No. 23-1066

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEWEY AUSTIN BARNETT, II,
Plaintiff-Appellant,

v.

BRENDA SHORT, et. al.,
Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Missouri, Hon. Sarah E. Pitlyk
No. 4:22-cv-00708

PLAINTIFF-APPELLANT'S OPENING BRIEF

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RULE 28A(i)(1) SUMMARY AND REQUEST FOR ARGUMENT

Plaintiff-Appellant Dewey Austin Barnett, II, is a devout Christian who practices his religion by reading the Bible. While incarcerated in Jefferson County, Mr. Barnett was held in solitary confinement and deprived of the Bible for a month. When he objected, Defendant-Appellee Brenda Short, the Jail Administrator, scoffed, telling him, "Feel free to quote the Constitution all you want." Mr. Barnett sued Jefferson County and Ms. Short, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause. The district court dismissed both claims at the screening stage.

Oral argument is warranted because the district court's holding splits with other circuits and contravenes Supreme Court precedent. For instance, the district court's holding that damages are not available under RLUIPA against Jefferson County breaks with opinions of the Fifth and Ninth Circuits. And its holding that damages are not available under RLUIPA against Ms. Short in her individual capacity cannot be squared with the Supreme Court's opinion in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020). In light of the complexity and importance of the issues at stake, Mr. Barnett respectfully requests 20 minutes of oral argument.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The district court entered a final order dismissing Mr. Barnett's action on November 30, 2022. App. 35; R. Doc. 7, at 12. Mr. Barnett timely filed a notice of appeal on December 28, 2022. App. 37-40; R. Doc. 11, at 1-5. This Court has jurisdiction under 28 U.S.C. § 1291.

INTRODUCTION

Defendants-Appellees cut Mr. Barnett off from his most sacred religious practice—reading the Bible—for an entire month. When Mr. Barnett requested permission to read the Bible his request was denied and ridiculed. Ms. Short even made a blanket statement that Mr. Barnett's future requests for religious liberties would be denied by saying, "You can have nothing more . . . Feel free to quote the Constitution all you want to—I don't mind at all." App. 23; R. Doc. 6-1 at 5.

This is precisely the type of mischief the Religious Land Use and Institutionalized Persons Act (RLUIPA) was enacted to prevent. Through RLUIPA, Congress broadly prohibited any "government," including both counties and individuals "acting under the color of State law," from imposing a substantial burden on "any exercise of religion" for any incarcerated person. 42 U.S.C. §§ 2000cc-1(a), 2000cc-5(4), 2000cc-5(7)(A). Congress also empowered courts to provide "appropriate relief" to redress RLUIPA violations, including money damages. *Id.* § 2000cc-2(a). As the Supreme Court held in interpreting RLUIPA's federal counterpart, the Religious Freedom Restoration Act (RFRA), the phrase

"appropriate relief" plainly encompasses damages. *Tanzin v. Tanvir*, 141 S. Ct. 486, 489 (2020). And if there is any doubt, RLUIPA contains a rule that the statute "shall be construed in favor of a broad protection of religious exercise." 42 U.S.C. § 2000cc-3(g).

Nevertheless, the district court dismissed Mr. Barnett's RLUIPA's claims by applying a categorical bar on damages, leaving Mr. Barnett without any meaningful relief. In doing so, the district court fundamentally misconstrued RLUIPA's language.

First, the district court erred in holding that money damages are not available against counties under RLUIPA. That holding contradicts RLUIPA's plain text, which expressly defines a "government" to include a "county," as two sister Circuits have recognized. 42 U.S.C. §§ 2000cc-5(4); *see Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 289-90 (5th Cir. 2012); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1168-69 (9th Cir. 2011).

Second, the district court erred in holding that damages against individual defendants are not available under RLUIPA. Again, that holding directly contradicts RLUIPA's text, which authorizes all "appropriate relief" against "any other person acting under color of State

law." 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4). Interpreting identical language under RFRA, the Supreme Court held that "appropriate relief" includes "money damages" against officials "in their individual capacities." *Tanzin*, 141 S. Ct. at 493. The use of the same language in RLUIPA makes clear that "Congress intended that text to have the same meaning in both statutes." *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005). The district court did not even address *Tanzin*.

The district court also erred in holding that Mr. Barnett failed to a state a claim under the First Amendment as to either Ms. Short or the County. Mr. Barnett's pleadings directly tie Ms. Short to the month-long deprivation of his Bible, and that deprivation was not *de minimis*. The Bible is the foundational text of Christianity. Devout Christians like Mr. Barnett cannot "practice [their] religion if deprived of access to the Bible." *Sutton v. Rasheed*, 323 F.3d 236, 257 (3d Cir. 2003). Ms. Short knew this, and simply did not care. And because Mr. Barnett adequately alleged that Ms. Short exercised final decision-making authority with respect to the Jefferson County jail, his complaint states a claim for liability against Jefferson County.

This Court should reverse the decision below and allow Mr. Barnett's claims to proceed.

STATEMENT OF ISSUES

1. Whether money damages are available under RLUIPA as "appropriate relief" against a "county," 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(i), as two of this Court's sister circuits have held. *Opulent Life*, 697 F.3d at 289-90; *Centro Familiar*, 651 F.3d at 1168-69; *see Tanzin*, 141 S. Ct. at 489

2. Whether money damages are available under RLUIPA as "appropriate relief" against "person[s] acting under color of State law," 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(iii), as the Supreme Court held in interpreting identical language in RFRA. *Tanzin*, 141 S. Ct. at 489; *see also Sabri v. United States*, 541 U.S. 600 (2004).

3. Whether the district court erred in concluding that Mr. Barnett failed to state First Amendment Free Exercise claims based on Ms. Short and Jefferson County's deprivation of Mr. Barnett's Bible on the grounds that it was a *de minimis* violation. *See Sutton*, 323 F.3d at 257; *Blankenship v. Setzer*, 681 F. App'x 274, 278 (4th Cir. 2017); *Ware v. Jackson Cnty.*, 150 F.3d 873, 880 (8th Cir. 1998).

4. Whether the district court erred in concluding that Mr. Barnett failed to allege municipal liability against Jefferson County for Ms. Short's Free Exercise Clause violation, where his complaint adequately alleged that Ms. Short exercised final decision-making authority for Jefferson County Jail. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986); *Ware*, 150 F.3d at 880; *Bolderson v. City of Wentzville*, 840 F.3d 982, 985 (8th Cir. 2016); *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 946 (8th Cir. 2017).

STATEMENT OF THE CASE

I. Statutory Background

Congress enacted RLUIPA "to provide very broad protection for religious liberty." *Holt v. Hobbs*, 574 U.S. 352, 356 (2015) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014)). RLUIPA provides: "No government shall impose a substantial burden on the religious exercise" of an incarcerated individual, unless the government can demonstrate that doing so is narrowly tailored to serve a compelling governmental interest. 42 U.S.C. § 2000cc-1(a). RLUIPA defines "government" expansively to include counties, their officials, and "any other person acting under color of State law." 42 U.S.C. § 2000cc-5(4)(A).

And RLUIPA authorizes all "appropriate relief" to address violations of religious liberty. 42 U.S.C. § 2000cc-2.

RLUIPA's text includes multiple provisions that "underscore its expansive protection for religious liberty." *Holt*, 574 U.S. at 358. As relevant here, Congress mandated that the statute "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." *Id.* § 2000cc-3(g).

RLUIPA traces its roots to its sister statute, the Religious Freedom Restoration Act (RFRA), a statute that Congress enacted in response to the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990), which held that, "the First Amendment tolerates neutral, generally applicable laws that burden or prohibit religious acts even when the laws are unsupported by a narrowly tailored, compelling governmental interest." *Tanzin*, 141 S. Ct. at 489. Congress viewed *Smith* as insufficiently protective of religious liberty. *Id.* Thus, it passed RFRA with the intent to provide far more sweeping protections for religious liberties and to prohibit governments from substantially burdening the exercise of

religion, even if the burden "results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a).

After the Supreme Court struck down RFRA as applied to the states, Congress swiftly responded by passing RLUIPA. RLUIPA "imposes the same general test as RFRA." *Hobby Lobby*, 573 U.S. at 695. Like RFRA, RLUIPA aimed to reinstate the pre-*Smith* standard: Both require a showing that any substantial government burden on religious exercise is the least restrictive means to serve a compelling government interest. 42 U.S.C. § 2000bb-1(b); *id.* § 2000cc-1(a). Both RLUIPA and RFRA provide that a person can "obtain appropriate relief against a government" for violations of religious liberty. 42 U.S.C. § 2000bb-1(c); *id.* § 2000cc-2(a). Both statutes also define "government" to include an "official" and any "other person acting under color of State law," *id.* § 2000bb-2(1); *id.* § 2000cc-5(4). And both statutes are "given the same broad meaning." *Hobby Lobby*, 573 U.S. at 696 n.5.

There are two main differences between the statutes. First, RFRA applies only to federal defendants, whereas RLUIPA "applies to the States and their subdivisions." *Holt*, 574 U.S. at 357. Second, RLUIPA provides even greater substantive protection than RFRA because

RLUIPA's provision 42 U.S.C. § 2000cc-3(g) requires that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted" by the statute's terms and the Constitution. 42 U.S.C. § 2000cc-3(g).

II. Factual Background

In 2021, Mr. Barnett was detained at the Jefferson County Jail in Hillsboro, Missouri. App. 9; R. Doc. 6, at 2. On March 12, 2021, Mr. Barnett was placed in solitary confinement. App. 23; R. Doc. 6-1, at 5. He was not released from solitary until about April 11, 2021. App. 21; R. Doc. 6-1, at 3.

Mr. Barnett is a devout Christian who practices his religion by reading the Bible. App. 23; R. Doc. 6-1, at 5. Throughout his time in solitary, however, he was deprived of access to any copy of the Bible. App. 23; R. Doc. 6-1, at 5. He filed a handwritten "Prisoner Request/Grievance Form" notifying prison officials of the deprivation, and citing his rights under the federal Constitution. App. 23; R. Doc. 6-1, at 5.

In response, Jefferson County and Ms. Short never provided Mr. Barnett access to a Bible. App. 10; R. Doc. 6, at 3. Instead, Ms. Short handwrote the following message on his grievance form:

> You can have nothing more than what you have. Your behavior has taken away all privileges. Feel free to quote the constitution all you want to – I don't mind at all. You will not receive anything more.[1]

App. 23; R. Doc. 6-1, at 5.

Because he was deprived of a Bible, Mr. Barnett was unable to practice his religion. App. 10; R. Doc. 6, at 3 (alleging he was "denied religion"). As a result, Mr. Barnett suffered anxiety, stress, and depression because he was forced "to sin and be a sinner." App. 11; R. Doc. 6, at 4.

Shortly after being released from solitary confinement, Mr. Barnett was transferred to another facility. App. 27; R. Doc. 7, at 4.

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[1] As explained *infra* II.B., Mr. Barnett's allegations and other filings indicate that Ms. Short personally wrote the response. *See* App. 13-14; R. Doc. 6, at 6-7 ("I appealed Grievance but Jail Administrator Brenda Short *also* answers Appeals and didn't reply." (emphasis added)); *compare also* App. 23; R. Doc. 6-1, at 5 *with* App. 7; R. Doc. 1-10 (showing jail administrator Short responds to grievances).

III. Procedural History

Mr. Barnett then filed this civil rights action against Jefferson County and Ms. Short in her individual and official capacities, seeking damages and injunctive relief. App. 8, 12; R. Doc. 6, at 1, 5.

Before any defendants were served, the district court screened and dismissed the amended complaint pursuant to 28 U.S.C. §1915A. The court acknowledged that Mr. Barnett's factual allegations raised claims under RLUIPA and under the First Amendment's Free Exercise Clause.

The court did not address Mr. Barnett's RLUIPA claim on its merits. *See* App. 27; R. Doc. 7, at 4. Instead, the court dismissed Mr. Barnett's claim because it concluded that money damages are unavailable as a remedy against Jefferson County and Ms. Short. App. 26-27; R. Doc. 7, at 3-4. In support, the district court cited only one published case from this circuit, holding that money damages are unavailable against state entities. App. 27; R. Doc. 7, at 4 (citing *Van Wyhe v. Reisch*, 581 F.3d 639, 655 (8th Cir. 2009)). Accordingly, the court concluded that Mr. Barnett could seek only seek injunctive relief under RLUIPA, and that any such request was moot because the defendants

had already transferred him to a different facility. App. 27; R. Doc. 7, at 4.

As to Mr. Barnett's Free Exercise claim, the district court held that Mr. Barnett failed to "allege how the deprivation of his Bible significantly inhibited or constrained" the exercise of his religion. App. 34; R. Doc. 7, at 11. Construing Mr. Barnett's complaint as alleging only a single day of being deprived of a Bible, the court concluded that the deprivation was nothing more than a "*de minimis* interference with his ability to read the Bible," and therefore did not constitute a constitutional violation. App. 35; R. Doc. 7, at 12. The court also held that Mr. Barnett's allegations failed to establish that Ms. Short directly participated in the deprivation. App. 31-32; R. Doc. 7, at 8-9. As a result, the court held that Mr. Barnett failed to state a claim against Ms. Short in her individual capacity. App. 32; R. Doc. 7, at 12. As to Jefferson County, the court concluded that Mr. Barnett's allegations failed to establish liability under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and that the County could not be held liable under *respondeat superior*. App. 27-30; R. Doc. 7, at 4-7.

On appeal, this Court summarily affirmed the district court's screening stage dismissal without briefing. 8th Cir. March 28, 2023,

Order & Judgment. Mr. Barnett moved for rehearing or rehearing en banc, and this Court granted the motion. 8th Cir. July 20, 2023, Order Granting Rehearing.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's decision to dismiss a civil complaint. *McAuley v. Fed. Ins. Co.*, 500 F.3d 784, 787 (8th Cir. 2007). To state a plausible claim for relief, a complaint must set forth sufficient "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014).

In conducting this review, this Court must "accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party." *Cole v. Homier Distributing Co.*, 599 F.3d 856, 861 (8th Cir. 2010). In addition, because Mr. Barnett filed his complaint and litigated it before the district court *pro se*, his allegations must be "given liberal construction," which means that "if the essence of an allegation is discernable," then the Court should "construe the complaint in a way that permits the layperson's claim to be considered

within the proper legal framework." *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015).

SUMMARY OF ARGUMENT

I.A. The district court erred in holding that RLUIPA barred Mr. Barnett's claims for money damages. RLUIPA's plain text authorizes actions for damages as "appropriate relief" against "county" defendants. 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(A)(i). There is a longstanding presumption that money damages are "appropriate relief" against such defendants unless Congress gives clear direction it intends to exclude money damages. *Franklin v. Gwinett Cnty. Pub. Sch.*, 503 U.S. 60, 68 (1992). As two of this Court's sister Circuits have held, RLUIPA contains no such direction. *See Opulent Life*, 697 F.3d at 289-90; *Centro Familiar*, 651 F.3d at 1168-69. This Court should reach the same conclusion that counties can be liable for money damages under RLUIPA.

I.B.1. RLUIPA also authorizes money damages against officials sued in their individual capacity. RLUIPA's plain text authorizes individual liability by defining "government" to include not only "official[s]," but also "any other person acting under color of State law." 42 U.S.C. §§ 2000cc-5(4)(A)(ii), (iii). In *Tanzin*, the Supreme Court

interpreted identical language to make clear that "officials are treated like persons," and subject to individual liability, just as they are under 42 U.S.C. § 1983. 141 S. Ct. at 490 (internal quotation marks omitted) (cleaned up). Confirming this, RLUIPA's own rules of construction require that RLUIPA be construed to authorize relief "to the maximum extent permitted" by the statute's terms. 42 U.S.C. § 2000cc-3(g). Those terms plainly encompass individual capacity claims. And for such claims, RLUIPA authorizes all "appropriate relief," including money damages. *See Tanzin*, 141 S. Ct. at 491-493.

I.B.2.a. Other courts that have barred money damages against individual defendants under the Spending Clause are wrong. Some reason that RLUIPA does not clearly impose individual liability as a condition of federal funding. Those courts failed to recognize RLUIPA's plain embrace of damages as "appropriate relief," as the Supreme Court made clear in *Tanzin*.

I.B.2.b. Other courts claim that the canon of constitutional avoidance requires construing RLUIPA contrary to its plain meaning in order to avoid a constitutional problem with individual liability under the Spending Clause. Such avoidance is both improper and unnecessary.

Constitutional avoidance is improper because RLUIPA's plain text is not subject to multiple interpretations. And avoidance is unnecessary because RLUIPA triggers no Spending Clause concerns. Other circuits' concern that Congress cannot impose liability on those who did not directly receive federal funding flies in the face of the Supreme Court's case law and statutes around the United States Code. *See Sabri*, 541 U.S. at 608; *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 180 (2023).

II. The district court also erred in dismissing Mr. Barnett's First Amendment claims. Reviewing his complaint at the screening stage, the district court failed to give Mr. Barnett's allegations the liberal construction required for *pro se* filings. It concluded that the deprivation of his Bible was *de minimis* and that he failed to allege that Ms. Short was personally involved in the deprivation. That was error.

II.A. First, depriving Mr. Barnett of the Bible—the holiest text in Christianity—was not a *de minimis* burden on his ability to practice his religion. Construing his complaint properly, Mr. Barnett alleged he was deprived of his Bible for the entire month he was in solitary confinement, not, as the district court found, solely on the day he filed his grievance.

And he alleged the deprivation entirely denied him of his "religion," causing him to feel stress, shame, and anxiety for having sinned. Those allegations more than suffice to state a claim under the First Amendment. *See Sutton*, 323 F.3d at 257; *Blankenship*, 681 F. App'x at 278; *Ware*, 150 F.3d at 880.

II.B. Second, Mr. Barnett adequately alleged that Ms. Short directly participated in depriving Mr. Barnett of his Bible for a month. Properly construed, Mr. Barnett's operative complaint and attached exhibits allege that Ms. Short personally authored the grievance response denying him access to his Bible and taunting him to "quote the Constitution." To the extent the Court finds Mr. Barnett's *pro se* complaint unclear, it should remand with leave to amend the complaint to add an express allegation that Ms. Short authored the grievance—an allegation that Mr. Barnett included in his initial *pro se* complaint but did not reiterate when he amended his complaint.

II.C. Finally, Mr. Barnett adequately alleged that Ms. Short is a final policymaker for Jefferson County, given her supervisory authority at the Jefferson County Jail. *Pembaur*, 475 U.S. at 481; *Bolderson*, 840 F.3d at 985; *see also City of St. Louis v. Praprotnik*, 485 U.S. 112, 123

(1988). Accordingly, Jefferson County is liable for her violation of Mr. Barnett's right to religious exercise, and this Court should permit Mr. Barnett's *Monell* claim against the County to proceed. *Ware*, 150 F.3d at 880.

ARGUMENT

I. The District Court Erred In Dismissing Mr. Barnett's RLUIPA Claim By Applying A Categorical Bar On Damages.

The district court did not dismiss Mr. Barnett's RLUIPA claim based on any substantive defect. 42 U.S.C. § 2000cc(a)(1); *see* App. 26-27; R. Doc. 7, at 3-4. Nor could it. Mr. Barnett alleged that defendants denied him a Bible for a full month and that as a result, he could not practice his religion. That denial surely qualifies as a "substantial burden on the exercise of religion." 42 U.S.C. § 2000cc-1(b)(1)-(2); *See, e.g.*, *Blankenship*, 681 F. App'x at 276-77; *Robertson v. Biby*, 647 F. App'x 893, 897-98 (10th Cir. 2016).

Instead, the district court barred Mr. Barnett's claim by holding that money damages are categorically unavailable under RLUIPA. App. 27; R. Doc. 7, at 4 ("RLUIPA does not provide monetary damages."). The district court's only published authority for that striking proposition was a case holding that money damages are not available against *state*

defendants in their *official* capacities, who enjoy sovereign immunity. But Mr. Barnett did not raise any claims against a state entity or official. Rather, he raised claims against Jefferson County and against the County's jail administrator in her individual capacity, neither of whom enjoy sovereign immunity. The plain text of the statute thus authorizes money damages in this case.

A. RLUIPA Authorizes "Appropriate Relief," Including Money Damages, Against A "County" Like Jefferson County.

RLUIPA authorizes courts to provide "appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). RLUIPA then defines the term "government" to include a "county" like Jefferson County. 42 U.S.C. § 2000cc-5(4)(A)(i). Accordingly, the circuits that have considered this issue have squarely held that money damages are "appropriate relief" against municipal and county defendants. *Opulent Life*, 697 F.3d at 290; *Centro Familiar*, 651 F.3d at 1169 & n.21.[2]

[2] Other circuits have also assumed money damages are available against municipalities. For example, in *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, the Third Circuit remanded the plaintiff's RLUIPA claim to the district court with instructions "to enter summary judgment for [the plaintiff] *and to determine compensatory damages*[.]" 510 F.3d 253, 261-73 (3d Cir. 2007) (emphasis added); *see also Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357, 365-66 (6th Cir.

1. As the Supreme Court recognized in *Franklin*, there is a longstanding presumption that money damages constitute "appropriate relief," unless Congress gives a clear direction it intends to exclude money damages. 503 U.S. at 66-67. "RLUIPA contains no indication, much less clear direction, that it intends to exclude a monetary damages remedy." *Opulent Life*, 697 F.3d at 290.

Congress knows how to exclude money damages as an available remedy when it wants to do so. *See*, *e.g.*, 29 U.S.C. § 1132(a)(3) (providing for "appropriate equitable relief"); 42 U.S.C. § 2000e–5(g)(1) (providing for "equitable relief as the court deems appropriate"); 15 U.S.C. § 78u(d)(5) (providing for "any equitable relief that may be appropriate or necessary"). Congress even did so in a different RLUIPA provision, authorizing the United States to bring actions "for injunctive or declaratory relief" to enforce RLUIPA. 42 U.S.C. § 2000cc-2(f). "[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004);

2018) (holding "Tree of Life has not abandoned its money-damages claim; nor did the district court's permanent injunction moot it").

see also United States v. Clark, 926 F.3d 487, 489 (8th Cir. 2019). Thus, Congress's choice of the more expansive language in RLUIPA's cause of action provision—"appropriate relief"—must be read as authorizing relief *beyond* "injunctive or declaratory relief," *i.e*, money damages.

Lest there be any doubt, RLUIPA expressly requires that its terms "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) (emphasis added).

The plain text of RLUIPA thus makes clear that money damages are available against county defendants.

2. RLUIPA's structure also counsels in favor of allowing money damages against county defendants. Recall that RLUIPA expressly contemplates suits against counties: It authorizes relief "against a government" which it defines to include a "county." 42 U.S.C. § 2000cc-5(4)(A)(i). In the mine run of cases, damages will be the *only* form of relief available against a county defendant.

As a general matter, counties interact with "institutionalized persons"—those protected by RLUIPA—through their operation of jails. *See* Zhen Zeng, Bureau of Justice Statistics, *Jail Inmates in 2021—*

Statistical Tables at 4 (Dec. 2022) (defining jail as "[a] confinement facility generally operated under the authority of a sheriff, police chief, or county or city administrator").[3] Unlike prisons, which are designed to house inmates for extended periods of time, the average inmate spends just over one month in a jail. *Id.* at 3. Very few, if any, RLUIPA claims could be resolved on the merits in that timeframe. But once an inmate is transferred to another location, any claims for injunctive relief are moot. And the jail itself—the defendant in a RLUIPA case—has discretion to transfer an inmate even sooner, thereby mooting the case even faster.

Money damages are thus not only "appropriate relief," but often the *only* relief available against county defendants. In this case, for instance, Defendants transferred Mr. Barnett to a new facility before the district court considered his suit, meaning that his request for injunctive relief was moot. App. 27; R. Doc. 7, at 4. If money damages are not available, Mr. Barnett will have no way to hold Jefferson County accountable.

3. The district court never cited RLUIPA's text or considered the holdings of other circuits. In support of its conclusion that RLUIPA

[3]https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ji21st.pdf.

prohibits money damages, it cited just one published case: *Van Wyhe v. Reisch*, 581 F.3d 639 (8th Cir. 2009). The district court described *Van Wyhe* as holding that "RLUIPA does not authorize monetary damages based on official capacity claims." App. 27; R. Doc. 7, at 4.

But *Van Wyhe* contains no such categorical rule. In *Van Whye*, this Court held that RLUIPA does not allow money damages against *state* officials—not *all* officials in their official capacity—because sovereign immunity protects states from money damages. 581 F.3d at 655 (finding no "waiver of sovereign immunity from money damages"). Counties and their officials, however, do not enjoy sovereign immunity. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280-81 (1977) (recognizing that political subdivisions of states do not enjoy Eleventh Amendment immunity); *see also Tanzin*, 141 S. Ct. at 492-493 (noting that state sovereign immunity against damages suits under RLUIPA does not apply to suits against defendants "who do not enjoy sovereign immunity"). *Van Wyhe*, therefore, does not bar damages against a non-sovereign defendant like Jefferson County. Rather, RLUIPA's plain text requires that "appropriate relief," including damages, be available.

B. RLUIPA Authorizes "Appropriate Relief," Including Money Damages, Against A "Person Acting Under Color Of State Law" Like Brenda Short.

RLUIPA's authorization of "appropriate relief against a government" also allows for money damages against government officials in their individual capacities. *See* 42 U.S.C. § 2000cc-2(a). RLUIPA defines "government" to include a "person acting under color of State law"—that is, an official in her individual capacity. And the Supreme Court's decision in *Tanzin* makes clear that "appropriate relief" against an official sued in her individual capacity includes money damages. *Tanzin,* 141 S. Ct. at 493. Other courts' decisions to the contrary wrongly assume one of two things. They either assume that RLUIPA is not sufficiently clear to impose money damages against individual officers—a position no longer defensible after *Tanzin*—or they assume that allowing money damages poses some constitutional problem—which it does not.

1. The Plain Text Of RLUIPA Authorizes Money Damages Against Officials In Their Individual Capacity.

a. As an initial matter, there can be no question that RLUIPA permits suits against government officials in their individual capacity.

RLUIPA defines "government" as:

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

42 U.S.C. §§ 2000cc-5(4)(A)(i)-(iii) (emphases added).

The phrase "under color of State law" invokes "one of the most well-known civil rights statutes: 42 U.S.C. § 1983." *Tanzin*, 141 S. Ct. at 490. The Supreme Court has long-held that Section 1983 "permit[s] suits against officials in their individual capacities." *Id.* Congress's use of the "same terminology as § 1983 in the very same field of civil rights law" renders it "reasonable to believe that the terminology bears a consistent meaning." *Id.* at 490-91 (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 323 (2012)).

Further confirmation: RLUIPA's definition lists "an official of" a government entity separately from "any *other person* acting under color of State law." 42 U.S.C. §§ 2000cc-5(4)(A)(ii), 2000cc-5(4)(A)(iii) (emphasis added). The former provision covers officials in their official capacities. The latter thus must permit suit against officials in their

individual capacities; otherwise the entirety of clause (iii) would be superfluous. *See City of Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (rejecting interpretation that rendered "superfluous another part of the same statutory scheme"); *Tanzin*, 141 S. Ct. at 490.

If there were any ambiguity remaining, recall that the text of RLUIPA contains its own canon of construction, which requires the statute to 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). That broad-construction rule mandates that RLUIPA be interpreted to allow individual capacity suits.

Finally, the Supreme Court eliminated all doubt about whether RLUIPA's language authorizes individual capacity claims three years ago. In *Tanzin*, the Supreme Court considered nearly identical language in RFRA that defined "government" to include any "other person acting under color of law" and held that this language authorized individual capacity claims. *Tanzin*, 141 S. Ct. at 490; 42 U.S.C. § 2000bb-2(1). Justice Thomas, delivering the unanimous opinion of the Court, explained that because RFRA defines "official" separately from "other

person[s]," the statute permitted suits against parties in both their official and individual capacities. *Tanzin*, 141 S. Ct. at 490.

The Supreme Court has explained that because RLUIPA's rights-creating language "mirrors RFRA" in all relevant respects, the Court generally construes RLUIPA and RFRA the same way. *Holt*, 574 U.S. at 357-58; *see Hobby Lobby*, 573 U.S. at 696 n.5. There is no reason to violate the Court's practice here. After all, the two statutes emerge from the same legal backdrop; contain nearly identical text; and share the goal of providing greater protection for religious liberty. *See supra*, 6-9. Just like RFRA, RLUIPA defines "officials of an entity" separately from "any other person acting under color of state law." If that language in RFRA authorizes individual capacity suits, so does the same language in RLUIPA.

b. The term "appropriate relief" includes money damages in suits against individual capacity defendants for the same reasons it includes money damages in suits against counties. *See supra* I.A. "Appropriate relief" is generally presumed to allow for money damages. *Id.*

Moreover, RLUIPA was enacted against the backdrop of a long tradition of money damages being available against individual capacity

defendants. *Tanzin* 141 S. Ct. at 491. "In the early Republic, 'an array of writs . . . allowed individuals to test the legality of government conduct by filing suit against government officials' for money damages 'payable by the officer.'" *Id.* (quoting James E. Pfander & Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification and Govt Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1871-1875 (2010)). Individual damages actions remained available at common-law through the 19th and well into the 20th centuries. *Id.* (collecting cases). And since as early as 1871, long before Congress enacted RLUIPA, money damages have also been available against state and local officials who "under color of state law" deprived another of a constitutional right. *Id.* (citing 17 Stat. 13.) This longstanding historical tradition—stretching back to the earliest roots of the Republic—confirm money damages are appropriate relief against persons acting under color of state law.

Moreover, as *Tanzin* explained, "[a] damages remedy is not just 'appropriate' relief as viewed through the lens of suits against government employees"; "[i]t is also the *only* form of relief" when it comes to some violations of religious liberty. 141 S. Ct. at 492 (emphasis in original). As explained *supra*, I.A., that's the case here—Mr. Barnett has

no recourse aside from money damages because he was transferred from the facility that employs Ms. Short rendering claims for injunctive relief moot. And the same is true for other jail inmates who suffer religious liberty violations and are transferred out of the offending facility before they can obtain relief. This is no small issue with recent estimates putting the U.S. jail population at 647,200 people in the spring of 2021.[4]

And again: If any doubt remains, recall RLUIPA's specific instruction that it is to be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted." 42 U.S.C. § 2000cc-3(g) (emphasis added).

c. Once again, the district court's only published authority for its conclusion was *Van Wyhe*. App. 27; R. Doc. 7 at 4. For the same reason, *Van Wyhe* does not bar suits against counties—namely, that it is a case about sovereign immunity, which is only available to states— it does not bar suits against defendants in their individual capacities, either: Individual defendants cannot claim sovereign immunity. *Tanzin*, 141 S.

[4] *See* Jacob Kang-Brown, Chase Montagnet, and Jasmin Heiss, People in Jail and Prison in Spring 2021, Vera Institute of Justice, June 2021, *available at* https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-spring-2021.pdf.

Ct. at 493. And the district court's two unpublished decisions, besides being nonprecedential, predate *Tanzin*.

The district court thus supplied no compelling reason to depart from the plain text of the statute: "Government" includes officials in their individual capacities, and "appropriate relief" includes money damages against such individuals.

2. This Court Should Not Follow Other Circuits That Have Improperly Barred Money Damages In Individual Capacity Suits Based On Erroneous Spending Clause Reasoning.

In fairness to the district court's decision, several other circuits bar money damages against individuals under RLUIPA. These decisions fall into two categories: those that find that RLUIPA fails to clearly authorize such damages, and those that hold that, even if RLUIPA speaks clearly, Congress cannot impose liability on individuals who do not directly receive federal funds. Neither set of cases is correct.

a. *Clear Statement:* Start with the clear-statement circuits. Those circuits rightly note that RLUIPA was passed, at least in part, under Congress's authority under the Spending Clause. Because Spending Clause legislation like RLUIPA operates through the consent of federal funding recipients, Congress must express any conditions of accepting

the funds "with a clear voice," in order to enable the recipients "to exercise their choice knowingly." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Prior to *Tanzin*, several circuits had thus held that RLUIPA cannot authorize damages against individual defendants because it does not speak with the requisite "clear voice." *See Haight v. Thompson*, 763 F.3d 554, 567-70 (6th Cir. 2014); *Rendleman v. Rouse*, 569 F.3d 182, 187-189 (4th Cir. 2009).

That reasoning was wrong even prior to *Tanzin*. The Fifth Circuit, for instance, even before *Tanzin* recognized that "[t]he plain language of RLUIPA" authorizes damages against defendants in their individual capacities. *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 327 (5th Cir. 2009), *aff'd sub nom. Sossamon v. Texas*, 563 U.S. 277 (2011).

In any event, the view that RLUIPA does not clearly encompass damages against individuals is entirely indefensible after *Tanzin*. There, the Supreme Court explained that "RFRA's text provides a clear answer" that suits against individuals in their personal capacities are authorized. 141 S. Ct. at 490. In such suits, "damages have long been awarded as appropriate relief." *Id.* at 491. That is especially true in the context of Section 1983, from which RLUIPA borrowed the language "person acting

under color of State law." *Id.* at 492. Just as "[t]here is no doubt that damages claims have always been available under § 1983," there is no doubt that damages are "appropriate relief" under RLUIPA. *Id.*

Congress spoke clearly when it offered Jefferson County federal funding, conditioning the funds on the imposition of individual liability on "person[s] acting under color of State law." 42 U.S.C. §§ 2000cc-1(b)(1), 2000cc-5(4). If Jefferson County did not believe individual liability was appropriate, its "recourse [was] to decline the funds." *Agency for Int'l Dev. v. All. For Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013). Instead, Jefferson County accepted tens of thousands of dollars in funding. *See, e.g.*, 2021 Missouri Local JAG Allocations, https://shorturl.at/floIS. As a result, Jefferson County accepted Congress's requirement that county employees, including Ms. Short, acting under Jefferson County's authority would be subject to individual liability for money damages for RLUIPA violations.

Indeed, as explained below, Ms. Short was not just any employee, but a high-ranking official and final policymaker for Jefferson County in matters relating to the jail. *See infra* II.B.-C. When it came to the

administration of the jail, she represented the County, and was responsible for complying with the obligations of RLUIPA.

b. *Direct Recipients Only:* Although the district court did not rely on them, other courts have suggested that it would be *unconstitutional* for Congress to impose money damages liability on defendants in their individual capacities through its Spending Clause power, and therefore "the principle of constitutional avoidance" counsels in favor of interpreting RLUIPA to exclude such damages. *See, e.g.*, *Landor v. La. Dep't of Corr. and Pub. Safety*, 82 F.4th 337, 342-44 (5th Cir. 2023); *Washington v. Gonyea,* 731 F.3d 143, 145-46 (2d Cir. 2013). But RLUIPA's text is too clear to allow the canon of constitutional avoidance to do any work, and in any event, there is no constitutional problem to avoid here.

i. No ambiguity: To begin with, where, as here, a statute's meaning is clear, the canon of constitutional avoidance "simply has no application." *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (cleaned up); *see also* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2145-49 (2016). For the reasons explained above—RLUIPA's clear statutory definition of "government," the Supreme

Court's long tradition of interpreting "appropriate relief" to include money damages, RLUIPA's internal canon of construction, and the Supreme Court's opinion in *Tanzin*—there is only one plausible interpretation of "appropriate relief against a government" here: it includes money damages against officials sued in their individual capacity.

To hold otherwise would give identical language in RLUIPA and RFRA—the phrase "appropriate relief against a government"—different meanings. This Court should not do so. *See Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1812 (2019) ("This Court does not lightly assume that Congress silently attaches different meanings to the same term in the same or related statutes.").

Indeed, doing so would give the phrase "appropriate relief against a government" different meanings within RLUIPA itself. RLUIPA authorizes "appropriate relief against a government" not only where the "substantial burden is imposed in a program or activity that receives Federal financial assistance" (the portion of RLUIPA enacted under Congress's Spending Clause power) but also where "the substantial burden affects . . . commerce . . . among the several States" (the portion of

RLUIPA under Congress's Commerce Clause power). 42 U.S.C. §§ 2000cc-1(b)(1)-(2); *see Holt*, 574 U.S. at 357. No court has suggested that, where Congress is exercising its Commerce Clause powers, it cannot authorize money damages against individual defendants. In those circumstances, at a minimum, "appropriate relief against a government" would include money damages against individual defendants.

Finding that the same phrase does *not* include money damages when it is applied against a defendant pursuant to Congress's Spending Clause power would mean that the same term, in the same statute, will have drastically different meanings in different cases. Statutes are not chameleons; the same words cannot take on different meanings depending on who is bringing the case. *See Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (explaining a statute must be given consistent meaning even when enforced in different contexts).

ii. No constitutional problem: In any event, these Courts have twisted themselves into linguistic knots for no reason: There is nothing unconstitutional about individual liability under the Spending Clause.

Courts that hold otherwise reason that because the individual defendant prison official is not a direct recipient of federal funds, there

can be no money damages remedy against her. *See, e.g.*, *Landor*, 82 F.4th at 343 n.5 (collecting cases). Courts have derived this limitation from the general analogy drawn by the Supreme Court between contracts and the Spending Clause. *See Landor*, 82 F.4th at 341 ("Spending Clause legislation operates like a contract, so only the grant recipient—the state—may be liable for its violation." (internal quotation marks omitted)).

As the Sixth Circuit has explained, however, "this approach proves too much." *Haight*, 763 F.3d at 570. The Court used the contract analogy solely to require that Congress speak clearly when it imposes conditions on funding; the Court did *not* say that "even an eminently clear statute . . . would not permit money damages" because of other rules that apply in breach-of-contract suits. *Id.*

To the contrary, the Supreme Court has reiterated that its limited contract analogy cannot be used to import *all rules of contract* as constitutional limitations on the Spending Clause. *See Sossamon v. Texas*, 563 U.S. 277, 290 (2011) ("We have acknowledged the contract-law analogy, but we have been clear 'not [to] imply . . . that suits under Spending Clause legislation are suits in contract, or that contract-law

principles apply to all issues that they raise.'"); *Talevski*, 599 U.S. at 177-78 (rejecting the imposition of a contract analogy on a Spending Clause statute).

The Supreme Court has made clear what requirements Congress must satisfy in order to impose conditions under the Spending Clause. *See South Dakota v. Dole*, 483 U.S. 203, 207-08 (1987). RLUIPA's imposition of individual liability on officials, like Ms. Short, satisfies all of these requirements, including the requirement that Congress speak "unambiguously" to enable Jefferson County to "exercise [its] choice knowingly, cognizant of the consequences of [its] participation." *Id.* Congress unambiguously provided that Ms. Short, as a high-ranking Jefferson County "official" and "person acting under color of State law," would be subject to individual liability for violating the right to religious exercise. *See* 42 U.S.C. §§ 2000cc-5(4)(A)(ii)-(iii). This Court should not follow the courts that have invented an additional limitation based on the "law governing . . . suits in contract." *Talevski*, 599 U.S. at 179.

If there were any doubt about Congress's power to impose individual-capacity liability under the Spending Clause alone, those doubts are put to rest by the Necessary and Proper Clause. That Clause

gives Congress broad authority to ensure that its funds "are used in the manner Congress intends." *Agency for Int'l Dev.*, 570 U.S. at 213.

For example, *Sabri* held that Congress had authority to impose criminal liability directly on individuals who threatened federally funded projects through corruption. 541 U.S. at 605. The Court explained that, under the Necessary and Proper Clause, Congress has broad authority to "see to it that taxpayer dollars appropriated under [the Spending Clause] power are in fact spent for the general welfare," and not mismanaged by "untrustworthy stewards" who fail to "deliver dollar-for-dollar value." *Id.* at 605-06. The Court noted that legislation enacted under this authority, moreover, does not depend on the consent of funding recipients, as Congress can "bring federal power to bear directly on individuals." *Id.* at 608.

The same is true here. Congress has an important interest under the Spending Clause in promoting religious toleration and rehabilitation in jails and prisons supported by federal funds. *See, e.g.*, *Charles v. Verhagen*, 348 F.3d 601, 608 (7th Cir. 2003); *Madison v. Virginia*, 474 F.3d 118, 125 (4th Cir. 2006). Congress can advance that interest by requiring, as a condition for federal funding, that a jail's agents and

officials be held personally liable for their misconduct. *See Carlson v. Green*, 446 U.S. 14, 21 (1980) ("It is almost axiomatic that the threat of damages has a deterrent effect, particularly so when the individual official faces personal financial liability." (footnote and citation omitted)). Just as in *Sabri*, county officials intentionally violating religious liberties in federally funded facilities are "untrustworthy stewards" who fail to "deliver dollar-for-dollar value." *Sabri*, 541 U.S. at 606. Accordingly, Congress's authority under the Spending Clause and the Necessary and Proper Clause extends to protect its investments through individual damages liability.

Other courts that have distinguished *Sabri* in the RLUIPA context are wrong. The Third Circuit, for example, held that Congress "did not enact RLUIPA to protect its own expenditures." *Sharp v. Johnson*, 669 F.3d 144, 155 n.15 (3d Cir. 2012); *see also Landor*, 82 F.4th at 345 (quoting *Sharp*). Not so. Congress enacted RLUIPA to guard against the misuse of federal moneys to infringe on religious liberties. "Congress surely did not intend for federal moneys to be expended to support the intentional actions it sought by statute to proscribe." *Franklin*, 503 U.S. at 75.

Moreover, concluding that Congress lacks authority under the Spending Clause to authorize money damages against individuals would threaten the constitutional validity of many Spending Clause statutes expressly authorizing money damages against not only governments but their agents and employees. For example, the Emergency Medical Treatment and Active Labor Act is a Spending Clause statute that imposes up to a $50,000 civil penalty against "any physician . . . in a participating hospital . . . who negligently violates" certain patient care requirements. 42 U.S.C. § 1395dd(d)(1)(B). If the direct-recipients-only rule is correct, that statute is unconstitutional, as the physician herself does not receive federal funding. Or consider Title X of the Public Health Service Act, which levies criminal penalties—including a year's imprisonment—on an "employee of any . . . entity, which administers . . . any program receiving Federal financial assistance . . . who coerces or endeavors to coerce any person to undergo an abortion." 42 U.S.C. § 300a-8. That statute would also be unconstitutional if the direct-recipients-only circuits are correct. This Court should not adopt a rule that would strike down statutes across the United States Code.

Finally, barring damages would be especially strange in this case because Ms. Short is an officer and employee of Jefferson County, who *did* receive federal funds. It is undisputable that Congress can constitutionally prohibit Jefferson County from infringing on religious liberty as a condition of federal funding. Governments like Jefferson County, however, "can act only through agents." *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 688 (1949). Without prohibiting Ms. Short, too, from violating the Constitution, there would be no way to prohibit Jefferson County from doing so.

In short, there is no basis to ignore RLUIPA's unambiguous text. No direct-recipient rule exists in addition to the Spending Clause's clear statement requirement. *See Haight*, 763 F.3d at 570. To the contrary, precedent confirms Congress can "bring federal power to bear directly on individuals" through the Spending Clause. *Sabri*, 541 U.S. at 608. Courts concluding otherwise are wrong.

II. The District Court Erred By Dismissing Mr. Barnett's First Amendment Claim.

The district court also erred by dismissing Mr. Barnett's claim that the deprivation of all access to the Bible violated the First Amendment. App. 27-35; R. Doc. 7, at 4-12. The court's decision turns on three

holdings. First, the court held that Mr. Barnett failed to allege more than a *de minimis* burden on his practice of religion. App. 33-35; R. Doc. 7, at 10-12. Second, the court held that Mr. Barnett failed to allege that Ms. Short was directly involved in the deprivation. App. 31-32; R. Doc. 7, at 8-9. Finally, the court held that Mr. Barnett failed to allege sufficient facts establishing that the County was liable for the deprivation. App. 27-31; R. Doc. 7, at 4-8. Each holding is wrong.

A. Depriving Mr. Barnett Of All Access To The Bible For One Month Substantially Burdened His Religious Exercise.

Depriving Mr. Barnett of the Bible—the holiest text in Christianity—was not a *de minimis* burden on his ability to practice his religion. State officials substantially burden religious exercise whenever they "meaningfully curtail a person's ability to express adherence to his or her faith." *Van Wyhe*, 581 F.3d at 656. Under this standard, "denying prisoners access to their holy text . . . is a substantial burden on free-exercise rights." *Garner v. Muenchow*, 715 F. App'x 533, 536 (7th Cir. 2017); *see also Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 224 (1963) ("Surely the place of the Bible as an instrument of religion cannot be gainsaid."). As the Third Circuit has recognized, "[W]hile we believe

that a Christian inmate could practice his religion generally even if prevented from attending Christmas or Easter services, we do not believe he could practice his religion if deprived of access to the Bible." *Sutton*, 323 F.3d at 257.

Here, Mr. Barnett alleged that he "[w]as denied religion" because he was deprived of access to the Bible throughout his month-long detention in solitary confinement. App. 24; R. Doc. 7, at 1; *compare* App. 21; R. Doc. 6-1, at 3 (confirming his time in lockdown lasted until at least April 11, 2021) *with* App. 23; R. Doc. 6-1, at 5 (stating his detention began on 3-12-21). Those allegations are more than suffice to establish a substantial burden. *See Blankenship*, 681 F. App'x at 278 (rejecting argument that deprivation of Bible for longer than 24 hours was "de minimis" burden).

The district court reached its erroneous conclusion by improperly construing Mr. Barnett's allegations in favor of the defendants in two different ways.

1. First, the district court concluded that Mr. Barnett was deprived of a Bible "on a single day." App. 35; R. Doc. 7, at 12. The district court appeared to draw this conclusion from Mr. Barnett's response to the

question "When did it happen?" Mr. Barnett responded: "March 15, 2021," which was the date he filed his grievance. App. 10; R. Doc. 6-1, at 3.

Construing that response to mean that Mr. Barnett was alleging he was denied the Bible *only* on March 15, and was given access to it on all other days that he was held in solitary, failed to "draw all reasonable inferences" in Mr. Barnett's favor. *Cole*, 599 F.3d at 861. Mr. Barnett alleged that he was held in solitary for a full month beginning "on 3-12-21," and while there, he was given "no property no hygiene and no Bible." App. 21; R. Doc. 6-1 at 3; App. 23; R. Doc. 6-1, at 5. Mr. Barnett also stated that he "was denied religion" during his time in "Administrative Segregation," and never indicated that he once received the Bible while detained there. App. 10; R. Doc. 6, at 3. Given these allegations, it is reasonable to infer that he identified March 15, 2021, on his complaint because that is the day he filed his grievance, and not that he was stating that March 15 was the sole date on which he was deprived of a Bible. *See* App. 23; R. Doc. 6-1, at 5 (dated 3/15/2021). Especially given that Mr. Barnett filed his complaint *pro se*, those allegations in his complaint suffice to create a reasonable inference that Mr. Barnett was denied the

Bible throughout his time in solitary. *Solomon*, 795 F.3d at 787 (requiring a "liberal construction" that permits favorable inferences as long as "the essence of an allegation is discernible").

To the extent this Court finds that Mr. Barnett's reference to "March 15" on the complaint form rendered his allegations ambiguous, it should remand to allow him leave to amend his complaint to state expressly what the complaint already fairly implies: that he was deprived of access to a Bible for the entire month he was in solitary confinement and not just on the single day he filed his grievance. 6 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1489 n.24 (3d ed. 2023) (collecting cases stating an appellate court can remand with directions to allow the appellant to amend pleadings).

2. Second, the district court concluded that, while Mr. Barnett alleged that he "was denied religion (Holy Bible)," he failed to provide "further allegations suggesting that the deprivation alone prevented him from freely exercising his religion." App. 34; R. Doc. 7, at 11. To the contrary, Mr. Barnett was explicit that he "was *denied religion*"—*i.e.*, not only that he could not practice freely, but that he could not practice *at all*. App. 26; R. Doc. 7, at 3. Because he practices his religion by reading

the Bible, Mr. Barnett explained that he could not be "faithful and obedient" while jail officials deprived him of all access to it. App. 11; R. Doc. 6, at 4. As a result, Mr. Barnett felt he had sinned, "causing guilt and shame," as well as "anxiety, stress, [and] depression." App. 11; R. Doc. 6, at 4. Those allegations establish that jail officials meaningfully curtailed his ability to adhere to his Christian faith. *See Garner*, 715 F. App'x at 536.

In the alternative, Mr. Barnett requests this Court vacate the order dismissing the action, App. 36; R. Doc. 8 at 1, and remand to the district court with instructions to allow Mr. Barnett to amend his allegations. *See supra*, 45.

B. Mr. Barnett Alleged That Ms. Short Directly Participated In The Deprivation Of His Access To A Bible.

The district court also erred by concluding that Mr. Barnett failed to allege "that Jail Administrator Short personally denied him a Bible." App. 32; R. Doc. 7, at 9. The court recognized that someone responded to Mr. Barnett's grievance by taunting him, "Feel free to quote the constitution all you want to – I don't mind at all." *Id.*; App. 23; R. Doc. 6-1, at 5. But it determined that the "exhibit is not signed by anyone, must

less Short, and Plaintiff does not allege that Short was the author." App. 32; R. Doc. 7, at 9.

Again, the district court failed to construe Mr. Barnett's allegations properly, taking into account the liberal construction that *pro se* filings are owed. In his complaint, Mr. Barnett noted that he appealed the grievance, "but Jail Administrator Brenda Short *also* answers Appeals and didn't reply." App. 14; R. Doc. 6, at 7 (emphasis added). Construed in the light most favorable to Mr. Barnett, under the lenient construction applied to *pro se* filings, the allegation that Ms. Short "also answers Appeals" can reasonably be read to mean that Ms. Short answered the initial grievance as well.

In addition, Mr. Barnett's letter to internal affairs, which he attached to the complaint, also supports an inference that Ms. Short participated in denying him access to a Bible. *See* App. 19-21; R. Doc. 6-1, at 1-3. There, Mr. Barnett wrote, "[W]hen we spoke on 3-31-2021 I brought up numerous grievances I filed with Brenda Short Jail Administrator and repl[ies] that I received. I also filed appeals to those grievances to which I never received repl[ies] back. Everything goes

through Brenda Short in this jail." App 21; R. Doc. 6-1 at 3 (emphasis in original).

Finally, Ms. Short *did* sign her response to a different grievance that Mr. Barnett filed on March 14, 2021. *See* App. 7; R. Doc. 1-10, at 1. The handwriting in that response matches the response to Mr. Barnett's grievance regarding denial of the Bible taunting him to "quote the constitution." *See* App. 23; R. Doc. 6-1, at 5.

Taken together, these allegations are sufficient to support a plausible inference that Ms. Short participated in the deprivation of Mr. Barnett's access to a Bible. Moreover, as the district court recognized, Mr. Barnett expressly alleged in his initial complaint that Ms. Short was the person who authored the grievance response. App. 33; R. Doc. 7, at 10 n.3. Although that allegation "does not reappear in the Amended Complaint," it is reasonable to conclude that that was simply an oversight on the part of Mr. Barnett—a *pro se* prisoner without legal training on drafting civil-rights complaints—and not an intent to "abandon[]" that allegation, as the district court concluded. *Id.* At the very least, this Court should remand with instructions to permit Mr.

Barnett leave to amend his complaint to include this express allegation again. *See supra*, 45.

C. Jefferson County Is Liable For The Deprivation.

The district court also erred in dismissing Mr. Barnett's § 1983 claim against Jefferson County. "A plaintiff may establish municipal liability under § 1983 by proving that his or her constitutional rights were violated by an action pursuant to official municipal policy." *Ware*, 150 F.3d at 880 (cleaned up). A single decision by a municipal official can constitute official policy. *Bolderson*, 840 F.3d at 985; *see also Praprotnik*, 485 U.S. at 123.

Liability attaches when "the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur*, 475 U.S. at 481. "Courts should consult two sources to identify the final policymaker: (1) state and local positive law and (2) state and local custom or usage having the force of law." *Soltesz*, 847 F.3d at 946 (cleaned up). Final policymakers can *also* create this liability by delegating policymaking authority to a subordinate. *Id.*

Applying that standard here, Mr. Barnett's allegations support a plausible inference that Ms. Short holds final policymaking authority for

the Jefferson County Jail. As Mr. Barnett's pleading explains, Ms. Short holds complete authority over the facility; "[e]verything goes through Brenda Short in this jail." App. 21; R. Doc. 6-1 at 3 (emphasis in original). "She is Judge Jury and Excution[er]." *Id.* Mr. Barnett's observations are consistent with the Jefferson County's organization structure. The Jefferson County Code states that the Jefferson County Sheriff administers the Jefferson County Jail.[5] The Jefferson County Sheriff's organizational chart, in turn, lists the "Jail Administrator" as the supervisor for all jail officials. *See* 2023 Organizational Chart, https://www.jcsd.org/DocumentCenter/View/419/2023-Organizational-Chart. These facts create a plausible inference that Ms. Short held *final* decision-making authority regarding practices within the Jefferson County Jail.

Accordingly, Ms. Short's decision that access to a Bible—the foremost means by which Mr. Barnett practiced his religion—was a

[5] The Jefferson County Code § 5.2.5.4 provides: "The Sheriff must supervise, manage and administer all corrections facilities in Jefferson County for which the County Government or the Sheriff has responsibility under Missouri Law." *See* Jefferson County Code, available at https://ecode360.com/27895488#27895488 (Last Accessed November 1, 2023).

"privilege" Mr. Barnett could forfeit due to his "behavior" constituted official municipal policy. Jefferson County is liable for Ms. Short's actions depriving Mr. Barnett of all access to a Bible. In the alternative, Mr. Barnett requests this Court vacate the order dismissing the action, App. 36; R. Doc. 8, at 1, and remand to the district court with instructions to allow Mr. Barnett to amend his allegations.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision dismissing Mr. Barnett's claims and remand for further proceedings. In the alternative, Mr. Barnett requests this Court vacate the order dismissing the First Amendment Claims, App. 36; R. Doc. 8 at 1, and remand to the district court with instructions to allow Mr. Barnett to amend his allegations.

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Respectfully Submitted,

s/ Easha Anand

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a) because this brief contains 9,746 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Century Schoolbook 14-point font.

Pursuant to Circuit Rule 28A(h)(2), this brief and the attached addendum have been scanned for viruses and are virus-free.

s/ Easha Anand

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2023, I caused the foregoing *Plaintiff-Appellant's Opening Brief* to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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