No. 08-___ 09109 JUL 22 2009

IN THE

Supreme Court of the United States

GERALD WILLIAM CARDINAL,

Petitioner,

v.

LINDA METRISH,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5, provides an express private right of action to "obtain appropriate relief against a government," *id.* § 2000cc-2. Exacerbating a circuit split, the Sixth Circuit held that the Eleventh Amendment precludes awards of compensatory damages under this provision against states and state officials in their official capacities. The question presented is:

Whether states and state officials in their official capacities may be subject to suit for damages for violations of the Religious Land Use and Institutionalized Persons Act?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerald William Cardinal respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 564 F.3d 794. The district court's opinion (Pet. App. 19a-27a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 2009. Pet. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

I. Constitutional Provisions

The Eleventh Amendment to the United States Constitution, U.S. CONST. amend. XI, provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

II. Statutory Provisions

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5 (2000), provides, in relevant part:

Section 2000cc-1. Protection of religious exercise of institutionalized persons

(a) General rule

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

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

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

(b) Scope of application

This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

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.

* * * * *

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 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 . . . .

* * * * *

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

STATEMENT OF THE CASE

Petitioner, a prison inmate, brought this suit against Warden Linda Metrish in her official capacity, seeking monetary damages for violations of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5 (2000). In acknowledged conflict with the Eleventh Circuit, the Sixth Circuit held that although RLUIPA's statutory text supported damages claims against states and state officials in their official capacities, the Eleventh Amendment foreclosed such relief.

1. RLUIPA is a civil rights law designed to protect against religious discrimination, unequal religious accommodations, and unjustified infringement of the free exercise of religion. Section 3 of the Act applies to any state prison that "receives Federal financial assistance," *id.* § 2000cc-1(b), and directs that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," *id.* § 2000cc-1(a), unless the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means" of furthering that interest, *id.* §§ 2000cc-1(a)(1) and (2). "[R]eligious exercise" is defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id.* § 2000cc-5(7)(A).

Congress enacted RLUIPA's institutionalized persons provision in response to substantial evidence, collected during three years of hearings, indicating that persons institutionalized in state facilities face "'frivolous or arbitrary' barriers" to their religious

exercise. *Cutter v. Wilkinson*, 544 U.S. 709, 716 (2005) (citation omitted); *see also* H.R. Rep. No. 106-219, at 9-10 (1999) (describing one prison's taping of confession between priest and penitent, and another prison's refusal to provide Jewish prisoners with unleavened bread during Passover, "essentially forcing all Jewish inmates to violate their sacred religious practices"); *Joint Statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000*, 146 Cong. Rec. S7774-75 (daily ed. July 27, 2000) (summarizing findings); *Protecting Religious Liberty After Boerne v. Flores*: *Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong., 1st Sess., Pt. 3, at 41 (1998) (*Joint Stmn.*) (discussing discriminatory accommodations).

Based on its investigation, Congress found that, "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *Joint Stmn.*, 146 Cong. Rec. at S7775. Concerned that federal funding not contribute to such frivolous, unreasoned, or discriminatory impositions on religious exercise, Congress invoked its Spending Clause authority, U.S. CONST., art. I, § 8, cl. 1, to require the application of RLUIPA's heightened statutory protection for religious exercise whenever a substantial burden on religious exercise "is imposed in a program or activity that receives Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1).

To ensure effective enforcement of the Act, Congress created an express private right of action, providing that a "person may assert a violation of this

chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). The term "government," in turn, is broadly defined to include:

> (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).

2. Petitioner was an inmate at Hiawatha Correctional Facility of the Michigan Department of Corrections (MDOC) at the time of the events at issue in this case. Pet. App. 1a. Because of his "sincerely held belief in Judaism," he is able to eat only kosher foods. Plaintiff's First Amended Complaint ¶ 9, *Cardinal v. Metrish*, No. 2:06-cv-232 (W.D. Mich. Feb. 8, 2007). On March 2, 2005, he was transferred to Kinross Correctional Facility to be placed in disciplinary segregation because the Hiawatha facility lacked disciplinary segregation facilities. Pet. App. 2a. As a matter of policy, the Kinross facility does not serve inmates kosher meals. *Id.* Consistent with this policy, for the next six days the prison refused to provide petitioner with food he could eat. Plaintiff's First Amended Complaint ¶¶ 15-23, *Cardinal*, No. 2:06-cv-232; *see also* Pet. App. 2a. This was despite the fact that he told staff of his religious dietary needs upon his arrival, sent a written message relaying the same information to

respondent, the Warden of both the Hiawatha and Kinross facilities, and made numerous written requests to staff members for kosher foods as simple as "an apple or some kind of vegetable." Plaintiff's First Amended Complaint ¶¶ 15, 19-23, *Cardinal*, No. 2:06-cv-232. Petitioner was finally transferred to a third facility that serves kosher meals to inmates in segregation, but because it took an additional two days for the new facility to provide him a kosher meal, petitioner ultimately was deprived of food for a total of eight days. Pet. App. 2a.

Petitioner filed suit against respondent in her official capacity, alleging in relevant part a violation of his rights under RLUIPA. *Id.* He sought both equitable relief and damages. Pet. App. 5a.

3. Adopting the United States Magistrate Judge's report and recommendation, the district court granted respondent's motion for summary judgment, holding that Michigan's sovereign immunity barred the RLUIPA damages claim, and that the RLUIPA claim for equitable relief was moot because petitioner had been transferred to a facility that served kosher meals. Pet. App. 27a.

4. The Sixth Circuit affirmed. Pet. App. 1a.

After affirming the dismissal of petitioner's claims for injunctive relief as moot, Pet. App. 5a-6a, the court found petitioner's claims for damages barred by the defendant's Eleventh Amendment immunity, Pet. App. 11a-12a. The court began by noting that because petitioner sued respondent in her official capacity, his suit was considered a suit against the State of Michigan for purposes of the Eleventh Amendment. Pet. App. 5a. The court

acknowledged that because RLUIPA clearly conditions receipt of federal prison funding on states' submitting to RLUIPA suits for "appropriate relief," states waive their Eleventh Amendment immunity to such suits by accepting federal funds. *See* Pet. App. 6a. The more difficult question, the court concluded, is whether "appropriate relief" includes monetary damages. *Id.* On that question, the court recognized, there is disagreement among the circuits. Pet. App. 6a-7a.

The court acknowledged that in *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007), the Eleventh Circuit had held that Congress validly conditioned receipt of federal funds on a waiver of states' immunity to damages claims under RLUIPA. *See* Pet. App. 7a. On the other hand, the court explained that in *Madison v. Virginia*, 474 F.3d 118 (4th Cir. 2006), the Fourth Circuit held that although accepting federal prison funds subjected the state of Virginia to RLUIPA's substantive requirements, the statute does not unambiguously condition receipt of those funds on a waiver of immunity to a money damages remedy for violations of the statute. *See* Pet. App. 7a-8a. This view, the court of appeals noted, was subsequently adopted by the Fifth Circuit as well, in *Sossamon v. Lone Star State of Texas*, 560 F.3d 316 (5th Cir. 2009), *petition for cert. filed*, 77 U.S.L.W. 3657 (U.S. May 18, 2009) (No. 08-1438). *See* Pet. App. 9a.

The Sixth Circuit agreed with the Fourth and Fifth Circuits, and held that petitioner's RLUIPA damages claim is barred by the Eleventh Amendment because "appropriate relief" does not clearly and unequivocally condition the state of Michigan's

receipt of federal funds on a waiver of sovereign immunity to monetary damages. Pet. App. 11a-12a.

Judge Clay concurred in the result but dissented from the majority's decision to reach the Eleventh Amendment question, which he believed had not been adequately developed in the district court or briefed on appeal. Pet. App. 15a-18a.

REASONS FOR GRANTING THE WRIT

This case presents the same question as the pending petition in *Sossamon v. Texas,* No. 08-1438. Agreeing with the Fifth Circuit's decision in that case, the Sixth Circuit here held, in acknowledged conflict with the law in the Eleventh Circuit, that the Eleventh Amendment bars money damages claims under RLUIPA. In addition to exacerbating a circuit conflict, this ruling effectively invalidates a key enforcement provision of a federal civil rights law. This Court's review is therefore warranted, either in *Sossamon* or in this case.

1. As discussed in greater detail in the *Sossamon* petition, there is a deep conflict among the circuit courts of appeal over the scope of states' waiver of sovereign immunity to RLUIPA claims by inmates in federally funded state prisons.

As the court of appeals recognized, the Eleventh Circuit has held that by accepting federal funds in light of RLUIPA's authorization of "appropriate relief," states waive their sovereign immunity to damages claims under the statute. In *Smith v. Allen*, the Eleventh Circuit held that RLUIPA's reference to "appropriate relief" "is broad enough to encompass the right to monetary damages" if a plaintiff proves a violation of the statute. *Smith*, 502 F.3d at 1270.

The Eleventh Circuit relied on *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992), which held that the implied private right of action under Title IX (another Spending Clause statute) included all "appropriate relief," including damages. *Smith*, 502 F.3d at 1270-71; *Franklin*, 503 U.S. at 66, 72-73. The Eleventh Circuit noted that Congress enacted RLUIPA in 2000, against the background of *Franklin*'s direction to lower courts to presume that all appropriate remedies are available, and that this "appropriate relief" included a damages remedy. *Smith*, 502 F.3d at 1271 ("We assume that, when Congress [enacted RLUIPA], it was aware of *Franklin*'s presumption in favor of making all appropriate remedies available to the prevailing party.").

As the Sixth Circuit here described, it joined the Fourth and Fifth Circuits in holding precisely the opposite. These courts have concluded that even if the phrase "appropriate relief" would otherwise be construed to include money damages, the statute is nonetheless insufficiently clear to condition receipt of federal funds on a waiver of sovereign immunity to RLUIPA damages claims. Pet. App. 11a-12a; *Sossamon*, 560 F.3d at 331; *Madison*, 474 F.3d at 131. Moreover, in a recent decision, the Seventh Circuit has now joined suit as well. *See Nelson v. Miller*, No. 08-2044, 2009 WL 1873500, at *14 (7th Cir. July 1, 2009).

2. The conflict between circuits is entrenched, capable of resolution only by this Court. The Eleventh Circuit has denied rehearing en banc in a case conflicting with the Sixth Circuit's decision, *Smith v. Allen*, 277 Fed. Appx. 979 (11th Cir. 2008)

(order denying rehearing) and recently reaffirmed its position, *see Hathcock v. Cohen*, 287 Fed. Appx. 793, 798 n.6 (11th Cir. 2008). The Sixth Circuit, for its part, reached its decision fully cognizant of the contrary authority. Delaying review will only exacerbate, not eliminate, the circuit conflict. The critical analytical debate has already been fully ventilated, with much of the division turning on debates over the meaning of *this Court*'s precedent. Courts in future cases will simply pick a side without further analysis, as the Seventh Circuit recently did. *See, e.g.*, *Nelson*, No. 08-2044, 2009 WL 1873500, at *14. Only this Court can bring the needed clarity to its precedent and provide stabilizing direction to the lower courts.

3. This Court's review is also warranted because the Sixth Circuit's decision effectively held unconstitutional a key enforcement provision of a civil rights law.

The court of appeals did not dispute that the most natural reading of RLUIPA's text—especially in light of *Franklin*'s use of the phrase "appropriate relief" to include damages in the context of another Spending Clause statute—would authorize a damages award against state defendants. But the court held that giving effect to the text so construed would violate the Eleventh Amendment, effectively invalidating an important provision of a federal statute.

This Court has consistently granted certiorari to review decisions declaring federal statutes unconstitutional even when those statutes have far less frequent application than RLUIPA. *See, e.g.*, *United States v. Stevens*, 129 S. Ct. 1984 (2009);

United States v. Morrison, 529 U.S. 598 (2000); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569 (1998); *Clinton v. City of New York*, 524 U.S. 417 (1998); *see also* ROBERT L. STERN & EUGENE GRESSMAN, STEPHEN M. SHAPIRO, & KENNETH S. GELLER, SUPREME COURT PRACTICE 264 (9th ed. 2007) ("Where the decision below holds a federal statute unconstitutional . . . certiorari is usually granted because of the obvious importance of the case."). It should do so again here.

4. For the reasons set forth in the *Sossamon* petition, certiorari is also warranted because the decision below is wrong.

The Sixth Circuit correctly recognized that Congress had clearly conditioned receipt of federal prison funding on a state's waiver of sovereign immunity to RLUIPA suits for "appropriate relief." But in holding that the Eleventh Amendment prohibited construing "appropriate relief" to include damages because states lacked notice of that interpretation, the court of appeals contravened this Court's decision in *Barnes v. Gorman*, 536 U.S. 181 (2002). In *Barnes*, this Court considered the scope of remedies available under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 to 12165, and Section 505 of the Rehabilitation Act, 29 U.S.C. § 794a, which, in turn, incorporated the remedies the Court had implied under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7. *Id.* at 185. As explained above, in *Franklin* this Court had held that an implied private right of action under a Spending Clause statute includes all "appropriate relief." Thus, the question in *Barnes* was the same

question presented here—what constitutes "appropriate relief"? *See id.* at 185.

Like the Sixth Circuit here, this Court began with the principle that a remedy constitutes "appropriate relief" only when the state "is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature." *Id.* at 187. But in direct conflict with the decision in this case, the Court then held that "[a] funding recipient is generally on notice that it is subject *not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract*," including "compensatory damages." *Id.* (citations omitted) (emphasis added).

Accordingly, under *Barnes*, states are on notice that by accepting federal prison funding, they are liable for compensatory damages and would be even if RLUIPA was completely silent as to available remedies. That RLUIPA expressly authorizes "appropriate relief" using the exact words *Franklin* had previously construed to include money damages only enhances the notice provided to states that a consequence of accepting federal prison funding is the possibility of suits for damages under RLUIPA.

5. Accordingly, certiorari is warranted to review the Sixth Circuit's conclusion that the Eleventh Amendment precludes an award of damages to petitioner for the violation of his rights under RLUIPA. However, because the same question is presented in the already-pending petition in *Sossamon v. Texas*, the Court may wish to hold this petition pending the disposition of that case. In the alternative, if the Court views this case as a better vehicle for deciding the question presented in both

petitions, it should grant the petition in this case and hold the petition in *Sossamon*.

CONCLUSION

The Court should hold the petition for a writ of certiorari in this case pending its disposition of the petition for a writ of certiorari in *Sossamon v. Texas*, petition for cert. pending, No. 08-1438 (filed May 18, 2009), and then dispose of this case accordingly.

Alternatively, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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