

1 **United States Court of Appeals**
2 **FOR THE SECOND CIRCUIT**

3
4 August Term 2012

5
6 (Argued: June 21, 2013 Decided: September 10, 2013)

7
8 No. 11-980-cv

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11 ANTHONY WASHINGTON,
12 *Plaintiff-Appellant,*

13
14 -v.-

15
16 PAUL GONYEA, Deputy Superintendent of Monterey Correctional Facility,
17 Individually and in his Official Capacity, TAMMI CHABOTY, Sergeant at Woodbourne
18 Correctional Facility, Individually and in her Official Capacity, KEITH GRANGER,
19 Sergeant at Livingston Correctional Facility, Individually and in his Official
20 Capacity,
21 *Defendants-Appellees.*
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24 Before: LIVINGSTON and CHIN, *Circuit Judges*, and RAMOS, *District Judge*.^{*}
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26 Appeal from the judgment of the United States District Court for the Southern
27 District of New York (Gardephe, *J.*), entered January 31, 2011, dismissing Plaintiff-
28 Appellant's claim alleging that defendants substantially burdened his right to free
29 exercise of religion in violation of the Religious Land Use and Institutionalized Persons
30 Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc-1. For the reasons discussed below, we
31 hold that section 3 of RLUIPA does not provide a private right of action against state
32 officials acting in their individual capacities. We AFFIRM the judgment of the district
33 court as to the RLUIPA claim.
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35 MICHAEL J. BALCH, New York, NY, *for Plaintiff-*
36 *Appellant.*

^{*} The Honorable Edgardo Ramos, of the United States District Court for the Southern District of New York, sitting by designation.

BRIAN A. SUTHERLAND, Assistant Solicitor General
of Counsel (BARBARA D. UNDERWOOD, Solicitor
General, MICHAEL S. BELOHLAVEK, Senior Counsel,
on the brief), for ERIC T. SCHNEIDERMAN, Attorney
General of the State of New York, New York, NY,
for Defendants-Appellees.

PER CURIAM:

Plaintiff-Appellant Anthony Washington (“Washington”) appeals from a judgment of the United States District Court for the Southern District of New York (Gardephe, *J.*) , entered January 31, 2011, dismissing his *pro se* complaint alleging that New York state prison officials Paul Gonyea (“Gonyea”), Tammi Chaboty (“Chaboty”), and Keith Granger (“Granger”) substantially burdened his First Amendment right to free exercise of religion in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc-1, and infringed his due process and First Amendment rights in violation of 42 U.S.C. § 1983 (“§ 1983”). In an accompanying summary order filed today, we affirm in part and reverse in part the district court’s rulings on Washington’s § 1983 claims. For the reasons stated below, we conclude that Washington’s RLUIPA claim must fail because RLUIPA does not authorize monetary damages against state officers in their official capacities, *see Sossamon v. Texas*, 131 S. Ct. 1651 (2011), and does not create a private right of action against state officers in their individual capacities.¹ We therefore affirm the judgment of the district court dismissing Washington’s RLUIPA claim.

¹ Since Washington is no longer in the Special Housing Unit, we dismiss his RLUIPA claim for injunctive and declaratory relief as moot. *See Salahuddin v. Goord*, 467 F.3d 263, 272 (2d Cir. 2006); *Muhammad v. City of N.Y. Dep’t of Corr.*, 126 F.3d 119, 122-23 (2d Cir. 1997).

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Washington commenced this *pro se* suit in the United States District Court for the Southern District of New York on November 5, 2009, alleging that Defendants-Appellees unconstitutionally retaliated against him for exercising his First Amendment rights to free exercise of religion and free speech and denied him due process in violation of § 1983, and that Defendants-Appellees substantially burdened his free exercise rights in violation of RLUIPA. Defendants each moved to dismiss the

1 complaint. As relevant here, the district court dismissed Washington’s RLUIPA claims
2 on the ground that Washington had not adequately pled that the Defendants-Appellees
3 had placed “a substantial burden---or, indeed, *any* burden---on his religious practice.”
4 *See Washington v. Chaboty*, No. 09 Civ. 9199, 2011 WL 102714, at *9 (S.D.N.Y. Jan.
5 10, 2011). Washington subsequently filed this timely appeal.

6 DISCUSSION

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8 Section 3 of RLUIPA provides that “[n]o government shall impose a substantial
9 burden on the religious exercise [of an institutionalized person],” 42 U.S.C. § 2000cc-
10 1(a), “in a program or activity that receives Federal financial assistance,” *id.* § 2000cc-
11 1(b)(1), or in a way that affects or would affect “commerce with foreign nations, among
12 the several States, or with Indian tribes,” *id.* § 2000cc-1(b)(2). RLUIPA creates an
13 express private cause of action allowing individuals to “obtain appropriate relief
14 against a government.” *Id.* § 2000cc-2(a); *see Sossamon v. Texas*, 131 S. Ct. at 1656.
15 The term “government” includes, *inter alia*, “a State, county, municipality, or other
16 governmental entity created under the authority of a State,” “any branch, department,
17 agency, instrumentality, or official” thereof, and “any other person acting under color
18 of State law[.]” 42 U.S.C. § 2000cc-5(4)(A).

19 In *Sossamon v. Texas*, the Supreme Court held that sovereign immunity
20 forecloses the availability of money damages as a remedy against states and state
21 actors in their official capacities under RLUIPA. 131 S. Ct. at 1663 (“States, in
22 accepting federal funding, do not consent to waive their sovereign immunity to private
23 suits for money damages under RLUIPA because no statute expressly and

1 unequivocally includes such a waiver.”). Washington therefore cannot sustain his
2 RLUIPA claim against Defendants-Appellees in their official capacities.

3 Washington has also sued Defendants-Appellees in their individual capacities.
4 While *Sossamon* did not decide whether RLUIPA allows individual-capacity suits
5 against state officials, every circuit to have addressed the issue has held that it does
6 not. *See Nelson v. Miller*, 570 F.3d 868, 886-89 (7th Cir. 2009); *Rendelman v. Rouse*,
7 569 F.3d 182, 188-89 (4th Cir. 2009); *Sossamon v. Lone Star State of Tex.*, 560 F.3d
8 316, 328-29 (5th Cir. 2009), *aff’d on other grounds by* 131 S. Ct. 1651 (2011); *Smith v.*
9 *Allen*, 502 F.3d 1255, 1271-75 (11th Cir. 2007), *abrogated on other grounds by*
10 *Sossamon*, 131 S. Ct. 1651.

11 We adopt the reasoning of our sister circuits in concluding that RLUIPA does
12 not provide a cause of action against state officials in their individual capacities
13 because the legislation was enacted pursuant to Congress’ spending power, *see* 42
14 U.S.C. § 2000cc-1(b)(1), which allows the imposition of conditions, such as individual
15 liability, only on those parties actually receiving the state funds. *See, e.g., Smith*, 502
16 F.3d at 1272-75 (“[I]t is clear that the ‘contracting party’ in the RLUIPA context is the
17 state prison institution that receives federal funds; put another way, these institutions
18 are the ‘grant recipients’ that agree to be amenable to suit as a condition to receiving
19 funds—but their individual employees are not ‘recipients’ of federal funding.”);² *cf.*

² As we have previously observed, “Spending clause legislation is ‘much in the nature of a contract,’ and [] its ‘contractual nature has implications for our construction of the scope of available remedies.” *Henrietta D. v. Bloomberg*, 331 F.3d 261,285 (2d Cir. 2003) (quoting *Barnes v. Gorman*, 536 U.S. 181, 186-87 (2002)).

1 *Davis ex rel LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640-41 (1999)
2 (holding that for Title IX, “enacted pursuant to Congress’ authority under the Spending
3 Clause,” “[t]he Government’s enforcement power may only be exercised against the
4 funding recipient”). Indeed, “[t]o decide otherwise would create liability on the basis
5 of a law never *enacted* by a sovereign with the power to affect the individual rights at
6 issue”—*i.e.*, the state receiving the federal funds, *Sossamon*, 560 F.3d at 329—and this
7 would “raise serious questions regarding whether Congress had exceeded its authority
8 under the Spending Clause,” *Nelson*, 570 F.3d at 889. *Cf. Rendelman*, 569 F.3d at 189
9 (explaining that even if Congress could condition acceptance of federal funds on a state
10 subjecting its officials to individual liability, “Congress did not signal with sufficient
11 clarity [an] intent” to do so under RLUIPA). Accordingly, as a matter of statutory
12 interpretation and following the principle of constitutional avoidance, we hold that
13 RLUIPA does not create a private right of action against state officials in their
14 individual capacities. We affirm dismissal of Washington’s RLUIPA claim on this
15 ground.

16 We note that Congress invoked its power to regulate interstate and foreign
17 commerce as an alternative basis for enforcing section 3 of RLUIPA. *See* 42 U.S.C. §
18 2000cc-1(b) (“This section applies in any case in which . . . (2) the substantial burden
19 affects . . . commerce with foreign nations, among the several states, or with Indian
20 tribes.”); *Nelson*, 570 F.3d at 886; *Rendelman*, 569 F.3d at 189. Here, however,
21 Washington has pled no facts indicating that the restriction of his religious rights had
22 any effect on interstate or foreign commerce. The commerce clause basis for RLUIPA

is therefore not properly before the Court, and we decline to decide whether RLUIPA authorizes individual-capacity suits under the imprimatur of the commerce clause.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court in dismissing Washington’s RLUIPA claim.