



Steven L. Beshear
Governor

JUSTICE AND PUBLIC SAFETY CABINET

J. Michael Brown
Secretary

Office of Legal Services
125 Holmes Street, Second Floor
Frankfort, Kentucky 40601
(502) 564-3279
Fax No. (502) 564-6686

May 22, 2014

Office of the Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Re: *Randy Haight, et. al. v. LaDonna Thompson, et. al.* (No. 13-6005)

Dear Clerk of Court:

During the May 9, 2014 oral argument in the above matter, the panel requested a letter brief addressing whether the Religious Freedom Restoration Act (“RFRA”) authorizes monetary damages in individual capacity suits and whether the availability of such damages under RFRA would impact the Court’s construction of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

RFRA provides that “[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in judicial proceeding and obtain appropriate relief against a government.” 42 U.S.C. § 2000bb-1(c). This language is substantially similar to that set out in RLUIPA: “A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.” *Id.* § 2000cc-2(a).

Analyzing the substantially similar language in RFRA and RLUIPA, numerous courts have held that monetary damages are simply unavailable when a prisoner alleging religious infringement sues prison officials in their individual capacities. For example:

- *Cardinal v. Metrish*, 564 F.3d. 794, 799-801 (6th Cir. 2009) (holding that because RLUIPA's ‘appropriate relief’ language does not clearly and unequivocally indicate that the waiver extends to monetary damages, the Eleventh Amendment bars plaintiff’s claim for monetary relief under RLUIPA.)
- *Froman v. KY DOC*, 2010 WL 1416682 at *2 (W.D. KY March 31, 2010) (“[S]everal other federal appellate courts have considered precisely that issue [of

whether RLUIPA authorizes individual capacity damages] and all have held that RLUIPA, as an exercise of Congress' Spending Clause power, does not authorize a claim for damages against state employees in their individual capacities.); (“We agree that a construction of RLUIPA providing for individual liability raises substantial constitutional concerns. Consequently, we conclude that section 3 of RLUIPA,” a provision that derives from Congress' Spending Power, “cannot be construed as creating a private action against individual defendants for monetary damages.”)

- *Boles v. Neet*, 402 F. Supp.2d 1237, 1240 (D. Colo. 2005) (“The Court understands [RLUIPA] to permit cases against a governmental entity, but not against an individual officer, except perhaps in his or her official capacity.”)
- *Pugh v. Goord*, 571 F.Supp.2d 477, 507 (S.D.N.Y. 2008) (finding the reasoning in *Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007) to be convincing, and concluding that RLUIPA does not provide for money damages against defendants in their individual capacities)
- *Rendelman v. Rouse*, 569 F.3d. 182, 189 (4th Cir. 2009) (“We conclude therefore that in simply defining ‘government’ in §2000cc-2 to include a ‘person acting under color of State law,’ Congress did not signal with sufficient clarity an intent to subject such a person to an individual capacity damages claim under RLUIPA.”)
- *Porter v. Beard*, 2010 WL 2573878 at *6 (W.D. Pa. 2010) (“The Religious Land Use and Institutionalized Persons Act (“RLUIPA”) does not support damage claims against state officials in their individual capacity.”) *See also Sharp v. Johnson*, 2008 WL 941686 at *19; *Brown v. PA. Department of Corrections*, 2007 WL 4322980 at *16 (W.D. Pa. 2007) (prison official’s not liable for damages in his individual capacity because RLUIPA does not authorize money damages against individuals”)
- *Logan v. Lockett*, 2009 WL 799749 at *4 (W.D. Pa. 2009) (“RLUIPA does not support damage claims against state officials in their individual capacity. Thus, there can be no damages liability against any of the Defendants in their individual capacities, and Defendants are entitled to summary judgment with respect to the individual capacity damage claims brought under RLUIPA.”)

- *Colvin v. Caruso*, 605 F.3d 282 at 289 (6th Cir. 2010) (“Although the statute permits the recovery of “appropriate relief against a government,” 42 U.S.C. § 2000cc-2(a), “this court has recently held that monetary damages are not available under RLUIPA.”

Finally, in perhaps the best opinion from any court concerning individual capacity RLUIPA actions, the U.S. District Court in the Northern District of Georgia thoroughly analyzed and synthesized the disparate RLUIPA monetary damages rationales and correctly discerned:

In view of both the uncertainty of RLUIPA jurisprudence and the absence of explicit authorization in RLUIPA for individual damages actions, the Court concludes that RLUIPA is susceptible of at least two “plausible statutory constructions.” *See Clark v. Martinez*, 543 U.S. 371, 380-81(2005). On the one hand, RLUIPA may be, and indeed has been reasonably construed to provide for individual damages actions against prison officials in their individual capacities. But as other courts have held, it may also be reasonably read to foreclose such actions. *See, e.g., Boles*, 402 F.Supp.2d at 1241. And yet another “fairly possible” reading of RLUIPA is that, while individual capacity actions may be technically authorized under RLUIPA, the only “appropriate” remedy available in such actions is injunctive or declaratory relief. *Cf. Lovelace v. Lee*, 472 F.3d 174, 196-99 & n. 7 (4th Cir. 2006) (appearing to recognize, in denying prison official qualified immunity, that RLUIPA authorizes claims against prison officials in their individual capacities, but leaving open question of whether RLUIPA allows award of damages, and noting split among district courts). Faced with the various plausible interpretations, the Court concludes that RLUIPA is ambiguous on the question of whether it authorizes a private right of action seeking monetary damages against prison officials in their individual capacities.

Daker v. Ferrero, 475 F.Supp. 1325, 1337 (N.D. Georgia 2007) (citations omitted)

Yet after an exhaustive analysis of the various plausible interpretations, the *Daker* Court correctly determined:

In sum, construing Section 3 of RLUIPA to provide a remedy against prison officials in their individual capacities would unmoor RLUIPA from its firm grounding in the Spending Clause, *see Cutter v. Wilkerson*, 544 U.S. 709, 715 (2005), and engender debate about whether it regulates localized, noneconomic conduct that does not substantially affect interstate commerce. Such a construction may be in tension with the Supreme Court's modern understanding of the Commerce Clause, as expressed in *U.S. v. Morrison*, 529 U.S. 598, 607 (2000) and thus raises serious constitutional concerns. Accordingly, to avoid such a serious constitutional question, the Court

concludes that Section 3 of RLUIPA does not authorize money damages actions against prison officials in their individual capacities.

Thus, numerous courts, including the Sixth Circuit in *Colvin*, have already embraced the most legally sound interpretation of the various RLUIPA individual capacity analyses have routinely found that neither RFRA nor RLUIPA authorizes monetary damages against individual capacity defendants. Further, most courts that have analyzed whether RLUIPA, enacted pursuant to the Spending Clause, applies to non-recipients of federal funds have specifically rejected that theory as an unconstitutional reading of RLUIPA. *See Smith*, 502 F.3d. at 1273. Accordingly, this Honorable Court should follow the precedent set by *Colvin* and the sound rationale of *Daker* and determine that monetary damages are simply unavailable against individual capacity defendants.

Respectfully submitted,

/s/ Stafford Easterling

STAFFORD EASTERLING
Justice and Public Safety Cabinet
125 Holmes Street, 2nd Floor
Frankfort, Kentucky 40601
Telephone: (502) 564-7554

COUNSEL FOR APPELLEES

cc : Yaakov Roth
JONES DAY
51 Louisiana Ave. N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Appellants

(whom the above-signing attorney certifies was served with this letter on May 22, 2014, via ECF at his email address)