No. 08-1438

In The Supreme Court of the United States

HARVEY LEROY SOSSAMON, III,
Petitioner,

v.

TEXAS, ET AL.,
Respondents.

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

BRIEF FOR THE RUTHERFORD INSTITUTE AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

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RELEVANT CONSTITUTIONAL AND STATUORY PROVISIONS

I. Constitutional Provisions

The Commerce Clause of the United States Constitution provides, in relevant part:

> Congress shall have the power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

The Section 5 of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

> Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

II. Statutory Provisions

The Religious Land Use and Institutionalized Persons Act provides, in relevant part:

Section 2000cc. Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

Section 2000cc-2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

Section 2000cc-5. Definitions

In this chapter:

. . . .

(4) Government

The term "government"—

(A) means—

(i) a State, county, municipality, or other governmental entity created under 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.

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INTEREST OF AMICI[1]

The Rutherford Institute is an international nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing legal representation without charge to individuals whose civil liberties are threatened or infringed and in educating the public about constitutional and human rights issues. The Rutherford Institute is interested in the instant case because the Institute was one of the moving forces behind the drafting and enactment of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and has and continues to represent individuals, religious assemblies and institutions that are the intended beneficiaries of RLUIPA. The Rutherford Institute fears that the broad ruling of the Court of Appeals for the Fifth Circuit will undermine the salutary purposes of RLUIPA and eviscerate the protection it was meant to provide to religious liberty.

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[1] Pursuant to Sup. Ct. R. 37.6, *amici* certify that no counsel for a party to this action authored any part of this *amicus curiae* brief, nor did any party or counsel to any party make any monetary contribution to fund the preparation or submission of this brief. Counsel of record for the parties to this action were notified of The Rutherford Institute's intent to file this *amicus curiae* brief on June 10, 2009 and have consented to the filing of this *amicus curiae* brief.

SUMMARY OF THE ARGUMENT

The decision of the Fifth Circuit undermines the intent of Congress, ignores the plain language of RLUIPA and threatens the free exercise of religion Congress intended to foster when it enacted the legislation in 2000. More specifically, the Fifth Circuit's broad holding that RLUIPA was passed pursuant only to Congress's power under the Spending Clause of Article I of the Constitution throws into doubt the availability of damages to all RLUIPA plaintiffs, whether under the land use provisions of 42 U.S.C. § 2000cc or the institutionalized persons section of 42 U.S.C. § 2000cc-1.

If institutionalized persons may recover compensatory damages only against the recipients of federal funds, serious doubt is raised as to whether litigants suing under the land use provision are also barred from recovering damages. The unavailability of a damages remedy will seriously undermine the effectiveness of RLUIPA as a bulwark against local government land use decisions that substantially burden the religious mission of churches and religious assemblies. Cities, towns and other local governments will have no incentive to comply with the statute, thus compromising the intent of the act and threatening religious freedom.

RLUIPA has a clear and legitimate jurisdictional basis in the Commerce Clause. Accordingly, even if compensatory damages are not

available pursuant to Congress's Spending Clause authority, litigants may recover all appropriate relief, including damages, against local governments under the Commerce Clause. Further, Congress appropriately exercised its enforcement power under Section 5 of the Fourteenth Amendment by allowing litigants to base their claim for compensatory damages on discriminatory land use regulations that impose a substantial burden on religious exercise.

For these reasons, this Court should grant the petition for a writ of certiorari and confirm that litigants suing under the land use provision of RLUIPA retain their right to recover compensatory damages because the statute has valid jurisdictional bases in the Commerce Clause and Section 5 of the Fourteenth Amendment.

ARGUMENT

I. The Court Should Clarify That Litigants May Recover Damages Against Local Governments Under The Land Use Provision Because Section 2000cc(a)(2)(B) Functions As A Valid Exercise of Congress's Commerce Clause Authority.

In the decision at issue here, the Fifth Circuit broadly held that "an action under RLUIPA does not exist for individual-capacity claims[.]" *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 329 (5th Cir. 2009). Even though, as cogently pointed out by the Petitioners, the text of RLUIPA's judicial relief

section clearly evinces Congress's intent to allow claims for damages against individuals and entities other than States, the Fifth Circuit found that such claims are barred unless the individual or entity receives federal funds. It reasoned that RLUIPA "was passed pursuant to the Spending Clause," and Congressional enactments pursuant to the Spending Clause do not themselves impose *direct* liability on a non-party to the contract between the state and the federal government." *Sossamon*, 560 F.3d at 329 (emphasis in original). The Fifth Circuit declined "to read Congress's permission to seek 'appropriate relief against a government' as permitting suits against RLUIPA defendants in their individual capacities." *Id.*

The holding below that RLUIPA depends solely on the Spending Clause power substantially restricts on the remedial scope of RLUIPA. Although the Fifth Circuit's decision is in the context of RLUIPA's institutionalized persons provision, its ruling on the constitutional basis for RLUIPA is broad enough to be applied to RLUIPA's land use provision. If only parties to a contract for the receipt of federal funds can be liable under RLUIPA, many entities and individuals that heretofore were considered defendants to a RLUIPA claim would now be outside the reach of the statute. In particular, local governments – the natural targets of RLUIPA's land use provision, 42 U.S.C. § 2000cc(a) – would not be subject to suit by a religious assembly or institution which has had its religious exercise substantially burdened by a local land use decision.

Instead, a suit would be permitted only in the rare instance in which a local land use decision is related to a program that received federal funding.

This Court should grant the petition for the purpose of rejecting the Fifth Circuit's broad holding that RLUIPA is supported only as an exercise of Congress's Spending Clause power and also recognizing that RLUIPA allows litigants to recover damages when local governments impose a land use regulation that affects interstate commerce because the Act is a proper exercise of Congress's Commerce Clause authority.

A. The Eleventh Amendment Does Not Bar Litigants From Recovering Damages Against Local Governments.

RLUIPA defines government as "a State, county, municipality, or other governmental entity created under the authority of the State; any branch, department, agency, instrumentality, or official of an entity . . . and any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A) (2006). Although Congress cannot abrogate the Eleventh Amendment sovereign immunity of states pursuant to its Commerce Clause power, local governments, including counties and municipalities, are not entitled to this immunity from suit. *See Seminole Tribe v. Florida*, 517 U.S. 44 (1996) (holding that Congress cannot unilaterally authorize suits against states pursuant to its Commerce Clause authority);

Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health and Human Servs., 532 U.S. 598, 609 n.10 (2001) ("Only States and state officers acting in their official capacity are immune from suits for damages in federal court. Plaintiffs may bring suit for damages against all others, including municipalities and other political subdivisions of a State.") (citation omitted); *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 313 (1990) (Brennan, J., concurring) (finding that under this Court's Eleventh Amendment jurisprudence, even "when a State creates subdivisions and imbues them with a significant measure of autonomy . . . these subdivisions are too separate from the State to" justify sovereign immunity); *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) ("The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations." (citations omitted)). Therefore, litigants may bring suit against local governments and their officials to obtain compensatory damages when a substantial burden on religious exercise affects interstate commerce. *See* 42 U.S.C § 2000cc-2(a); *see also Mt. Healthy*, 429 U.S. at 281.

B. Section 2000cc(a)(2)(B) Contains An Express Jurisdictional Element.

Section 2000cc(a)(2)(B) of RLUIPA provides that the substantial burden provision applies in any case in which "the substantial burden affects, or

removal of the substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability." *See* 42 U.S.C. § 2000cc(a)(2)(B). This language explicitly connects land use regulations that impose a substantial burden on religious exercise with interstate commerce using language that mirrors the Commerce Clause. *See* U.S. Const. art. I § 8, cl. 3 ("Congress shall have the power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes."). This Court has held that Congress's expression of a jurisdictional nexus is sufficient to satisfy the requirements of the Commerce Clause. *See United States v. Morrison*, 529 U.S. 598, 612 (2000) ("Such a jurisdictional element may establish that the enactment is in pursuance of Congress' regulation of interstate commerce."); *see also United States v. Lopez*, 514 U.S. 549, 561 (1995) (determining that statute was not a valid exercise of congressional power under the Commerce Clause because it contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce").

Accordingly, the express jurisdictional element in section 2000cc(a)(2)(B) of RLUIPA is sufficient to invoke congressional authority under the Commerce Clause. *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 354 (2d Cir. 2007).

C. Section 2000cc(a)(2)(B) Directly Regulates Economic Activity.

Burdens on religious exercise imposed through land use regulations have a significant effect on interstate commerce. In *Lopez*, this Court identified three bases of Congress's authority to regulate interstate commerce: the channels of interstate commerce, the instrumentalities of interstate commerce, and those activities having "a substantial relation to interstate commerce." 514 U.S. at 558-59. When the source of Congress's authority to regulate pursuant to the Commerce Clause derives from activities having a substantial effect on interstate commerce, the activity must deal with "commerce or any sort of economic enterprise" or exist as "part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez*, 514 U.S. at 561. Even if an activity is economic in nature, the link to interstate commerce must be direct, not attenuated. *See Morrison*, 529 U.S. at 612; *see also Lopez*, 514 U.S. at 563-67.

In determining whether the activity is economic in nature, this Court has held that non-profit organizations, including religious institutions, engage in interstate commerce in a variety of ways and are appropriately subject to the Commerce Clause. *See Camps Newfound v. Town of Harrison*, 520 U.S. 564, 583-84 (1997) (finding Commerce Clause applicable to non-profit organizations because

"they purchase goods and services in competitive markets, offer their facilities to a variety of patrons, and derive revenues from a variety of sources, some of which are local and some out of State"). Additionally, zoning regulations that affect the rental of property and the development of land can have a considerable effect on interstate commerce. In *Groome Resources, Ltd. v. Parish of Jefferson*, the Fifth Circuit held that a special accommodations provision under the Fair Housing Amendments Act of 1988 implicated interstate commerce when a plaintiff could not obtain a variance from a local zoning ordinance in order to operate a group home. 234 F.3d 192, 205 (5th Cir. 2000). The court reasoned that the refusal to grant a reasonable accommodation under the statute impacted the housing market because it prevented the plaintiff from effectively purchasing or selling property. *See id.* at 205-06. Because the denial of the variance functioned as "an act of discrimination that directly interfere[d] with a commercial transaction," the court determined that the reasonable accommodations provision of the statute implicated economic activity. *See id.* at 206; *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 259 (1964) (holding that "the power of Congress to promote interstate commerce also includes the power to regulate . . . local activities . . . which might have a substantial and harmful effect upon that commerce.").

Regulations that impose a substantial burden on religious exercise similarly implicate economic activity. *See Freedom Baptist Church of Delaware*

County v. Twp. of Middletown, 204 F. Supp. 2d 857, 867 (E.D. Pa. 2002) ("[I]nsofar as state or local authorities 'substantially burden' the economic activity of religious organizations, Congress has ample authority to act under the Commerce Clause."). Specifically, such regulations hinder the development and use of property, such as the purchase, sale, construction, and renting of land – all activities that are commercial in nature. The Second Circuit has found that the land use portion of RLUIPA functions as a valid exercise of the Commerce Clause for that very reason. *See Westchester Day School*, 504 F.3d at 354 (holding that "the evidence need only demonstrate a minimal effect on commerce to satisfy the jurisdictional element"). The Second Circuit concluded that an Orthodox Jewish day school's claim based on the refusal of the town to issue a permit for expansion of its facilities fell within Congress's Commerce Clause authority because "commercial building construction is an activity affecting interstate commerce." *See id.* Additionally, unlike the activities in question in *Lopez* and *Morrison*, discriminatory land use regulations have a discernible link to interstate commerce because imposing substantial burdens directly prevents religious organizations from buying land and initiating construction activities. *See Groome*, 234 F.3d at 214 (finding link "connecting direct discrimination against the disabled with the larger and more subtle effects on the interstate supply of housing").

D. The Legislative History Of RLUIPA Makes Express Findings Detailing The Effect Of Discriminatory Land Use Decisions On Interstate Commerce.

Congress has also made various findings describing the impact of discriminatory land use regulations on interstate commerce. Congressional findings regarding the effect of an activity on interstate commerce are not required when a statute, such as the land use provisions of RLUIPA, regulates an activity that clearly implicates interstate commerce, but they do serve as additional, relevant support for Congress's judgment that discriminatory land use regulations substantially effect interstate commerce. *See Lopez*, 514 U.S. at 640.

In a joint statement, Senators Hatch and Kennedy described the explicit jurisdictional element of the statute and noted that burdens on religious exercise through land use regulations will impact interstate commerce. *See Joint Statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000*, 146 Cong. Rec. S7774, S7774-78 (daily ed. July 27, 2000). Further, the Senators pointed out the specific effects of such discrimination when "the burden prevents a specific economic transaction in commerce, such as a construction project, purchase or rental of a building, or an interstate shipment of religious goods." *See id.* (quoting testimony of Marc D. Stern that "'many activities of religious not-for-profit corporations come

within the Commerce Clause,' including purchasing and providing goods and services").

The House Subcommittee also reviewed confirmed data compiling the aggregate effect of these types of transactions. *See Lopez*, 514 U.S. at 562 (suggesting that congressional committee findings are also relevant). The House Report indicates that "the exercise of religion sometimes requires commercial transactions, such as the construction of churches, the hiring of employees, or the purchase of supplies and equipment." *See* H.R. Rep. No. 106-219, at 28. The House Report further clarifies that proving a substantial burden implicates interstate commerce is essential to asserting a claim under the land use section of RLUIPA. *See* H.R. Rep. No. 106-219, at 16. This legislative record provides additional support for Congress's authority to enact the statute pursuant to the Commerce Clause. *See Lopez*, 514 U.S. at 640.

For all these reasons, RLUIPA, carefully tailored to prohibit only discriminatory regulations that implicate interstate commerce, is a valid exercise of Congress's Commerce Clause authority.

II. The Court Should Confirm That Litigants May Recover Compensatory Damages Because Congress Properly Exercised Its Authority to Pass Section 2000cc(a)(2)(C) Pursuant To Section 5 Of The Fourteenth Amendment.

The authority of Congress to enforce the Due Process Clause of the Fourteenth Amendment, including the rights that the First Amendment guarantees, provides an independent basis for enacting section 2000cc(a)(2)(C). *See, e.g.,* U.S. CONST. amend. XIV, § 5 ("Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."); *City of Boerne v. Flores*, 521 U.S. 507, 517-18 (1997) (finding that "Congress can enact legislation under § 5 enforcing the constitutional right to the free exercise of religion."); *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966) (holding that Section 5 is "a positive grant of legislative power" to Congress); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) ("[t]he fundamental concept of liberty embodied in [the Due Process Clause of the Fourteenth Amendment] embraces the liberties guaranteed by the First Amendment."). Congress may also abrogate state sovereign immunity under the Eleventh Amendment and authorize suits for damages through a valid exercise of its Section 5 power. *See Nevada Dep't Human Res. v. Hibbs*, 538 U.S. 721, 727 (2003).

The first step in determining the constitutionality of Congress' use of its enforcement powers is "to identify with some precision the scope of the constitutional right at issue." *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 365 (2001). Section 2000cc(a)(2)(C) of RLUIPA protects the free exercise of religion from land use regulations, enforced on the basis of individual assessments, that impose substantial burdens on free exercise and are

not narrowly tailored to satisfy a compelling government interest. *See* 42 U.S.C. §§ 2000cc(a)(1)(A)-(B); *see also Guru Nank Sikh Soc'y v. County of Sutter*, 456 F.3d 978, 993 (9th Cir. 2006) (identifying precise right as "the free exercise of religion in the face of individualized governmental assessments subject to strict scrutiny."). Congress has appropriately exercised its authority under Section 5 of the Fourteenth Amendment to protect this right because it has identified widespread violations of these rights and RLUIPA is a congruent and proportional response to that discrimination.

A. Congress Has Identified A History And Pattern Of Unconstitutional Conduct Through Discriminatory Land Use Regulations That Inhibit The Free Exercise Of Religion.

The congressional record supporting the land use provisions of RLUIPA sets forth statistical data and anecdotal evidence detailing the pervasive discrimination that religious institutions are subject to in the context of land use regulations. As part of the inquiry into whether Congress has properly exercised its Section 5 authority, this Court has considered "whether Congress identified a history and pattern of unconstitutional [regulation] by the States against [religious groups]." *Garrett*, 531 U.S. at 368. *Compare South Carolina v. Katzenbach*, 383 U.S. at 334 (recognizing detailed legislative record compiling discrimination in voting rights cases) *with City of Boerne*, 521 U.S. at 530 ("RFRA's legislative

record lacks examples of modern instances of generally applicable laws passed because of religious bigotry.").

RLUIPA's legislative record includes "massive evidence" of widespread religious discrimination caused by land use regulations that frustrate religious exercise. *See Joint Statement*, 146 Cong. Rec. at S7774; H.R. Rep. No. 106-219, at 17. Congress accumulated evidence of land use regulations that excluded all new churches from an entire city, required religious (but not secular) institutions to obtain special building permits, and excessively impacted new churches and unfamiliar religions. *See* H.R. Rep. No. 106-219, at 19; *see also Joint Statement*, 146 Cong. Rec. at S7774. The House Report also includes the summary of a zoning expert's testimony that under twelve of twenty-nine zoning codes surveyed in suburban Chicago, religious institutions could not build houses of worship without obtaining a special use permit, which could be arbitrarily denied. *See* H.R. Rep. No 106-219, at 19.

Congress recognized that the discretionary power of government officials to regulate land use leads to discrimination that makes it extremely difficult for religious assemblies to open houses of worship. *See* H.R. Rep. No. 106-219, at 18; *Joint Statement*, 146 Cong. Rec. at S7774. Decision-making based on particular facts, rather than a general rule, formed a common thread in many reports of discrimination. *See* H.R. Rep. No. 106-219,

at 21. Witness testimony confirmed the pervasive nature of the discrimination, including accounts of re-zoning to prevent houses of worship from being built and the revocation of permits after construction was underway. *See id.* at 20-21.

This record evidences a history and pattern of land use regulations that unconstitutionally inhibit the free exercise of religion. *See Garrett*, 531 U.S. at 368.

B. The Scope Of The Right RLUIPA Defined In Section 2000cc(a)(2)(C) Is Congruent And Proportional To The Discrimination That Congress Has Identified.

RLUIPA is a permissive use of Congress's remedial authority because it does not alter the scope of any existing constitutional right, rather it enforces constitutional violations identified in this Court's Free Exercise Clause jurisprudence.

Congress's use of its remedial authority to enforce existing constitutional rights must demonstrate "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne*, 521 U.S. at 520. RLUIPA is a congruent and proportional exercise of congressional authority because it satisfies the constitutional standards set forth in this Court's prior rulings. In *Employment Division v. Smith*, this Court held that the government need not

offer a compelling interest to justify neutral laws of general applicability that incidentally impact religion. 494 U.S. 872, 888-89 (1990). However, that decision also clarified that where the government has a regulatory system that grants discretionary exemptions, there must be a compelling reason to deny an exemption if such denial results in a substantial burden on the free exercise of religion. *See id. at 884*; *see also Sherbert v. Verner*, 374 U.S. 398, 406-07 (1963). In addition, this Court has instructed that facially neutral laws that improperly target religion are subject to strict scrutiny when they violate principles of neutrality and are not generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

Section 2000cc(a)(2)(C) applies to land use regulations, a regime under which the government makes individual assessments, and prohibits the imposition of a substantial burden on free exercise unless such result is justified by a compelling interest and narrowly tailored to achieve that interest. *See* 42 U.S.C. § 2000cc(a)(2)(C); *Freedom Baptist*, 204 F. Supp. 2d at 868 (recognizing that "zoning ordinances must by their nature impose individual assessment regimes. That is to say, land use regulations through zoning codes necessarily involve case-by-case evaluations of the propriety of proposed activity against extant land use regulations."). Accordingly, the constitutional protection afforded in this section mirrors the scope of the rights protected in *Sherbert*, *Smith*, and

Lukumi. *See Lukumi*, 508 U.S. 542; *see also Smith*, 494 U.S. at 890; *Sherbert*, 374 U.S. at 403; *see also Freedom Baptist*, 204 F. Supp. 2d at 868 ("What Congress manifestly has done in this subsection is to codify the individualized assessment jurisprudence in Free Exercise cases that originated with the Supreme Court's decision in *Sherbert v. Verner*."); H.R. Rep. No. 106-219, at 17 (pointing out that individualized assessment portion of statute reflects Court's teachings in *Smith*); *Joint Statement*, 146 Cong. Rec. at S7775 ("Each subsection closely tracks the legal standards in one or more Supreme Court opinions.").

In addition to the congruence between the right that Congress has identified and the constitutional rights this Court has recognized, section 2000cc(a) is a proportional response to the problems that Congress has acknowledged. On the whole, the provisions of RLUIPA do not amount to "[s]weeping coverage." *See City of Boerne*, 521 U.S. at 532. RLUIPA deals with violations of constitutional rights only in the context of land use regulations and institutionalized persons and does not have the effect of "displacing laws and prohibiting official actions of almost every description and regardless of subject matter." *Id.* RLUIPA remedies constitutional violations in areas where discrimination has been the most flagrant – in the context of land use regulations and institutionalized persons. *See, e.g.*, *id.*; *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966) (allowing congressional use of enforcement power in context of voting rights because statute affected discrete class of state laws);

Guru, 456 F.3d at 994-95 ("RLUIPA is a congruent and proportional response to free exercise violations because it targets only regulations that are susceptible, and have been shown, to violate individuals' religious exercise."); H.R. Rep. No. 106-216, at 17 (finding that statute "operates as precisely the type of 'enforcement' that the *Boerne* Court invited.").

In light of the legislative findings regarding the widespread discrimination in the context of land use regulation and the congruent and proportional statute crafted by Congress in response, section 2000cc(a)(2)(C) functions as an appropriate exercise of Congress's Section 5 enforcement power.

III. This Court Should Clarify That RLUIPA Authorizes Litigants To Recover Compensatory Damages Against Governments And Government Actors.

RLUIPA provides that violations of the Act entitle litigants to file suit against governments to recover "appropriate relief," including damages. *See* 42 U.S.C. § 2000cc-2(a). Furthermore, individuals "acting under color of State law" are subjected to liability. 42 U.S.C. § 2000cc-5(4)(A)(iii).

Congress intended this provision to grant prevailing parties the right to recover damages, and this Court's "general rule" is to interpret the term "appropriate relief" to include damages unless otherwise directed by Congress. *See* H.R. Rep. No.

106-219, at 29 (1999) (stating that RLUIPA creates "a private cause of action for damages, injunction and declaratory judgment"); *Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 66-70 (1992) (reinforcing the "the traditional presumption in favor of all appropriate relief"); *see also Smith v. Allen*, 502 F.3d 1255, 1269-71 (11th Cir. 2007) (concluding that "the phrase 'appropriate relief' in RLUIPA encompasses monetary as well as injunctive relief").

As a result, and pursuant to a valid exercise of Congress's Commerce Clause and Section 5 authority, litigants may recover compensatory damages against governments and individual government actors for violations of RLUIPA.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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