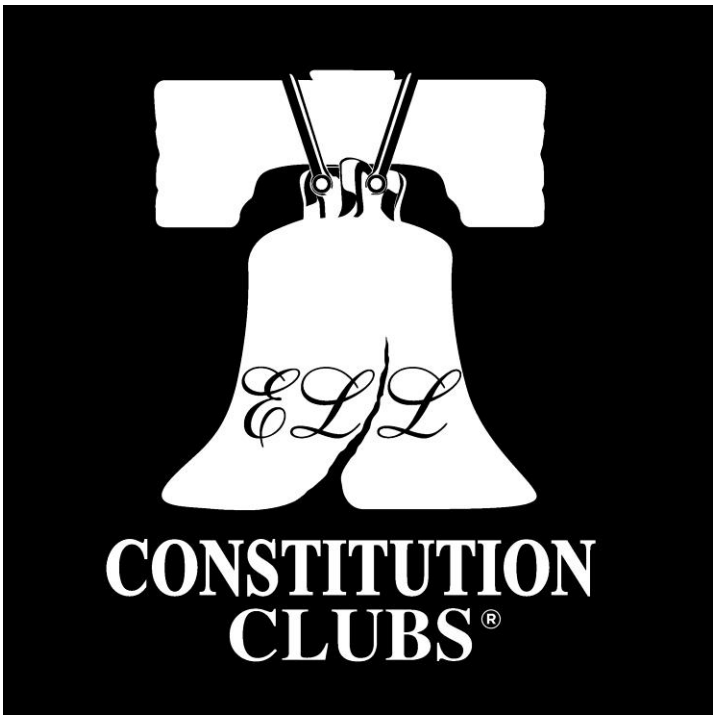

SOSSAMON v. TEXAS
SUPREME COURT OF THE UNITED STATES
No. 08-1438
April 20, 2011
[6 – 2][1]

OPINION: Thomas...This case presents the question whether the States, by accepting federal funds, consent to waive their sovereign immunity to suits for money damages under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). We hold that they do not. Sovereign immunity therefore bars this suit for damages against the State of Texas.

I
A

RLUIPA is Congress' second attempt to accord heightened statutory protection to religious exercise in the wake of this Court's decision in *Employment Div.* v. *Smith*[2]. Congress first enacted the Religious Freedom Restoration Act of 1993 (RFRA) with which it intended to "restore the compelling interest test as set forth in *Sherbert* v. *Verner*[3] and *Wisconsin* v. *Yoder*[4]...in all cases where free exercise of religion is substantially burdened." We held RFRA

[1] Justice Kagan took no part in this case.
[2] Case 1A-R-087 on this website.
[3] Case 1A-R-035 on this website.
[4] Case 1A-R-045 on this website.

unconstitutional as applied to state and local governments because it exceeded Congress' power under §5 of the Fourteenth Amendment. *City of Boerne* v. *Flores*[5].

Congress responded by enacting RLUIPA pursuant to its Spending Clause and Commerce Clause authority. RLUIPA borrows important elements from RFRA—which continues to apply to the Federal Government—but RLUIPA is less sweeping in scope. *Cutter* v. *Wilkinson*[6]. It targets two areas of state and local action: land-use regulation and restrictions on the religious exercise of institutionalized persons.

Section 3 of RLUIPA provides that "no government shall impose a substantial burden on the religious exercise" of an institutionalized person unless, as in RFRA, the government demonstrates that the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering" that interest. As relevant here, §3 applies "in any case" in which "the substantial burden is imposed in a program or activity that receives Federal financial assistance."

RLUIPA also includes an express private cause of action that is taken from RFRA: "A person may assert a violation of RLUIPA as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." For purposes of this provision, "government" includes States, counties, municipalities, their instrumentalities and officers, and persons acting under color of state law.

B

Petitioner Harvey Leroy Sossamon III is an inmate in the Robertson Unit of the Texas Department of Criminal Justice...In 2006, Sossamon sued the State of Texas and various prison officials in their official capacities under RLUIPA's private cause of action, seeking injunctive and monetary relief. Sossamon alleged that two prison policies violated RLUIPA: (1) a policy preventing inmates from attending religious services while on cell restriction for disciplinary infractions; and (2) a policy barring use of the prison chapel for religious worship. The District Court granted summary judgment in favor of respondents and held, as relevant here, that sovereign immunity barred Sossamon's claims for monetary relief.

The Court of Appeals for the Fifth Circuit affirmed. Acknowledging that Congress enacted RLUIPA pursuant to the Spending Clause, the court determined that Texas had not waived its sovereign immunity by accepting federal funds. The Court of Appeals strictly construed the text of RLUIPA's cause of action in favor of the State and concluded that the statutory phrase "appropriate relief against a government" did not "unambiguously notify" Texas that its acceptance of funds was conditioned on a waiver of immunity from claims for money damages. We granted certiorari to resolve a division of authority among the courts of appeals on this question.

II

[5] Case 1A-R-097 on this website.
[6] Case 1A-R-105 on this website.

"Dual sovereignty is a defining feature of our Nation's constitutional blueprint." Upon ratification of the Constitution, the States entered the Union "with their sovereignty intact."

Immunity from private suits has long been considered "central to sovereign dignity." As was widely understood at the time the Constitution was drafted:

> "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent.* This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union." The Federalist No. 81 (A. Hamilton).

Indeed, when this Court threatened state immunity from private suits early in our Nation's history, the people responded swiftly to reiterate that fundamental principle. See *Hans* v. *Louisiana* (discussing *Chisholm* v. *Georgia* and the Eleventh Amendment).

Sovereign immunity principles enforce an important constitutional limitation on the power of the federal courts. For over a century now, this Court has consistently made clear that "federal jurisdiction over suits against unconsenting States 'was not contemplated by the Constitution when establishing the judicial power of the United States.'" *Seminole Tribe of Fla.* v. *Florida.* A State, however, may choose to waive its immunity in federal court at its pleasure. *Clark* v. *Barnard* (1883).

Accordingly, "our test for determining whether a State has waived its immunity from federal-court jurisdiction is a stringent one." *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.* (1999). A State's consent to suit must be "unequivocally expressed" in the text of the relevant statute. Only by requiring this "clear declaration" by the State can we be "certain that the State in fact consents to suit." Waiver may not be implied.

For these reasons, a waiver of sovereign immunity "will be strictly construed, in terms of its scope, in favor of the sovereign." So, for example, a State's consent to suit in its own courts is not a waiver of its immunity from suit in federal court. Similarly, a waiver of sovereign immunity to other types of relief does not waive immunity to damages: "The waiver of sovereign immunity must extend unambiguously to such monetary claims." *United States* v. *Nordic Village* (construing an ambiguous waiver of sovereign immunity to permit equitable but not monetary claims); *Hoffman* v. *Connecticut Dept. of Income Maintenance* (construing a statute to authorize injunctive relief but not "monetary recovery from the States" because intent to abrogate immunity to monetary recovery was not "unmistakably clear in the language of the statute."

III

A

RLUIPA's authorization of "appropriate relief against a government" is not the unequivocal expression of state consent that our precedents require. "Appropriate relief" does not so clearly and unambiguously waive sovereign immunity to private suits for damages that we can "be certain that the State in fact consents" to such a suit.

1

"Appropriate relief" is open-ended and ambiguous about what types of relief it includes, as many lower courts have recognized...The context here—where the defendant is a sovereign—suggests, if anything, that monetary damages are not "suitable" or "proper."

Indeed, both the Court and dissent appeared to agree in *West* v. *Gibson*, that "appropriate" relief, by itself, does not unambiguously include damages against a sovereign. The question was whether the Equal Employment Opportunity Commission, which has authority to enforce Title VII of the Civil Rights Act against the Federal Government "through appropriate remedies," could require the Federal Government to pay damages. The dissent argued that the phrase "appropriate remedies" did not authorize damages "in express and unequivocal terms." The Court apparently did not disagree but reasoned that "appropriate remedies" had a flexible meaning that had expanded to include money damages after a related statute was amended to explicitly allow damages in actions under Title VII.

Further, where a statute is susceptible of multiple plausible interpretations, including one preserving immunity, we will not consider a State to have waived its sovereign immunity. See *Dellmuth* v. *Muth* (holding that "a permissible inference" is not the necessary "unequivocal declaration" that States were intended to be subject to damages actions); *Nordic Village* (holding that the existence of "plausible" interpretations that would not permit recovery "is enough to establish that a reading imposing monetary liability on the Government is not 'unambiguous' and therefore should not be adopted"). That is the case here.

Sossamon argues that, because RLUIPA expressly limits the United States to "injunctive or declaratory relief" to enforce the statute, the phrase "appropriate relief" in the private cause of action necessarily must be broader. Texas responds that, because the State has no immunity defense to a suit brought by the Federal Government, Congress needed to exclude damages affirmatively in that context but not in the context of private suits. Further, the private cause of action provides that a person may assert a violation of the statute "as a claim *or defense."* Because an injunction or declaratory judgment is not "appropriate relief" for a successful defense, Texas explains, explicitly limiting the private cause of action to those forms of relief would make no sense.

Sossamon also emphasizes that the statute requires that it be "construed in favor of a broad protection of religious exercise." Texas responds that this provision is best read as addressing the substantive standards in the statute, not the scope of "appropriate relief." Texas also highlights Congress' choice of the word "relief," which it argues primarily connotes equitable relief.

These plausible arguments demonstrate that the phrase "appropriate relief" in RLUIPA is not so free from ambiguity that we may conclude that the States, by receiving federal funds, have unequivocally expressed intent to waive their sovereign immunity to suits for damages. Strictly construing that phrase in favor of the sovereign— as we must—we conclude that it does not include suits for damages against a State...

B

Sossamon contends that, because Congress enacted §3 of RLUIPA pursuant to the Spending Clause, the States were necessarily on notice that they would be liable for damages. He argues that Spending Clause legislation operates as a contract and damages are always available relief

for a breach of contract, whether the contract explicitly includes a damages remedy or not. Relying on *Barnes* and *Franklin*, he asserts that all recipients of federal funding are "generally on notice that they are subject...to those remedies traditionally available in suits for breach of contract," including compensatory damages.

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." *Barnes*. We have not relied on the Spending Clause contract analogy to expand liability beyond what would exist under non-spending statutes, much less to extend monetary liability against the States, as Sossamon would have us do. In fact, in *Barnes* and *Franklin*, the Court discussed the Spending Clause context only as a potential *limitation* on liability.

In any event, applying ordinary contract principles here would make little sense because contracts with a sovereign are unique. They do not traditionally confer a right of action for damages to enforce compliance: "The contracts between a Nation and an individual are only binding on the conscience of the sovereign and have no pretensions to compulsive force. They confer no right of action independent of the sovereign will." *Lynch* v. *United States* (quoting The Federalist, No. 81(A. Hamilton)).

More fundamentally, Sossamon's implied-contract-remedies proposal cannot be squared with our longstanding rule that a waiver of sovereign immunity must be expressly and unequivocally stated in the text of the relevant statute. It would be bizarre to create an "unequivocal statement" rule and then find that every Spending Clause enactment, no matter what its text, satisfies that rule because it includes unexpressed, implied remedies against the States. The requirement of a clear statement in the text of the statute ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter. Cf. *Spector* v. *Norwegian Cruise Line Ltd.* ("Clear statement rules ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation"). Without such a clear statement from Congress and notice to the States, federal courts may not step in and abrogate state sovereign immunity.

IV

Sossamon also argues that §1003 of the Rehabilitation Act Amendments of 1986 independently put the State on notice that it could be sued for damages under RLUIPA. That provision expressly waives state sovereign immunity for violations of "section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." Section 1003 makes "remedies (including remedies both at law and in equity)...available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State." Sossamon contends that §3 of RLUIPA falls within the residual clause of §1003 and therefore §1003 waives Texas' sovereign immunity to RLUIPA suits for damages.

Even assuming that a residual clause like the one in §1003 could constitute an unequivocal textual waiver, §3 is not unequivocally a "statute prohibiting discrimination" within the meaning

of §1003. The text of §3 does not prohibit "discrimination"; rather, it prohibits "substantial burdens" on religious exercise. This distinction is especially conspicuous in light of §2 of RLUIPA, in which Congress expressly prohibited "land use regulations that discriminate...on the basis of religion." A waiver of sovereign immunity must be "strictly construed, in terms of its scope, in favor of the sovereign." We cannot say that the residual clause clearly extends to §3; a State might reasonably conclude that the clause covers only provisions using the term "discrimination."

The statutory provisions specifically listed in §1003 confirm that §3 does not unequivocally come within the scope of the residual clause. "General words," such as the residual clause here, "are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." Unlike §3, each of the statutes specifically enumerated in §1003 explicitly prohibits "discrimination."

We conclude that States, in accepting federal funding, do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA because no statute expressly and unequivocally includes such a waiver. The judgment of the United States Court of Appeals for the Fifth Circuit is affirmed.

DISSENT: SOTOMAYOR/BREYER...[Not Provided.]