

## Monetary Damages Not Available Under RLUIPA

On April 20, 2011, the United States Supreme Court decided *Sossamon v. Texas, et. al*, No. 08-1438. Justice Thomas delivered the Supreme Court's 6-2 opinion (Justice Kagan recused), which held that states and local governments, by receiving federal funds, have not unequivocally expressed their intent to waive their sovereign immunity to private lawsuits for monetary damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

RLUIPA is a federal law passed in 2000 to provide greater protection for religious freedom in the context of land use regulations and prisons. Specifically, the law protects the religious rights of prisoners and the use of property for religious purposes by prohibiting states and local governments from imposing substantial burdens on the religious exercise of institutionalized persons or from implementing or enforcing a land use regulation in a manner that imposes a substantial burden on a religious exercise of a person, assembly or institution.

In 2006, Harvey Leroy Sossamon III, an inmate in the Texas correctional system, brought a lawsuit in federal district court seeking injunctive and monetary relief against the State of Texas and prison officials. Sossamon alleged their policies violated RLUIPA by barring use of the prison chapel for religious worship and preventing inmates on cell restriction for disciplinary infractions from attending religious services. The district court ruled in favor of the state and denied both of Sossamon claims for relief. The Court of Appeals for the Fifth Circuit affirmed with respect to monetary damages, holding that the state did not waive its sovereign immunity by accepting federal funds, but granted Sossamon's request for injunctive relief concerning use of the prison chapel. The state had already abandoned its cell-restriction policy once Sossamon filed suit and also now permits inmates to attend chapel services. The remaining question on appeal to the Supreme Court was whether Congress was clear in enacting RLUIPA – that by accepting federal funds, states consented to waiving sovereign immunity, thereby subjecting themselves to claims for monetary damages.

Sovereign immunity is a common law doctrine that the “sovereign” or the state can commit no wrong and therefore is immune from liability. This doctrine prevents governments from being sued in federal court without their permission. In quoting from Alexander Hamilton's *The Federalist No. 81*, Justice Thomas reminds us that the constitutional limitation placed on the power of federal courts was one of the fundamental principles underpinning the formation of our union. “It is inherent in the nature of sovereignty not to be amendable to the suit of an individual without its consent.” It is from this principle the Supreme Court derives its “stringent” test for determining whether a state has waived its immunity: “A State's consent to suit must be ‘unequivocally expressed’ in the text of the relevant statute.” Waivers of sovereign immunity therefore are to be strictly construed in favor of the sovereign from a literal reading of the law and not to be implied from its purpose. As concerns RLUIPA, the Supreme Court was unanimous in concluding that the outcome of the case turned on the operative phrase “appropriate relief against a government.” What Congress had meant by “appropriate relief,” though, met with some disagreement.

Justice Thomas and the rest of the Supreme Court found the term “appropriate relief” to be open-ended and ambiguous as to the type of relief it included and, therefore, “not the unequivocal

expression of state consent that our precedents require” to waive sovereign immunity to private suits for damages. In enacting RLUIPA, Congress chose to allow for “appropriate” rather than money damages. Because what may be considered “appropriate relief” in one context may not be appropriate in another, the majority concluded that the remedy warranted is inherently dependent on the context. “The context here – where the defendant is a sovereign– suggests, if anything, that monetary damages are not ‘suitable’ or ‘proper.’” Justice Thomas even points to the arguments Sossamon makes in support and those made by the State of Texas against to support the Supreme Court’s conclusion that the term “appropriate relief” is open to interpretation and therefore ambiguous. As it concerns an express waiver of sovereign immunity, there must be a clear indication from Congress that it intends to include a damages remedy. Without this notice that states were subject to suits for this particular type of liability, the federal courts cannot simply set aside the protections afforded sovereign immunity.

Where the majority saw ambiguity, Justice Sotomayor, with whom Justice Breyer joined in writing for the minority, saw none. “Appropriate relief,” writes Justice Sotomayor, is an inclusive term that encompasses all relief, equitable (non-monetary remedies such as injunctions) and monetary damages alike and was utilized by Congress to allow courts to adequately redress the injury suffered. “The ‘appropriateness’ of relief to be afforded a civil plaintiff is generally determined by the nature of the injury to his legal rights.” What was not clear for Sotomayor was why the majority found the phrase “appropriate relief” too ambiguous to provide a waiver of state sovereign immunity with respect to monetary damages but not for equitable remedies, especially when the Supreme Court has historically found damages to be the default remedy and equitable relief the exception. Surely, Sotomayor argues, states were aware of these principles and precedent. There is no reason why “appropriate relief” provides clear notice to states that waiving sovereign immunity to equitable relief is a condition of accepting federal funds, but not to monetary ones.

This decision is important for municipalities because, for the time being, states and local governments are immune from monetary damages under RLUIPA. As the minority points out, however, despite this ruling, “Congress can revise RLUIPA to provide specifically for monetary relief against the States ...” Given RLUIPA represents Congress’s second attempt to protect the exercise of religious freedoms against unnecessary governmental intrusions, the minority’s reasoning that “(i)t is difficult to believe that Congress would have devoted such care and effort to establishing significant statutory protections for religious exercise and specifically extended those protections to persons in state institutions, yet withheld from plaintiffs a crucial tool for securing the rights the statute guarantees” may very well forewarn that this time may be short-lived.

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