by the recipient's acceptance of funding—would violate these principles in at least two ways.

First, where a State is the funding recipient, the State could unilaterally consent to a deprivation of its citizens' individual liberty and property outside of the

lawmaking process. Congress, of course, has no independent "sovereign" authority to do so. *Cummings*, 596 U.S. at 219 (quoting *Barnes*, 536 U.S. at 186). And a State in this scenario has exercised no lawmaking power, instead wielding only its (self-serving) consent to the deprivation in exchange for money.

Worse, if and when said citizen is displeased with the state of affairs, to whom should he run? If he complains to the State, the State can simply "point its finger at the federal government for tying needed funds to an undesired liability." *Sossamon*, 560 F.3d at 329. But, if he then complains to Congress, "Congress could reciprocate by pointing its finger at the state legislature for accepting the funds and visiting liability on its citizens by the state's own choice." *Id.* These blurred lines of responsibility would foster a world in which States and the federal government could freely "wield power without owning up to the consequences." *Dep't of Transp.*, 575 U.S. at 57 (Alito, J., concurring).

In this regard, the Court's decision in *South Dakota v. Dole*, 483 U.S. 203 (1987), represents an especially good example of how limiting conditions to funding recipients avoids this constitutional problem. There, Congress conditioned a percentage of South Dakota's federal highway funds on whether the "lawful" drinking age in South Dakota was 21 years old. *Id.* at 205 (citation omitted). If so, then South Dakota could keep its funds, but if not, then not. Note that Congress imposed the condition on the State itself—either to maintain a law setting the drinking age at 21 years old or to enact such a law. *Accord* Br.44 (citing

Randolph v. Donaldson, 13 U.S. 76 (1815), where Congress conditioned funds on the State "pass[ing] laws" to create keeper liability).

If a disgruntled 19-year-old bourbon enthusiast disagreed with that law, therefore, he would know precisely whom to hold accountable. If he violated the law, he could suffer a deprivation of liberty or property only at the hands of the State through a legal process established by the State. And if the State (in the federal government's view) insufficiently enforced that law, the federal government's recourse was to withhold the specified percentage of highway funds. That is federalism and constitutional accountability in action.

With great respect for Judge Oldham, that explains the mistake in his remark that, "[i]f South Dakota can agree to criminalize the behavior of its 19-year-old bourbon enthusiasts, it's unclear why Louisiana cannot agree to make its prison officials liable" under RLUIPA. Pet.App.30a. Perhaps the comparison would be apt if Congress had required Louisiana to enact a law effectuating RLUIPA's provisions. But Congress did not take that liberty-protective step. Instead, the more apt comparison to *Dole* is to say that, if petitioner were correct in this case, Congress could have simply imposed (and attached individual liability for violations of) a national minimum drinking age on its own so long as each State accepted highway funds—no State law necessary. That is not the law. Not least because this Court has long rejected a view of the Spending Clause that would essentially allow the federal government to buy police powers. *See United States v. Butler*, 297 U.S. 1, 77 (1936) (rejecting any

understanding of the spending power that would convert the federal government "into a central government exercising uncontrolled police power in every state of the Union, superseding all local control or regulation of the affairs or concerns of the states").[2]

Second, and relatedly, another set of constitutional concerns would arise where a *private* entity is the funding recipient. For there, too, petitioner's rule that Congress may impose spending conditions on non-recipients would apply. So, what of non-recipient States and State officials? Or private non-parties? On petitioner's view, private entities could simply contract with the federal government to supplant State law—and penalize State officials in their individual capacities and private non-parties to the extent the federal government believes necessary to advance the goals of the contract.

In this respect, petitioner's unbounded view of the spending power tracks the same view that the United States recently refused to disavow before this Court. *See* Tr. of Oral Arg. at 72, *Moyle v. United States*, Nos. 23-726 & 23-727 (U.S. Apr. 24, 2024) (Justice Alito: "[H]ow can you impose restrictions on what Idaho can criminalize simply because hospitals in Idaho have chosen to participate in Medicare?"); *id.* at 98 (Justice

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[2] This addresses petitioner's speculation (Br.47–48) about how RLUIPA's provisions could have been embedded in other contracts signed by a particular State official. In such hypotheticals, assuming a valid contract, the official would have (a) expressly consented to (b) specific obligations that (c) would be enforceable by a specific person (d) in a breach-of-contract action. That quite plainly is not this case.

Barrett: "[I]t does seem odd that through a side agreement between a private entity and the federal government, the private entity can get out of state law, right?"); *id.* at 100 (Justice Gorsuch: "Congress could prohibit gender reassignment surgeries across the nation, it could ban abortion across the nation, through the use of its Spending Clause authority, right?").

This would be an upside-down world. Non-recipients "cannot be bound by terms that they never accepted"—especially sovereign States, State officials, and private citizens. *Moyle v. United States*, 603 U.S. 324, 357 (2024) (Alito, J., dissenting). Indeed, to hold otherwise would illustrate how far afield we would be from ordinary understandings at the Founding. *See Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 212 (2023) (Thomas, J., dissenting) ("[E]ven those who held the broadest conception of the spending power recognized that it was only a power to spend, not a power to impose binding requirements with the force of federal law.").

4. Petitioner's Necessary and Proper Clause argument is unavailing.

Because petitioner has no Spending Clause cases on his side, he directs the Court's attention instead to a long line of cases acknowledging Congress' "implied power to criminalize any conduct that might interfere with the exercise of an enumerated power." *United States v. Comstock*, 560 U.S. 126, 147 (2010). The Court is well familiar with those cases involving wire fraud, 18 U.S.C. § 1343, and property fraud and theft, *id.* § 666(a)(1)(A). *See, e.g.*, *Kelly v. United States*, 590 U.S. 391 (2020) (§ 1343 and § 666(a)(1)(A)); *Ciminelli v. United States*, 598 U.S. 306 (2023) (§ 1343); *Skilling*

v. United States, 561 U.S. 358 (2010) (§ 1343). And the Court recently considered a related bribery statute, 18 U.S.C. § 666(a)(1)(B). *See Snyder v. United States*, 603 U.S. 1 (2024).

Petitioner takes a special interest in § 666 and associated cases because that statute criminalizes bribery, theft, and fraud as they relate to entities receiving federal financial assistance. *See, e.g.*, Br.4, 14 (citing *Sabri v. United States*, 541 U.S. 600 (2004)). Specifically, § 666 applies whenever an entity receives in excess of $10,000 in federal funding during a one-year period. § 666(b). And it criminalizes property fraud and theft regarding property worth more than $5,000 (§ 666(a)(1)(A)), as well as bribery regarding any business or transaction worth more than $5,000 (§ 666(a)(1)(B)). That, petitioner announces, is a clear sign that Congress may regulate non-parties to the spending contract—and he loudly repeats this Court's statement in one case that there was "no serious doubt about the constitutionality of § 666(a)(1)(B) as applied to the facts of [that] case," *Salinas v. United States*, 522 U.S. 52, 60 (1997). *See, e.g.*, Br.4, 14, 31.

Virtually every court of appeals in the country has rejected this attempt to sustain an individual-capacity claim under RLUIPA[3]—for at least three good reasons.

First, these statutes are not spending-power conditions. They are "exercises of authority" under "the

[3] *See, e.g.*, *Barnett*, 129 F.4th at 543 (*Sabri* is "too dissimilar"); *Wood*, 753 F.3d at 903 (reliance on *Sabri* is "not [] sensible"); *Tripathy*, 103 F.4th at 115 (*Sabri* is "easily distinguishable"); *Sharp*, 669 F.3d at 155 n.15 (*Sabri* is "inapposite"); Pet.App.11a (petitioner's "reading of *Sabri* is flawed").

Necessary and Proper Clause" that are "derivative of, and in service to, a granted power." *NFIB*, 567 U.S. at 560 (Roberts, C.J.); *see id.* (describing *Sabri* and § 666(a)(1)(B) as "criminalizing bribes involving organizations *receiving federal funds*"); *accord Comstock*, 560 U.S. at 136 ("Congress routinely exercises its authority to enact criminal laws in furtherance of ... its enumerated powers[.]" (citing *Sabri*)). They thus say exactly nothing about the limitations on Congress' spending power itself.

Second, these types of criminal statutes have a lengthy historical pedigree. *See Comstock*, 560 U.S. at 135–36 (citing cases); *Sabri*, 541 U.S. at 614 n.2 (Thomas, J., concurring in the judgment) ("Criminalizing the theft (by fraud or otherwise) or embezzlement of federal funds themselves fits comfortably within Congress' powers." (citing *United States v. Hall*, 98 U.S. 343 (1879))); *see also* Br.44–45 (invoking Congress' earlier regulation of embezzlement, false claims, kickbacks, and the like). While the Court has acknowledged that "even a longstanding history of related federal action" does not automatically render new Necessary and Proper Clause legislation constitutional, "[a] history of involvement" by Congress in similar activities is instructive. *Comstock*, 560 U.S. at 137; *see id.* at 142 (stating that the law at issue was "a modest addition to a longstanding federal statutory framework, which has been in place since 1855"). Here, of course, RLUIPA's putative cause of action against non-recipients is not a criminal statute at all; it is a class of one in our Nation's history; and if Congress had attempted to install criminal provisions in RLUIPA, those provisions would be blatantly unlawful, unprecedented as they would be.

Third, these statutes have a common feature that is lacking in RLUIPA: They target offenders "who convert public spending into unearned gain." *Sabri*, 541 U.S. at 608. That targeted approach stems from a concern for "protect[ing] the integrity of the vast sums of money distributed through Federal programs from theft, fraud, and undue influence by bribery." *Id.* at 606 (citation omitted). Of course "not every bribe or kickback" can be "traceably skimmed from specific federal payments, or show up in the guise of a *quid pro quo* for some dereliction in spending a federal grant." *Id.* But, as the monetary thresholds ($10,000 in financial assistance, and $5,000 of value in illicit dealings) in § 666 reflect, the theory justifying statutes like § 666 is that the federal government is paying into a program that is losing monetary value. (The same goes for the False Claims Act and other statutes addressing kickbacks, bribes, and fraud in federally funded programs. Br.44–45.) And Congress, the Court has said, has "[t]he power to keep a watchful eye on expenditures and on the reliability of those who use public money," which "is bound up with congressional authority to spend in the first place." *Sabri*, 541 U.S. at 608.

RLUIPA is self-distinguishing. Its unconstitutional private right of action against non-recipient nonofficials has nothing to do with the defendant's handling of money, financial corruption, impairment of the prison's budget or property, or anything else that plausibly could be considered "convert[ing] public spending into unearned private gain." *Id.*

Petitioner responds by shifting the goalposts: "[R]espondents," he says, "more than 'directly threatened the 'object' of RLUIPA—*they blatantly violated* RLUIPA and its central object of protecting religious exercise." Br.43. By that logic, Congress may spend money toward any policy and then attach liability to non-recipients when they allegedly impede the implementation of that policy.

Petitioner fundamentally misapprehends these cases. As just explained, the unique and longstanding exercise of Necessary and Proper Clause authority in statutes like § 666 is necessarily tied to attacking "unearned private gain." *Sabri*, 541 U.S. at 608. In fact, *Sabri* itself disavowed considering § 666 to be a spending tool—"a means for bringing federal economic might"—to affect "a State's own choices of public policy." *Id.* Yet that is how petitioner reimagines the Necessary and Proper Clause: to give Congress all enforcement tools necessary to police recipients and non-recipients alike, ensuring that they appropriately carry out Congress' preferred policy.

That view has no basis in this Court's cases—and in fact, the Court has rejected that overly broad understanding. "[L]aws that undermine the structure of government established by the Constitution ... are not '*proper* [means] for carrying into Execution' Congress's enumerated powers. Rather, they are, 'in the words of The Federalist, merely acts of usurpation which deserve to be treated as such.'" *NFIB*, 567 U.S. at 559 (Roberts, C.J.) (quotation marks and citations omitted); *accord id.* at 560 ("It is of fundamental importance to consider whether essential attributes of state sovereignty are compromised by the assertion of

federal power under the Necessary and Proper Clause ...." (quoting *Comstock*, 560 U.S. at 153 (Kennedy, J., concurring in judgment))); *see supra* Section I.A(3) (identifying the constitutional problems with petitioner's position). In the fraud context, the Court's "oft-repeated instruction" has been: "Federal prosecutors may not use property fraud statutes to 'set[] standards of disclosure and good government for local and state officials.'" *Kelly*, 590 U.S. at 403 (citation omitted); *see Snyder*, 603 U.S. at 15 ("[F]ederalism principles weigh heavily in favor of reading § 666 as a bribery statute and not as a gratuities law.").

The danger with the bribery and fraud statutes, the Court has long recognized, is that "the Federal Government could use the criminal law to enforce (its view of) integrity in broad swaths of state and local policymaking." *Kelly*, 590 U.S. at 404. Federal law does not permit that "ballooning of federal power." *Id.* For that reason, the story of this Court's cases is a story of rejecting "sweeping" theories of congressional power for "narrow" ones. *Snyder*, 603 U.S. at 15 (citation omitted). The Court need only say as much again to reject petitioner's inapt reliance on those cases.

5. As non-recipients, nonofficials acting under color of State law cannot be subject to suit under RLUIPA.

As the discussion above shows, Congress' spending power is limited to imposing conditions on actual funding recipients. And that reveals the problem with RLUIPA's creation of a right of action against "nonofficials," *Tanzin*, 592 U.S. at 48, for "breaching" the RLUIPA spending contract. By definition, a nonoffi-

cial is not an "official of" a "State, county, municipality, or other governmental entity created under the authority of a State." 42 U.S.C. § 2000cc-5(4)(A)(i), (ii). And RLUIPA applies only to the operations of a State entity that receives federal funding. *Id.* § 2000cc-1(b)(1) (RLUIPA applies where a "substantial burden is imposed in a program or activity that receives federal financial assistance"); *id.* § 2000cc-5(6) (defining "program or activity" to mean the operations of an entity described in § 2000d-4a(1)). In other words, a nonofficial unquestionably is not a "recipient" for Spending Clause purposes: He is not the State, and he is not a State official.

The upshot is that RLUIPA's authorization of a cause of action against a non-recipient nonofficial is unconstitutional. It makes no sense to ask if "the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature," *Cummings*, 596 U.S. at 220 (quoting *Barnes*, 536 U.S. at 187) (emphasis omitted)—for the nonofficial is not a funding recipient, and the State entity that received federal funding is not exposed to damages liability, *see Sossamon*, 563 U.S. 277. As a result, the "any other person acting under color of State law" definition of "government," § 2000cc-5(4)(A)(iii), exceeds Congress' spending power to the extent that it authorizes suit against nonofficials.

Under RLUIPA's severability provision, the proper route is to treat that portion of the definition as void and severed while leaving the remainder intact. *Id.* § 2000cc-3(i); *accord Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 624 (2020) ("At least absent extraordinary circumstances, the Court should

adhere to the text of the severability or nonseverability clause.").

B. Properly Construed, RLUIPA Does Not Clearly and Unambiguously Create a Right of Action Against Officials in Their Individual Capacities for Damages.

The foregoing discussion regarding *nonofficials* makes this case an easy one regarding *officials*. That is principally because Congress' ordinary obligation to speak unambiguously is uniquely weighty in this context in light of, among other things, the federalism canon operating in parallel. Under that clear-statement framework, Congress fell far short of plainly authorizing personal-capacity claims against officials. And even if Congress had done so, it did not unambiguously authorize damages as appropriate relief.

1. Congress' obligation to speak clearly is uniquely heightened in this context.

The proper analytical framework begins with a proper assessment of how clearly and unambiguously Congress was required to speak if indeed it had sought to establish a right of action against officials in their personal capacities for damages. In the ordinary Spending Clause case, of course, the Court asks whether Congress spoke "'clearly,' 'expressly,' 'unequivocally,' and 'unambiguously.'" *Ali*, 132 F.4th at 933 (Sutton, C.J.) (citations omitted). But this is no ordinary Spending Clause case. Indeed, in at least four separate respects, that ordinary obligation is supercharged here.

First, the federalism canon imposes a second layer of clear-statement obligations on Congress. The Court

has long respected "the well-established principle that 'it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' the 'usual constitutional balance of federal and state powers.'" *Bond v. United States*, 572 U.S. 844, 858 (2014) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)) (internal quotation marks omitted). Or, as the Court has borrowed Justice Frankfurter's words, "if the Federal Government would 'radically readjust[] the balance of state and national authority, those charged with the duty of legislating [must be] reasonably explicit' about it." *Id.* (quoting *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994)) (internal quotation marks omitted). Simply put, Congress "must make its intention ... *unmistakably clear* in the language of the statute." *Gregory*, 501 U.S. at 460 (emphasis added and internal quotation marks omitted).

That demand for unmistakable clarity squarely applies here. "[I]t is 'difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.'" *Woodford v. Ngo*, 548 U.S. 81, 94 (2006) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973)). Because "RLUIPA regulates state prisons," therefore—"as traditional a state function as there is"—it is eminently "appropriate to require Congress to 'make its intention[s] ... unmistakably clear' in the statute." *Haight v. Thompson*, 763 F.3d 554, 570 (6th Cir. 2014); *see City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (recognizing that RFRA's unconstitutional application to the States presented "a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the

health and welfare of their citizens," "impos[ed] a heavy litigation burden on the States," and "curtail[ed] their traditional general regulatory power"). Accordingly, this "background principle" of federalism, *Bond*, 572 U.S. at 858, overlays the ordinary Spending Clause clear-statement rule, requiring Congress to have spoken with extraordinary clarity in this context.

Second, the novel nature of petitioner's position likewise imposes a second layer of clear-*notice* obligations on Congress. In the ordinary Spending Clause case, the Court is concerned with whether "funding recipients [were] on notice of their exposure to [a] particular remedy." *Cummings*, 596 U.S. at 214. Here, however, petitioner concedes that a private non-recipient is, by definition, not a party to the spending contract. *E.g.*, Br.30 (complaining instead that "it is not true that the Spending Clause prohibits regulating anyone beyond the recipient" (citation omitted)). Logically, therefore, petitioner's vision of RLUIPA at least would require two layers of clear notice: clear notice first to the *actual recipient* of the condition as the Court's cases require, and then clear notice to the *non-recipient* against which Congress (allegedly) sought to impose the condition.

Third, petitioner's view of Congress' spending power itself warrants skepticism. As petitioner's silence suggests, there appears to be no instance in our Nation's history in which Congress has ever attempted to leverage its spending power to create a private right of action against non-recipients. It is thus not hyperbole to say that petitioner's "claim of expansive authority" under RLUIPA "is unprecedented."

Ala. Ass'n of Realtors v. HHS, 594 U.S. 758, 765 (2021) (per curiam).

In the administrative-law context, the Court has said that, "[w]hen an agency claims to discover in a long-extant statute an unheralded power,'" the Court "typically greet[s] its announcement with a measure of skepticism." *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). The Court has expressed that skepticism in case after case, "requir[ing] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power[.]" *Ala. Ass'n of Realtors*, 594 U.S. at 764 (quoting *U.S. Forest Serv. v. Cowpasture River Preservation Ass'n*, 590 U.S. 604, 621–22 (2020)); *accord NFIB v. Dep't of Labor*, 595 U.S. 109, 119 (2022) (per curiam) (finding it "telling that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind").

In fact, that sort of skepticism is what doomed the "two levels of good-cause tenure" at issue in *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 505 (2010). Quoting then-Judge Kavanaugh, the Court emphasized,

> Perhaps the most telling indication of the severe constitutional problem with the PCAOB is the lack of historical precedent for this entity. Neither the majority opinion nor the PCAOB nor the United States as intervenor has located any historical analogues for this novel structure. They have not identified any independent agency other than the PCAOB that is appointed

> by and removable only for cause by another independent agency.

Id. at 505–06 (citation omitted).

That spirit of skepticism is equally warranted here—where Congress apparently has never otherwise attempted to wield its spending power to create a private right of action against non-recipients.

Fourth, Congress' quarter-century silence in the face of a unanimous—and nationwide—rejection of any private right of action against State officials in their personal capacities under RLUIPA doubly justifies a healthy skepticism. *See supra* Section I.A(2). No doubt, in a great many cases and contexts, there are good reasons to avoid reading too much into congressional silence. *See generally* Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317 (2005). But two aspects of the silence here make this, again, an extraordinary case where "the silence of Congress is relevant ... [and] telling." *Ziglar v. Abbasi*, 582 U.S. 120, 143–44 (2017).

The first is that this is a context where "[c]ongressional interest has been 'frequent and intense,'" and Congress' "responses ... have been well documented." *Id.* at 144. As the Court has recounted, RLUIPA represents "Congress' second attempt to accord heightened statutory protection to religious exercise in the wake of this Court's decision in" *Employment Division v. Smith*, 494 U.S. 872 (1990). *Sossamon*, 563 U.S. at 281. RFRA marked Congress' first attempt—enacted just three years after *Smith*. After this Court "held RFRA unconstitutional as applied to state and local

governments" in *City of Boerne* in 1997, Congress "responded by enacting RLUIPA" just three years later. *Id.* If Congress had been displeased with judicial interpretations of RLUIPA, therefore, one would have expected congressional action over the last 25 years, just as Congress acted in 1993 and 2000.

The second important point is that the federal courts of appeals' unanimous rejection of petitioner's view of RLUIPA represents one voice "on behalf of [almost] the entire judicial department." Barrett, *Statutory Stare Decisis*, *supra*, at 350. When only one court of appeals speaks, its voice reaches "only one limited part of the judiciary"—whereas, when this Court speaks, "it speaks on behalf of the entire judicial department." *Id.* As detailed above, *supra* Section I.A(2), nearly every State is subject to the unanimous rule rejecting petitioner's view of RLUIPA. Courts of appeals can never speak for this Court, but they come close when they broadly agree with each other, thereby signaling to Congress the judicial department's settled view. So it is here.

For these reasons, Congress' "silence is notable." *Ziglar*, 582 U.S. at 144. That Congress has "fail[ed] to provide a damages remedy" in the face of a nationwide bar makes it "much more difficult to believe that 'congressional inaction' was 'inadvertent.'" *Id.* (citation omitted).

* * *

Petitioner's extraordinary view of Congress' spending power requires this Court to apply, in effect, a super clear-statement rule: Did Congress speak with ab-

solute, exceeding, and unmistakable clarity in (purportedly) authorizing a right of action against State officials in their personal capacities for damages? The answer is no.

2. RLUIPA does not unambiguously authorize personal-capacity suits.

Start with RLUIPA's failure to clearly permit personal-capacity suits against State officials. As the *Tanzin* Court recognized in the RFRA context, 592 U.S. at 47, this question turns on the definition of "government," which includes an "official," 42 U.S.C. § 2000cc-5(4)(A)(ii). If "official" includes a State official in his personal capacity, then "appropriate relief against a government," *id.* § 2000cc-2(a), includes appropriate relief against a State official in his personal capacity. So, the question is whether "official" actually does include a State official in his personal capacity.

Tanzin began that analysis for RFRA purposes with one sentence about the plain meaning of the term "official": "[T]he term 'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" 592 U.S. at 47 (citation omitted). Respondents accept that the same is true of the term "official" in RLUIPA. But, as the *Tanzin* Court appeared to recognize, that dictionary definition does not move the needle on the question of the capacity in which an official may be sued. As recounted above, that is why the *Tanzin* Court had to rely on RFRA's "authoriz[ation] [of] suits against 'other person[s] acting under color of law'"—"nonofficials." *Id.* at 47–48 (citation omitted). Alongside the term "official," the Court reasoned, that language shows "that 'official[s]'

are treated like 'person[s].'" *Id.* at 48 (citation omitted). And that is especially so given that the "acting under color of law" concept "draws on" § 1983, which "this Court has long interpreted [] to permit suits against officials in their individual capacities." *Id.* Thus, the Court concluded that RFRA authorizes "[a] suit against an official in his personal capacity." *Id.*

The problem in this Spending Clause context is that Congress could not lawfully authorize a private right of action against nonofficials acting under color of State law. *See supra* Section I.A. Accounting for that constitutional infirmity, RLUIPA's definition of "government" effectively reads as follows:

> (i) a State, county, municipality, or other governmental entity created under the authority of a State;
>
> (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
>
> ~~(iii) any other person acting under color of State law~~.

Id. § 2000cc-5(4)(A). That is how numerous courts of appeals have understood the limitations on Congress' spending power, both before and after RLUIPA's enactment, *supra* Section I.A(2)—and it is certainly what the States "would have known" each time over the past quarter century that they were "'engaged in the process of deciding whether [to] accept' federal dollars." *Cummings*, 596 U.S. at 220 (quoting *Arlington*, 548 U.S. at 296).

Without clause (iii), however, there is no basis to conclude that "official" in clause (ii) includes an official in his personal capacity. The most that can be said is what *Tanzin* said: "[T]he term 'official' does not refer solely to an office, but rather to the actual person 'who is invested with an office.'" 592 U.S. at 47 (citation omitted). And that statement does not articulate at all—much less with the clarity required by a super-charged clear-statement rule—whether an official in his personal capacity is "a government."

This analysis is thus as straightforward as it was in *Tanzin*—except with the opposite result: RLUIPA's text does not clearly state that "injured parties can sue [State] officials in their personal capacities." *Id.*[4]

3. Even if RLUIPA authorized personal-capacity suits, RLUIPA does not unambiguously authorize a damages remedy.

Because RLUIPA does not unambiguously authorize personal-capacity suits, the Court need not proceed further to determine whether "appropriate relief" unambiguously includes a damages remedy. But the answer to that question would be no, too.

a. The term "appropriate relief" "is open-ended and ambiguous about what types of relief it includes"—it "is inherently context dependent." *Sossamon*, 563 U.S. at 286. Even in *Tanzin*, the Court did not say that "appropriate relief" was "clear"; the Court simply reached its best understanding of that term in light of RFRA's

[4] For that reason, petitioner's assertion (Br.25) that, "without damages, RLUIPA's clear individual-capacity action would be largely meaningless" rests on an invalid premise—that such an action even exists.

text and structure. *Cf.* 592 U.S. at 47 (finding that the definition of "government" provided "a clear answer" regarding whether injured parties can sue federal officials in their personal capacities). And there are at least four aspects of the context here that underscore this ambiguity.

First, the Court has recognized that the term "relief" itself "plausibl[y]" means only equitable relief. *Sossamon*, 563 U.S. at 287–88. That was Texas's argument drawn from Black's Law Dictionary (7th ed. 1999), which defined "relief" as "[t]he redress or benefit, esp. equitable in nature." *Id.* (citation omitted); *accord* Black's Law Dictionary, *Relief* (12th ed. 2024) ("The redress or remedy, esp. equitable in nature (such as an injunction or specific performance), that a party asks of a court."). And that plausible reading remains.

Second, spending contracts under RLUIPA are "contracts with a sovereign," which, as this Court has said, "do not traditionally confer a right of action for damages to enforce compliance." *Sossamon*, 563 U.S. at 290. Petitioner repeatedly emphasizes (*e.g.*, Br.8) that this is not a suit against a sovereign; he is right. But that does not change the fact that the underlying RLUIPA spending contract itself *is* a contract between sovereigns—the federal government and a State. As a result, one would expect Congress to clearly state that it was authorizing damages if it intended to override the traditional rule. It did not.

Third, while RLUIPA authorizes "appropriate relief" in a private cause of action, it elsewhere "expressly limits the United States to 'injunctive or declaratory relief' to enforce the statute." *Sossamon*,

563 U.S. at 287 (quoting 42 U.S.C. § 2000cc-2(f)). Petitioner believes (Br.14, 24) that textual difference helps him by signaling that the term "appropriate relief" may be more broadly interpreted to include damages. But he ignores the opposite inferences that this Court already has deemed "plausible." *Sossamon*, 563 U.S. at 288. Specifically, "because [a] State has no immunity defense to a suit brought by the Federal Government," perhaps "Congress needed to exclude damages affirmatively in that context but not in the context of private suits." *Id.* at 287. Relatedly, moreover, "explicitly limiting the private cause of action" to injunctive and declaratory relief "would make no sense." *Id.* That is because "the private cause of action provides that a person may assert a violation of the statute 'as a claim *or defense*.'" *Id.* (quoting 42 U.S.C. § 2000cc-2(a)). "Because an injunction or declaratory judgment is not 'appropriate relief' for a successful defense," therefore, it would be nonsensical to so limit the right of action. Whatever Congress' intent, the reality is that the term remains ambiguous.

Fourth, the historical backdrop—including the courts' universal rejections of individual-capacity claims both before and after RLUIPA's enactment, *supra* Section I.A(2)—provides an especially good reason to question how far Congress may have attempted to go (if it sought to create a personal-capacity right of action against officials at all). *See Sossamon*, 563 U.S. at 289 n.6 (observing that a few pre-RFRA district court decisions "could have signaled to the States that damages are *not* 'appropriate relief' under RLUIPA").

Tanzin itself has language to this effect. It considered the federal government's argument that the

Court "should be wary of damages against government officials because these awards could raise separation-of-powers concerns." 592 U.S. at 52. But it rejected that argument because "this exact remedy has coexisted with our constitutional system since the dawn of the Republic." *Id.* Similarly, the Court considered the federal government's request for "a new policy-based presumption against damages against individual officials." *Id.* The Court acknowledged that "background presumptions can inform the understanding of a word or phrase"—but, the Court hastened to add, "those presumptions must exist at the time of enactment. We cannot manufacture a new presumption now and retroactively impose it on a Congress that acted 27 years ago." *Id.*

This reasoning forecloses petitioner's position in this case. Not only has a putative personal-capacity right of action for damages pursuant to the spending power not "coexisted with our constitutional system since the dawn of the Republic"—it appears that such a right of action has *never* existed in the Republic. And the theory implicates obvious constitutional concerns, *supra* Section I.A(3), of which the Court should be "wary," *Tanzin*, 592 U.S. at 52.

As for background presumptions "at the time of enactment," moreover, that no court of appeals allowed such a right of action either before or after RLUIPA's enactment, *supra* Section I.A(2), unquestionably "inform[s] the understanding" of "appropriate relief" today, *Tanzin*, 592 U.S. at 52. That is especially so in this treaty-like context where post-enactment understandings are relevant. *See Medina*, 145 S. Ct. at 2231

("[F]ederal-state agreements are really more like treaties 'between two sovereignties.'"); *Medellín v. Texas*, 552 U.S. 491, 507 (2008) ("Because a treaty ratified by the United States is 'an agreement among sovereign powers,' we have also considered as 'aids to its interpretation' the negotiation and drafting history of the treaty as well as 'the postratification understanding' of signatory nations."). Put simply, this case implicates exactly the sort of constitutional concerns that the federal government tried and failed to prove up in *Tanzin*.

Ignoring this backdrop, petitioner tries (Br.13, 19, 27) to frame the relevant "contexts" differently—as between suits against sovereigns (*Sossamon*) and suits against nonsovereigns (*Tanzin*)—and shoehorn this case into the "nonsovereign" bucket. On his view, that automatically means *Tanzin* requires finding that RLUIPA creates a right of action against officials in their individual capacities for damages.

But that overly simplistic reasoning is no different than wrongly assuming all football games are played by all the same rules simply because a football is involved. *Cf., e.g.*, Matthew Jackson, *All the Differences Between College Football and the NFL, Explained*, NBC (Aug. 19, 2025), tinyurl.com/mtfs4mbu. As Chief Judge Sutton has explained at length, *see Ali*, 132 F.4th at 931–34, that is misguided. "In 'light of RFRA's origins,' the [*Tanzin*] Court found 'damages under § 1983' 'particularly salient' in circumscribing 'appropriate relief.'" *Id.* at 933 (quoting *Tanzin*, 592 U.S. at 50). "But in light of RLUIPA's origins under the spending power, a different set of expectations and requirements applies. In the same way that asking your own

child to do the dishes sheds little light on the propriety of asking other children to do your dishes, Congress's inherent prerogative to regulate federal officials does not mean it may regulate state officials." *Id.*

The term "appropriate relief" "does not signal 'clearly,' 'expressly,' 'unequivocally,' and 'unambiguously' that Congress imposed money-damages remedies." *Id.* at 933 (citations omitted).

b. Petitioner's remaining arguments go nowhere. He cites (Br.7, 24–25, 30) RLUIPA's statement that "[t]his chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution," 42 U.S.C. § 2000cc-3(g). His implication appears to be that the Court should construe RLUIPA as broadly as possible to permit a right of action for damages. But this Court has rejected that misreading of RLUIPA. Specifically, the Court has said that it is the *definition* of "religious exercise" that must be interpreted broadly: "Congress mandated that *this concept* '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.'" *Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (quoting § 2000cc-3(g)) (emphasis added). That rule of construction thus does not extend to articulating the scope of the right of action or available remedies. *Accord Sossamon*, 563 U.S. at 287 (recognizing even before *Holt* that it was "plausible" that "this provision is best read as addressing the substantive standards in the statute, not the scope of 'appropriate relief'").

Petitioner and his *amici* also argue that, if the Court rules against him, the Court will render RLUIPA "a dead letter." Br.23. Two responses.

First, this argument pretends as if the Court would somehow *take away* the availability of individual-capacity damages from RLUIPA plaintiffs. That is not accurate. No federal court of appeals has *ever* allowed a RLUIPA plaintiff to recover individual-capacity damages in 25 years. Affirming the judgment below, therefore, would simply maintain the status quo that has existed for a quarter century.

Second, insofar as petitioner and his *amici* suggest that RLUIPA is meaningless without the availability of individual-capacity damages, Gregory Holt would likely disagree. *See Holt*, 574 U.S. at 359–60 (preliminary injunction and injunction pending appeal entered by this Court allowing Holt to grow a beard). So would Patrick Murphy. *Murphy v. Collier*, 587 U.S. 901 (2019) (stay of execution). As would John Ramirez. *Ramirez v. Collier*, 595 U.S. 411, 416, 436–37 (2022) (stay of execution and injunctive relief ordered "[i]f Texas reschedules Ramirez's execution and declines to permit audible prayer or religious touch"). And Christopher Ware. *Ware v. La. Dep't of Corr.*, 866 F.3d 263, 267 n.1 (5th Cir. 2017) ("Following the district court's ruling in favor of DOC, a magistrate judge stayed the judgment and enjoined DOC from cutting Ware's hair during the pendency of this appeal.").

To be sure, RLUIPA as it has existed for a quarter century will not remedy every possible burden on religious exercise. But it is misleading to suggest that RLUIPA has no utility without a damages remedy on

individual-capacity claims. *See* U.S.Br.23 (agreeing that "private enforcement is effective").

C. Even If RLUIPA Unambiguously Authorized Individual-Capacity Claims Against Officials for Damages, Affirmance Would Be Warranted.

Even if RLUIPA unambiguously authorized individual-capacity claims against State officials for damages, affirmance would remain proper for two reasons.

First, a personal-capacity right of action against non-recipient *officials* would exceed Congress' spending power just as much as would the same right of action against non-recipient *nonofficials*. *See supra* Section I.A. Petitioner suggests otherwise on an agency theory: that officials in their individual capacities shoulder a "responsibility to comply with RLUIPA [as a] result of their choice to work for a federally-funded state program." Br.32. That is not how agency works. Even if an official had personally consummated a spending contract on a prison's behalf, that would not personally bind him to the contract.[5] *A fortiori* his

[5] *See* Restatement (Second) of Agency § 320 (1958) ("Unless otherwise agreed, a person making or purporting to make a contract with another as agent for a disclosed principal does not become a party to the contract."); Restatement (Third) of Agency § 6.01 (2006) ("When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal, (1) the principal and the third party are parties to the contract; and (2) the agent is not a party to the contract unless the agent and third party agree otherwise."); 12 Williston on Contracts § 35:34 (4th ed.) ("The agent cannot enforce the contract, nor is the agent bound by it." (footnotes omitted)).

mere employment would not personally bind him to the contract.

Petitioner also cherry picks a couple of lines from *Rust v. Sullivan*, 500 U.S. 173 (1991), to make the same point. *See* Br.4 ("The 'consequence of their decision to accept employment in [such] a project' is that they must 'perform their duties in accordance with the [funding's] restrictions.'" (quoting *Rust*, 500 U.S. at 198–99)). But there is no dispute that Louisiana prison officials must comply with RLUIPA's substantive protections for religious exercise—and may be forced to do so through injunctive relief when sued in their official capacities. The question instead is whether a non-recipient can be held *personally* liable for an alleged RLUIPA violation—and *Rust* says exactly nothing about that issue. *Cf. Rust*, 500 U.S. at 199 (noting that the federal regulations did "not in any way restrict the activities of those persons acting as private individuals").

Second, affirmance would be independently appropriate because petitioner cannot change history: that all States, including Louisiana, have entered into spending contracts for a quarter century on the understanding that individual-capacity claims do not exist under RLUIPA.

As petitioner concedes, "parties to a 'contract between the government and a private party' are ordinarily 'presumed or deemed to have contracted with reference to existing principles of law.'" Br.49 (quoting 11 Williston on Contracts § 30:19 (4th ed.)); *accord, e.g.*, *Fraternal Order of Police Lodge No. 89 v. Prince George's Cnty., Md.*, 608 F.3d 183, 191 (4th Cir. 2010) ("It is a cardinal principle of contract interpretation

that the parties are presumed to contract against the backdrop of relevant law[.]"). That background rule of contract interpretation is not limited to contracts involving governments—it applies to all "parties to a contract." 11 Williston on Contracts § 30:19. It requires "contractual language [to] be interpreted in light of existing law, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law." *Id.* As Corbin explains, this means that contracting parties "are presumed"—barring "a contrary intent"—"to have in mind all existing and applicable statutes and case law relating to the contract." 5 Corbin on Contracts § 24:18 (2025) (citation omitted). The upshot: "[A]ll existing applicable or relevant and valid statutes, ordinances and regulations, and settled law at the time the contract was made, become a part of the contract and must be read into it." *Id.* (citation omitted).

In this case, that means the States' spending contracts must be understood against the nationwide consensus that RLUIPA does not authorize individual-capacity claims. Even if petitioner's import-*Tanzin* view carried the day, therefore, that view could not retroactively change the perspectives of the States "when [they were] 'engaged in the processing of deciding whether' to accept federal funds." *Cummings*, 596 U.S. at 226 (quoting *Arlington*, 548 U.S. at 296). So, affirmance would remain proper.

II. ALTERNATIVELY, *NFIB* APPEARS TO RENDER RLUIPA UNCONSTITUTIONAL.

Resolving this case on the above grounds would avoid (for now) any need to resolve a larger Spending

Clause problem that the Court has not yet addressed. *See Sossamon*, 563 U.S. at 282 n.1 ("Nor is Congress' authority to enact RLUIPA under the Spending Clause challenged here."). That problem: *NFIB* appears to render RLUIPA, 42 U.S.C. § 2000cc-1, unconstitutional because it exceeds Congress' spending power. "[S]pending-power conditions are legitimate only if the State's acceptance of them is in fact voluntary." *Medina*, 145 S. Ct. at 2232 n.4 (citing *NFIB*, 567 U.S. at 581–82 (Roberts, C.J.), 676 (joint dissent)). The problem for RLUIPA is that: (A) any federal financial assistance triggers RLUIPA's conditions; (B) virtually every State prison receives federal Medicaid funds; and (C) *NFIB* says a condition threatening all Medicaid funds is unconstitutionally coercive. *Contra* Br.35 ("There is no commandeering or coercion.").

A. RLUIPA is unconventional Spending Clause legislation in part because it is not tied to any particular federal funding. It applies "in any case in which ... the substantial burden is imposed in a program or activity that receives Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1). A "program or activity" means "all of the operations," *id.* § 2000cc-5(6), of "a department ... of a State," *id.* § 2000d-4a(1)(A). So long as such a department "receives Federal financial assistance," that department is subject to RLUIPA.

B. That feature of RLUIPA is critical—because it runs headlong into Medicaid. "Today, all 50 States participate in Medicaid." *Medina*, 145 S. Ct. at 2226. And the financial implications of that participation are astounding. In 2023 and 2024, the federal government directed approximately $587 billion in federal Medicaid funding each year to the States. *See 2024*

State Expenditure Report: Fiscal Years 2022 – 2024, p. 53, Nat'l Ass'n of State Budget Officers (2024), tinyurl.com/4fxzppcb. Louisiana, for example, received approximately $13 billion from the federal government in 2023. *Id.* That was nearly 80% of Louisiana's *Medicaid* expenditures in 2023. *Id.* And Louisiana's total Medicaid expenditures constituted 37.8% of its *total* expenditures in 2023. *Id.* at 54. In all, therefore, federal Medicaid funding comprises nearly 30% of Louisiana's total expenditures.

Relevant here, a State's participation in Medicaid depends on the State's "plan for medical assistance" and compliance with that plan. 42 U.S.C. § 1396a(a). "To win the [Health and Human Services] Secretary's approval, that plan must satisfy more than 80 separate conditions Congress has set out in § 1396a(a)." *Medina*, 145 S. Ct. at 2226.

Among the various funding conditions are those tied to inmates in State prisons and local jails. The States must "mak[e] medical assistance available" to specific categories of individuals. 42 U.S.C. § 1396a(a)(10). The term "medical assistance" means the "payment of part or all of the cost" of specific care and services for the identified individuals. *Id.* § 1396d. That term *excludes* payments with respect to care or services for "any individual who is an inmate of a public institution"—but it *includes* such payments for an inmate who is "a patient in a medical institution." *Id.* § 1396a(A). An inmate must be admitted to a medical institution for at least 24 hours to trigger Medicaid coverage. *See* 42 C.F.R. § 435.1010; State Health Official Letter #16-007, *RE: To Facilitate successful re-entry for individuals transitioning from incarceration to*

their communities, p. 12, Ctrs. for Medicare and Medicaid Servs. (Apr. 28, 2016), tinyurl.com/mspzbepy; *Medicaid: Information on Inmate Eligibility and Federal Costs for Allowable Services*, p. 1, U.S. Gov. Accountability Office (Sept. 5, 2014), tinyurl.com/3wbphsze (GAO Report).

Because inmates receiving inpatient services "qualify for federal Medicaid matching funds," GAO Report at 1, the States' departments of corrections receive significant Medicaid funding every year. In 2013, for example, California received $38.5 million and Pennsylvania received $7.1 million for inmate inpatient treatment. *Id.* at 6. The same is true of Louisiana, which—alongside federal Medicaid funding—is responsible for paying millions of dollars for such services every year. *See* I-900, p. 1, La. Medicaid Eligibility Manual (Sept. 23, 2024), tinyurl.com/bdeu35p9; *Attention Providers of Outpatient Services: Medicaid Responsibility for Medicaid Eligible Incarcerated Recipients*, La. Medicaid (Oct. 2016), tinyurl.com/bde3pwr8.

The universe of inmates entitled to Medicaid coverage, moreover, has expanded this year. Specifically, under Section 5121 of the Consolidated Appropriations Act of 2023, the States "must"—in the 30 days prior to a juvenile's release from prison—"provide any screenings and diagnostic services which meet reasonable standards of medical and dental practice." *See* State Health Official Letter #24-004, p. 1, Ctrs. for Medicare and Medicaid Servs. (July 23, 2024), tinyurl.com/yc3ka9a8; *see also id.* at 12 ("Mandatory Requirements of Section 5121"). As that requirement suggests, the 2023 Act "modifie[s]" "the statutory Medicaid inmate payment exclusion language ... to allow

for payment for these services for eligible juveniles under certain circumstances." *Id.* at 12.

The upshot is that all 50 States—by virtue of their participation in Medicaid—receive federal financial assistance in the form of billions of dollars every year. That participation legally obligates the States—through their departments of corrections—to provide care and services to eligible inmates. And like all care and services under Medicaid, that provision of care and services is "subsidize[d]" by "federal Medicaid funding." *Medina*, 145 S. Ct. at 2226. Put otherwise, every State department of corrections is a "program or activity that receives Federal financial assistance"—and is thereby subject to RLUIPA. 42 U.S.C. § 2000cc-1(b)(1).

C. If the only way for the States to say no to RLUIPA is to withdraw from Medicaid, that "is a gun to the head" and this is *NFIB* all over again. 567 U.S. at 581 (Roberts, C.J.). Even "[t]he threatened loss of over 10 percent of a State's overall budget," the Court recognized, "is economic dragooning that leaves the States with no real option but to acquiesce in" Congress' preferred policy. *Id.* at 582. As in *NFIB*, that problem may exist here. If so, "[n]othing ... precludes Congress from offering funds under [RLUIPA]" to advance religious freedom, "and requiring that States accepting such funds comply with the conditions on their use." *Id.* at 585; *accord id.* at 687–88 (joint dissent). "What Congress is not free to do," however, is to force States to burn "their existing Medicaid funding" to avoid "participat[ing] in" RLUIPA. *Id.* at 585 (Roberts, C.J.). Doing so "is not a realistic option." *Id.* at 681 (joint dissent). Coercion for a perceived good—whether

expanded healthcare or expanded religious freedom—is still coercion.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

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