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, Eastern Division
Hon. Sarah E. Pitlyk
No. 4:22-CV-00708

BRIEF OF APPELLEES BRENDA SHORT AND JEFFERSON COUNTY JAIL

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

Appellant/Plaintiff Dewey Barnett ("Plaintiff") appeals from the District Court's Order pursuant to 28 U.S.C. § 1915(e)(2) dismissing Plaintiff's Amended Complaint at the frivolity review stage. Appellant/Plaintiff Dewey Barnett ("Plaintiff") was incarcerated at Jefferson County Jail on March 15, 2021. During that time, Plaintiff alleges that he was deprived of a Bible. Plaintiff sued Defendants/Appellees Jefferson County Jail and Brenda Short, in her official and individual capacity, ("Defendants")[1] pursuant to 42 U.S.C. § 1983.

The District Court correctly dismissed Plaintiff's Amended Complaint because Plaintiff has failed to satisfy the threshold rules of pleading under the RLUIPA and because RLUIPA does not permit recovery of monetary damages. The District Court also correctly dismissed Plaintiff's Amended Complaint as to Plaintiff's claims under 42 U.S.C. § 1983 because Brenda Short is entitled to qualified immunity, and also because Brenda Short is not a final policymaker so as to hold the County liable through a single act.

For these reasons, Appellees respectfully request 20 minutes of oral argument.

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[1] Plaintiff sued Officer Christopher Rulo in his initial Complaint. (App. 1). However, Plaintiff's First Amended Complaint only includes Jefferson County and Brenda Short as Defendants. (App. 8, R. Doc. 6, at 1). Because Officer Rulo is no longer a defendant, this appeal only discusses claims against Jefferson County and Brenda Short.

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II. Whether an inmate may bring a claim under the RLUIPA for money damages against a county prison official in their individual capacity when the authority for such legislation emanates from the Spending Clause and the Supreme Court and several Circuits have regarded the RLIPA as having employed "open-ended" verbiage. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216, 142 S. Ct. 1562, 1568, 212 L. Ed. 2d 552, *reh'g denied*, 142 S. Ct. 2853, 213 L. Ed. 2d 1081 (2022); *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 343 (5th Cir. 2023); *Sossamon v. Texas*, 563 U.S. 277, 286, 131 S.Ct. 1651, 179 L.Ed.2d 700 (2011); *Haight v. Thompson*, 763 F.3d 554, 569 (6th Cir. 2014).

III. Whether an inmate may bring a claim under the RLUIPA for money damages against a county when the authority for such legislation emanates from the Spending Clause and the Supreme Court and several Circuits have regarded the RLIPA as having employed "open-ended" verbiage. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216, 142 S. Ct. 1562, 1568, 212 L. Ed. 2d 552, *reh'g denied*, 142 S. Ct. 2853, 213 L. Ed. 2d 1081 (2022); *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 343 (5th Cir. 2023); *Sossamon v. Texas*, 563 U.S. 277, 286, 131 S.Ct. 1651, 179 L.Ed.2d 700 (2011); *Haight v. Thompson*, 763 F.3d 554, 569 (6th Cir. 2014).

IV. Whether an inmate may bring a claim under the RLUIPA for money damages against a county prison official in their individual capacity when the authority for such legislation emanates from the Spending Clause and the prison official is not a direct recipient of federal funding. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216, 142 S. Ct. 1562, 1568, 212 L. Ed. 2d 552, *reh'g denied*, 142 S. Ct. 2853, 213 L. Ed. 2d 1081 (2022); *Mack v. Warden Loretto FCI*, 839 F.3d 286, 303 (3d Cir. 2016); *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 343 n. 5 (5th Cir. 2023).

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IX. Whether the district court erred in concluding that Mr. Barnett failed to allege municipal liability against Jefferson County under the First Amendment Free Exercise Clause when, for the first time on appeal, he asserts that Short is a final policymaker of the County with delegated authority despite state law. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Atkinson v. City of Mountain View, Mo.*, 709 F.3d 1201, 1214 (8th Cir. 2013); *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 946 (8th Cir. 2017).

STATEMENT OF THE CASE

I. Factual Background

Dewey Austin Barnett was incarcerated at the Jefferson County Jail in 2021. (App. 10; R. Doc. 6, at 3). On March 12, 2021, Barnett was transferred to "lockdown" at Jefferson County Jail. (App. 23; R. Doc. 6-1, at 5). On March 15, 2021, Barnett filed a grievance form requesting that he be provided a Bible. *Id.* In the grievance, Barnett states that he is a Christian who has received pastoral visits for about two years. *Id.* Per a notation "Received back 3/18/2021," Barnett received a response stating that he could "having nothing more" than what he has and that his "behavior has taken away all privileges." *Id.* The response further states "Feel free to quote the constitution all you want to – I don't mind at all. You will not receive anything more." *Id.* The response is unsigned. *Id.* On April 4, 2021, Barnett addressed a letter to "Lt. Hoffman/Internal Affairs" in which he complained about Short's handing of grievances. (App. 21; R. Doc. 6-1, at 3).

II. Procedural History

Following the dismissal of a previous Complaint, on July 5, 2022, Plaintiff filed a Prisoner Civil Rights Complaint Under 42 U.S.C. § 1983 in the United States District Court, Eastern District of Missouri, alleging that he was denied a Bible by Brenda Short. (App. 5, R. Doc. 1-3); *Barnett v. Jefferson County,* No. 4:21-CV-00509 SEP (E.D. Mo. March 15, 2022) (Doc. Nos. 1, 7). On August 23,

2022, the District Court noted several deficiencies in Plaintiff's Complaint and ordered him to file an amended complaint. (App. 2, R. Doc. 5, at 2). On September 22, 2022, Plaintiff filed an Amended Prisoner Civil Rights Complaint under 42 U.S.C. § 1983 against Jefferson County and Brenda Short, in her individual and official capacity, again alleging that he was denied a Bible by Brenda Short. (App. 8, R. Doc. 6, at 1). The First Amended Petition included two exhibits, an April 4, 2021, letter to Lieutenant Hoffman of Internal Affairs (App. 19, R. Doc. 6-1, at 1) and a "Prisoner Request/Grievance Form" dated March 15, 2021 (App. 23, R. Doc. 6-1, at 5).

On November 30, 2022, the District Court reviewed Plaintiff's First Amended Petition pursuant to 28 U.S.C. § 1915(e)(2). (App. 24, R. Doc. 7, at 1). The District Court examined Plaintiff's claims under Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment pursuant to 42 U.S.C. § 1983 finding that Plaintiff failed to state a cause of action under either avenue. (App. 26-35, R. Doc. 7, at 3-12).

As to the RLUIPA claims, the District Court found that RLUIPA does not authorize monetary damages and Plaintiff's claims for injunctive relief were moot due to his transfer to another facility. As to the § 1983 claims under the First Amendment against Jefferson County, the District Court found that Plaintiff failed to plead any facts demonstrating that Jefferson County had an unconstitutional

policy or custom, or that it was deliberately indifferent in failing to train or supervise its employees.

As to the First Amendment § 1983 claims against Brenda Short, the District Court found that, as to the official capacity claim, such claims are actually against the government entity itself and since Plaintiff failed to allege a § 1983 claim against the County, the official capacity claims against Brenda Short must also be dismissed. As to the § 1983 claims against Brenda Short in her individual capacity, the District Court also dismissed these claims finding that Plaintiff did not allege that Brenda Short directly participated in a constitutional violation nor that she failed to train her employees in a supervisory capacity. The District Court also found that even if Plaintiff had alleged that Brenda Short was personally responsible for denying him a Bible, Plaintiff's claims would still fail because Plaintiff failed to allege that his ability to practice his religion was substantially burdened.

STANDARD OF REVIEW

The standard of review is de novo. *Jackson v. Nixon*, 747 F.3d 537, 541 (8th Cir. 2014). In reviewing an appeal from dismissal under 28 U.S.C. § 1915(e)(2), the Court "must accept as true all the factual allegations in the complaint and draw all reasonable inferences in plaintiff's favor." *Glover v. Tigani*, 666 F. Supp. 3d 896, 899 (D. Minn. 2023). While *pro se* complaints are construed liberally, they still must allege "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). The Court "will not supply additional facts, nor construct a legal theory for plaintiff that assumes facts that have not been pleaded." *Id.* quoting *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989). The Court is not bound to accept legal conclusions as true when they are disguised as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

SUMMARY OF THE ARGUMENT

Upon review under 28 U.S.C. § 1915(e)(2) of the Plaintiff's "Prisoner Civil Rights Complaint Under 42 U.S.C. § 1983," the District Court properly found that Plaintiff failed to state a claim against Jefferson County and its Jail Administrator Brenda Short under 42 USC § 1983 and also under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1 (RLUIPA), to the extent the complaint could be construed to assert a claim under the latter. While the District Court correctly noted that the Plaintiff sought to allege claims under the First Amendment pursuant to 42 U.S.C. § 1983, the District Court had no obligation to address a claim under RLUIPA because Plaintiff failed to invoke the act, both in his failure to identify the act in his pleadings and to assert facts triggering the application of the statute.

The District Court was correct in its conclusion that, even if Plaintiff had asserted a claim under the RLUIPA, such claim failed because the RLUIPA does not provide for the recovery of monetary damages, and Plaintiff's claims for injunctive relief were moot due to his transfer to another facility. As for damages, though the RLUIPA employs language tracking the Religious Freedom Restoration Act of 1993 (RFRA), which has been interpreted to allow damages, the RLUIPA's interpretation is informed and limited by its enactment under the Spending Clause and the attendant requirement that those subject to such legislation must be clearly

notified through the statute of the consequence of receiving federal funding. As the RLUIPA employs language that the Supreme Court and several Circuits has regarded as "open-ended," including the phrase "appropriate relief," it cannot be interpreted to satisfy the Spending Clause clarity requirement and allow the recovery of damages.

As a corollary of the clear notice requirement of the Spending Clause and the canon of constitutional avoidance, Brenda Short cannot be held individually liable because she is not, nor is she alleged to be, a recipient of federal funds. Even if claims the RLUIPA is construed by this Court to provide the rights asserted by the Plaintiff, such have never before been clearly established and Brenda Short is entitled to qualified immunity.

Plaintiff has also failed, whether under the RLUIPA or the First Amendment, to plead a substantial burden on his exercise of religion, or that any burden rose above a *de minimis* denial. Accordingly, the District Court correctly found that Plaintiff did not state a claim under 42 U.S.C. § 1983. Plaintiff's claims also fail to the extent lodged against Brenda Short individually because he has not alleged that Brenda Short directly participated in denying Plaintiff access to a Bible and she is shielded by the doctrine of qualified immunity.

The District Court found that Plaintiff failed to plead any facts demonstrating that Jefferson County had an unconstitutional policy or custom, or that it was

deliberately indifferent in failing to train or supervise its employees. The District Court is correct because Plaintiff has not alleged a municipal policy, custom or usage giving rise to liability, but instead asserts, for the first time on appeal, that Brenda Short is a "final policymaker" for Jefferson County, by delegation, who may in a single act bind the County. Plaintiff's effort to assert such theory relies on a chain of matters not set forth in the operative complaint which are conclusory and matters of state law that, in any event, does not support Plaintiff's legal conclusion. The evidence that Plaintiff presents on appeal in the form of the Jefferson County Charter, identifies the Sheriff, not the Jail Administrator, as having the requisite legal authority, and Plaintiff fails to allege any facts whereby such legal authority has been or can be delegated.

ARGUMENT

The Appellees do not take exception with the general proposition advanced by the Appellant and various *amicus curiae* espousing the worthiness of protecting religious liberties. Rather, the Appellees contend that this matter, having been disposed at the pleading stage via frivolity review, is amenable to disposition based on the principles and rules of pleading articulated and applied within this Circuit. Only where the Plaintiff's Amended Complaint survives the application of those threshold rules of pleading do the issues of the application and statutory construction of the Religious Land Use and Institutionalized Persons Act raised by the Appellant possibly bear on the proper disposition of this case. To the extent a construction of the statute must be considered, the District Court's interpretation, guided and supported by ample apposite authority, correctly concluded that the RLUIPA provides Plaintiff with no claim in this case.

I. THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED COMPLAINT BECAUSE PLAINTIFF FAILS TO STATE A CLAIM UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA), 42 U.S.C. 2000CC-1, IN THAT HIS PLEADINGS DO NOT INVOKE THE ACT

The District Court correctly noted that the Appellant (at least) twice sought to allege claims under the First Amendment pursuant to 42 USC § 1983. It was only "[t]o the extent that the Amended Complaint can be construed as making a claim under the Religious Land Use and Institutionalized Person Act (RLUIPA)" that the

District Court passed judgment on the availability of money damages under the act. (App. 26-27, R. Doc. 7, at 3-4). The Appellees here respectfully submit that, though the District Court's conclusion about the RLUIPA were correct, it had no obligation to address a claim the plaintiff never pleaded or supply facts that were not pled, despite Appellant's then pro se status. *Stone*, 364 F.3d at 914. The Complaint under review should not be construed as making such claim because Plaintiff failed to invoke the act, both in the failure to identify the act in his pleadings and in the failure to assert facts triggering the antecedent for application of the statute.

A. PLAINTIFF FAILS TO IDENTIFY RLUIPA IN HIS PLEADINGS

While a pro se litigant is generally afforded the benefit of a generous construction of his pleadings, he must nevertheless adequately apprise the Defendant of the claims being made, stating a plausible claim. *Id*. See also *Iqbal*, 556 U.S. at 678. In the interest of justice, the court may yet allow the pro se litigant to amend pleadings that fail to meet this standard, even providing guidance to that litigant as to how to correct deficiencies of pleading; a plaintiff, having been previously granted leave to amend his deficient pleading has been provided sufficient and fair opportunity to state a claim. *But cf. Beck v. Skon*, 253 F.3d 330, 333 (8th Cir. 2001) (discussing limitations on obligation to instruct pro se plaintiffs). In this case, the Appellant received such an opportunity on multiple

occasions, including twice in a prior action. (App. 15, R. Doc. 6, at 8); *Barnett v. Jefferson County*, No. 4:21-CV-00509 SEP (E.D. Mo. March 15, 2022) (Doc. Nos. 1, 7). Yet even on this, his fourth effort, Plaintiff's operative complaint does not state that he has brought a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000CC-1.

Some jurisdictions have held that a free exercise claim brought by a *pro se* prisoner automatically includes claims under the RLUIPA. See, e.g., *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012); and *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). However, the right of action provided by the RLUIPA is a creation of that statute, providing a means of vindicating rights explicitly separate from that provided by the Establishment Clause of the First Amendment of the Constitution (and made actionable through 42 USC § 1983). See 42 USC § 2000cc-4 ("Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the 'Establishment Clause')."). Accordingly, where, as here, a pleading specifically invokes a cause of action seeking to vindicate a First Amendment right, it does not by such terms automatically invoke a statutory right under the RLUIPA, and it would be inconsistent with the practice of this Circuit to hold otherwise. *Cf. In re Richards & Conover Steel, Co.*, 267 B.R. 602, 610 (B.A.P. 8th Cir. 2001)

(recognizing that trial by consent is not found when evidence of unpled theory also goes to pled theory).

It is entirely consistent with *Iqbal* and *Twombly*[2] to require a plaintiff to specifically identify a statute in order to provide notice and the framework for plaintiffs to establish why they are "entitled to relief,"[3] particularly when that statute expands upon or deviates from the common law or constitutional law, and especially when the complaint purports to invoke multiple legal claims upon the same facts. *In re Richards & Conover Steel, Co.*, 267 B.R. at 610. Moreover, the specific identification of the RLUIPA is a necessary component of a plaintiff's effort to invoke original federal jurisdiction, particularly where, as here, he has failed to state a constitutional claim. See generally Fed. R. Civ. P. 8(a); see also, e.g., *Lane v. City of Lee's Summit*, No. 4:21-00437-CV-JAM, 2021 WL 5311330, at *2 (W.D. Mo. Nov. 15, 2021) ("While the pleading standards are not intended to be onerous on plaintiffs, defendants and courts are not required to scour the federal code to locate applicable statutes and jurisdictional bases that a plaintiff may or may not be invoking. Plaintiff, therefore, must clearly identify a federal statute or other appropriate legal authority that supports the legal claim or claims giving rise to this suit."); and *Hankins v. PennyMac Loan Services, LLC*, 4:23-CV-1288 RLW, 2023 WL 6795396, at *1 (E.D. Mo. Oct. 13, 2023) ("Here, Plaintiff does

[2] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)
[3] Fed. R. Civ. Proc. 8(a)(2)

not cite any federal statute, federal treaty, or provision of the United States Constitution. Simply put, the Complaint does not present a federal question and Plaintiff has not demonstrated the existence of federal question jurisdiction in this matter.").

Such is the case notwithstanding that the Plaintiff is a pro se inmate; indeed, an inmate offering a repeatedly amended claim. Again, the operative complaint in this case represents the Plaintiff's *fourth* attempt to state a claim upon the same circumstances, as he previously filed a complaint and amended complaint in a prior-dismissed action before lodging the pleadings in the case now under review. It is unambiguously identified as a "Prisoner Civil Rights Complaint Under 42 U.S.C. § 1983," and was assembled by the Plaintiff with the use of a Court-provided form pursuant to local rule, upon the District Court's determination that Plaintiff's original complaint was deficient in its attempt to state a "42 U.S.C. § 1983 action." (App. 8, R. Doc. 6, at 1). It is clear from the statement of claim asserted by the Plaintiff, as well as the relief sought in the that the intended claim was one arising out of the Constitution, and no other law.

B. PLAINTIFF FAILS TO PLEAD THE JURISDICTIONAL REQUIREMENTS OF RLUIPA

"To state a claim under RLUIPA, a party must plead facts that trigger the jurisdictional requirements identified in the statute." *Satanic Temple v. City of Belle Plaine, Minnesota*, 475 F. Supp. 3d 950, 963 (D. Minn. 2020), *aff'd*, 80 F.4th

864 (8th Cir. 2023) (citations omitted). By its own terms, the impositions of RLUIPA can only apply to a program or activity that (1) received Federal financial assistance or (2) affects interstate or foreign commerce. 42 U.S.C. § 2000cc-1(b). In this respect, the RLUIPA is similar to Section 504 of the Rehabilitation Act, which requires the defendant entity to be a recipient of federal funds. 29 U.S.C. § 794. Accordingly, this Circuit has recognized that a Plaintiff must prove, *inter alia*, that "he was denied the benefits of a program or activity of a public entity which receives federal funds." *Gorman v. Bartch*, 152 F.3d 907, 911 (8th Cir. 1998) (citation omitted). It necessarily follows that the Plaintiff must plead that Defendants received federal funds, or an independent basis under the Commerce Clause, in order to invoke the act. See, e.g., *Richards v. Dayton*, No. 13-3029 JRT/JSM, 2015 WL 1522199, at *42 (D. Minn. Jan. 30, 2015), *report and recommendation adopted sub nom. Richards v. Ritchie*, CIV. 13-3029 JRT/JSM, 2015 WL 1522237 (D. Minn. Mar. 30, 2015).

Nowhere in the Plaintiff's complaint are there any factual allegations indicating that either of these jurisdictional requirements are met. Appellant's effort to introduce such facts in support of this claim for the first time on appeal should be disregarded. *Schreiber v. Ludwick*, 754 Fed. Appx. 501 (8th Cir. 2019) (unpublished, citations omitted) (recognizing, in preservice dismissal, that this

Court does "not consider claims raised for the first time on appeal"). The District Court's order of dismissal was therefore warranted and appropriate.

II. THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED COMPLAINT BECAUSE PLAINTIFF FAILS TO STATE A CLAIM UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA), 42 U.S.C. 2000CC-1, IN THAT THE ACT DOES NOT PERMIT THE RECOVERY OF MONETARY DAMAGES

Appellant commits significant portions of his brief to proffering an interpretation of the RLUIPA by reference to the RFRA, asserting that there are "two main differences between the statutes" in that the former is broader and the latter applies only to federal defendants. Appellant's Brief (hereinafter "Brief") p. 8-9. However, Appellant fails to regard as substantial the differences between these statutes provided by the congressional authority whereby they were enacted, particularly how the authority undergirding the RLUIPA is much narrower.

A. The RLUIPA Does Not Provide for the Recovery of Damages from Individual Defendants

1. Spending Clause Limitations on the RLUIPA Necessarily Inform Its Interpretation, Require Direct Funding For Liability

Well-reasoned decisions from various circuits have concluded that the RLUIPA does not provide for the recovery of damages from defendants in their individual capacities. Such decisions issued both before and after the Supreme Court's ruling in *Tanzin v. Tanvir*, 141 S. Ct. 486, 493 (2020), the Religious Freedom Restoration Act of 1993 (RFRA) case on which Appellant chiefly relies

in offering his errant interpretation of the RLUIPA. Common among those decisions, and *Tanzin*, is a recognition that the ultimate question of whether "appropriate relief" encompasses damages against an individual under the RLUIPA is by its own terms open-ended, ambiguous, and subject to interpretation. Indeed, the Eighth Circuit is among those Circuits having recognized ambiguity in the statute, and should now, interpreting the RLUIPA in its appropriate context, join those circuits in expressly holding that the RLUIPA does not permit the recovery of damages against a defendant in their individual capacity. See *Van Wyhe v. Reisch*, 581 F.3d 639, 654 (8th Cir. 2009) (observing, incidental to a sovereign immunity analysis, that "RLUIPA's 'appropriate relief' language does not *unambiguously* encompass monetary damages.") (emphasis added).

Appellant correctly concedes that the RLUIPA emanates from Congress's authority under the Spending Clause. Brief p. 30; see 42 U.S.C. § 2000cc-1(b)(1). Such authority, while not strictly contractual, partakes in the character of a contract whereby Congress sets the conditions upon which it disburses federal funds to voluntary recipients. See *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216, 142 S. Ct. 1562, 1568, 212 L. Ed. 2d 552, *reh'g denied*, 142 S. Ct. 2853, 213 L. Ed. 2d 1081 (2022) (citing *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981)). Accordingly, "the legitimacy of Congress' power to enact Spending Clause legislation rests not

on its sovereign authority to enact binding laws, but on whether the [recipient] voluntarily and knowingly accepts the terms of th[at] contract." *Id*. at 219 (citations and quotes omitted, cleaned up). This characteristic of Spending Clause statutes must inform the question of what remedy constitutes "appropriate relief"; Congress must clearly and unambiguously apprise the funding recipient of the liability to which it is exposed in the bargain. *Id*. at 219-20.

Appellant maintains that the RLUIPA satisfies this requirement based on the plain language of the statute and the rationale applied to the provision of "appropriate relief" under the RFRA in *Tanzin*, 141 S. Ct. at 493 (holding that RFRA "permits litigants, when appropriate, to obtain money damages against federal officials in their individual capacities"). However, as the Fifth Circuit aptly recognized in rejecting individual liability under the RLUIPA, the Supreme Court in *Tanzin* logically did not extend its holding to the RLUIPA given the RFRA's basis in the Fourteenth Amendment rather than the Spending and Commerce Clauses. *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 82 F.4th 337, 343 (5th Cir. 2023) (citations omitted). Despite the use of the words "appropriate relief" in both statutes, the Fifth Circuit harkened the Supreme Court's prior proclamation that "[i]n law as in life, ... the same words, placed in different contexts, sometimes mean different things." *Id*. at 344 (quoting *Yates v. United States*, 574 U.S. 528, 537 (2015)). Indeed, the Court in *Tanzin* recognized and reiterated that the "open-

ended" nature of the phrase "appropriate relief" renders it "inherently context dependent." *Tanzin*, 141 S. Ct. at 491 (citing *Sossamon v. Texas*, 563 U.S. 277, 286 (2011) (*Sossamon II*).

That the RFRA and RLUIPA arise from different congressional powers provides consequential context. "Where the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning of identical words well may vary to meet the purposes of the law and of the circumstances under which the language was employed." *Id* at 344 (citations and quotes omitted, cleaned up). "Section 5 of the Fourteenth Amendment and the Spending Clause do not empower Congress to the same degree, and *Tanzin* does nothing to fill that gap." *Id*. As the Sixth Circuit observed:

> One of the distinguishing features of the spending power is that it allows Congress to exceed its otherwise limited and enumerated powers by regulating in areas that the vertical structural protections of the Constitution would not otherwise permit. So long as States consent to the bargain—receiving federal funds in return for allowing Congress to regulate where it otherwise could not—the Constitution permits the arrangement. This feature of the spending power requires clarity throughout, not just in money-damages actions against state officials sued in their official capacity. That is why the Court's spending power cases refer in general to Congress "attach[ing] conditions on the receipt of federal funds," and "require[ ]" in general that, "if Congress desires to condition the States' receipt of federal funds, it 'must do so unambiguously ..., enabl [ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation,'"

Haight v. Thompson, 763 F.3d 554, 568–69 (6th Cir. 2014) (internal citations omitted, cleaned up).

Appropriately recognizing that the RFRA's enactment under the Fourteenth Amendment implicated a far broader exercise of congressional power than the exercise of Spending Clause power giving rise to the RLUIPA, the Third Circuit also plainly observed:

> Because state officials are not direct recipients of the federal funds, and thus would have no notice of the conditions imposed on them, they cannot be held individually liable under RLUIPA.

Mack v. Warden Loretto FCI, 839 F.3d 286, 303 (3d Cir. 2016). The Fifth and Third Circuits are not alone in this conclusion, which is shared by several of the Circuits. See *Landor*, 82 F.4th at 343 n. 5 (5th Cir. 2023) (collecting supporting cases).

Appellant attempts to undermine the holdings of *Landor* and other similar cases prohibiting the recovery of damages against individuals who are not direct recipients of federal funding by framing those decisions as misapplications of the "principle of constitutional avoidance." Brief p. 33. Appellant reasons that the canon has no application because the "statute's meaning is clear." *Id*. However, Appellant is incorrect for at least two reasons, which also reveal that the logic of those cases was not so limited.

First, the canon of constitutional avoidance is rightly applied when, "after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction," *Saxton v. Fed. Hous. Fin. Agency*, 901 F.3d 954, 959 (8th Cir. 2018) (quoting *Clark v. Martinez*, 543 U.S. 371, 385, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005)) and, as discussed *supra*, the Supreme Court has specifically regarded the term "appropriate relief" as being "open-ended." *Tanzin*, 141 S. Ct. at 491 (citing *Sossamon II*, 563 U.S. at 286). Second, it is not only the canon of constitutional avoidance that permits the consideration of broader statutory context for interpretation, but resort to that broader statutory context is also particularly necessitated by the elastic verbiage of the statute itself, which naturally draws its meaning from that context. See, e.g., *Dubin v. United States*, 599 U.S. 110, 118, 143 S. Ct. 1557, 1565, 216 L. Ed. 2d 136 (2023) (recognizing contextually sensitive verbiage requiring interpretation by reference to its broader statutory context). That broader context must also include the authority by which Congress has enacted the statute, and how it operates. See, e.g., *Cummings*, 596 U.S. at 219. ("[O]ur consideration of whether a remedy qualifies as appropriate relief must be informed by the way Spending Clause statutes operate…") (quotation marks omitted); and *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 295, 126 S. Ct. 2455, 2458, 165 L. Ed. 2d 526 (2006) ("Our resolution of the question presented in this case is guided by the fact that Congress enacted the

[subject statute] pursuant to the Spending Clause."). It is also for this reason that Appellant's thorough reliance on analogizing the RLUIPA to 42 USC § 1983 is misplaced. See, e.g., *Haight*, 763 F.3d at 572 (observing that "the phrase 'person acting under color of State law' or its equivalent is used in numerous sections of the United States Code, many having nothing to do with the availability of money damages.").

Indeed, while Appellant argues that the Fifth Circuit, "even before *Tanzin*," recognized that damages were authorized by the plain language of the RLUIPA in *Sossamon v. Texas*, 560 F.3d 316 (8th Cir. 2009) (*Sossamon I*), the court in that case only observed that such language "seem[ed]" or "appear[ed]" to contemplate such relief, before ultimately concluding both as "a matter of statutory interpretation *and* to avoid the constitutional concerns" that the RLUIPA does not permit suits against defendants in their individual capacities. *Sossamon I*, 560 F.3d at 316, 328-329. In affirming that case, the Supreme Court specified that "'appropriate relief' is open-ended and ambiguous about what types of relief it includes…Far from clearly identifying money damages, the word 'appropriate' is *inherently* context dependent." *Sossamon II*, 563 U.S. at 286 (citations omitted, emphasis added). The Circuits holding that the RLUIPA does not permit damages against defendants in their individual capacities are justified both by application of the canon of constitutional avoidance and as a matter of necessary contextual

interpretation of an ambiguous statute. *Tanzin* necessarily reached a different conclusion because of the significantly different context presented by the different congressional authority under which the RFRA was enacted. *Tanzin*, 141 S. Ct. at 492.

Appellant nevertheless also urges that a so-called "direct recipient" requirement is incompatible with the RLUIPA's secondary authority under the Commerce Clause because it would result in the same verbiage of the statute having varying meanings. Brief p. 35. However, the Commerce Clause is not implicated in the Appellant's Complaint and should be avoided here as it "implicates constitutional issues of the sort that courts avoid considering unless necessary." *Haight*, 763 F.3d at 572 (citing discussion of judicial restraint in *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445–46 (1988)). Moreover, "when Congress invokes more than one source of federal power to enact a law, it does so as a form of insurance—on the off chance that the first source of authority exceeds its grasp. It does not invoke two sources of authority in order to permit two interpretations of the same phrase." *Haight*, 763 F.3d at 569. In any event, as a clear-statement requirement applies to the Spending Clause a comparable rule applies to the Commerce Clause, *Id*. at 569-70 (citing *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) and *Bond v. United States*, 572 U.S. 844, 856-860 (2014)), and the majority of circuit holdings demonstrate that the RLUIPA

fails to satisfy that rule. The direct recipient requirement operates as a function of the clear statement rule; it is only in adopting the dichotomy between the two championed by Appellant that inconsistent interpretations threaten to arise.

2. Limiting RLUIPA Liability to Direct Recipients of Federal Funding Properly Preserves Constitutional Limitations on Spending Clause Legislation

Appellant ultimately urges that all of the effort to interpret this ambiguous statute or reckon with its limitations under the Spending Clause is wasted because imposing liability on individual defendants who are not direct recipients of federal funds poses "no constitutional problem." Brief p. 35. Appellant's basis for this position is a critique of otherwise aligned Circuits having taken the contract analogy too far, citing dicta in *Haight*, 763 F.3d at 570 expressing concern over a hypothetical statue that, unlike RLUIPA is "eminently clear" in imposing such liability, thus obviating any need for the court in *Haight* to meaningfully grapple with the contract analogy. Plaintiff also cites to various Supreme Court cases supportive of his position that analyzing Spending Clause legislation under contract principles cannot "import *all rules of contract*." Brief p. 36 (emphasis in original). However, Appellant disregards recent Supreme Court precedent that further explores the contours of the limitations of the contract analogy.

The Supreme Court's recent holding in *Cummings* that "emotional distress damages are not recoverable under the Spending Clause" antidiscrimination

statutes at issue in that case was explicitly based upon principles of contract. In that case, the Supreme Court indeed recognized limitations on the contract analogy, iterating that "suits under Spending Clause legislation" are not "literal suits in contract, subjecting funding recipients to whatever governing rules some general federal law of contracts would supply." *Id*. at 225. (citations omitted, cleaned up). However, the Court also reiterated that it "employ[s] the contract analogy only as a potential *limitation* on liability compared to that which would exist under nonspending statutes…to ensure that funding recipients exercise their choice to take federal dollars knowingly, cognizant of the consequences of doing so." *Id*. (citations omitted, cleaned up, emphasis original). Limiting liability under the RLUIPA to direct recipients of federal funding is thus not an "invention" of the several Circuits so holding, as Appellants suggests, but a consistent recognition of the character of the clear notice required of all Spending Clause legislation; it is the expansion of liability championed by Appellant that seeks to deviate from sound precedent.

Even Appellant's continued mischaracterization of Defendant Short in this case as a "high-ranking official" and "final policymaker" – a matter of state law unpled - lends no aid to his argument. As discussed *infra*, this is a legal conclusion entitled to no deference. But more germane to the appropriate contract analogy, even in the light most favorable to Appellant, Short could never be construed as

anything more than an agent of the County; and while notice to an agent may be imputed to the principal, the law of agency does not provide the reverse. *Cf. Newco Land Co. v. Martin*, 358 Mo. 99, 110, 213 S.W.2d 504, 511 (1948) (reciting well settled rule of imputed knowledge). Thus, even if Jefferson County is a recipient of federal funding, which Appellant fails to allege in his Complaint, Short cannot be held individually liable.

Moreover, despite Appellant's assessment of governmental agency relationships, Short's individual liability is no more required for her employer's liability than that of any other public official who, for example, might enjoy qualified immunity despite culpability on the part of her employer. See generally *Owen v. City of Indep., Mo.*, 445 U.S. 622, 650, 100 S. Ct. 1398, 1415, 63 L. Ed. 2d 673 (1980) (rejecting qualified immunity for municipalities under 42 USC § 1983). More to the point, in *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 641, 119 S. Ct. 1661, 1670, 143 L. Ed. 2d 839 (1999), the Supreme Court emphasized in other Spending Clause legislation (Title IX), that although the "Government's enforcement power may only be exercised against the funding recipient" and it did not "extend[] damages liability under Title IX to parties outside the scope of this power," the funding recipient employer may nevertheless be held liable for "its *own* decision to remain idle" in the face of statutory violations. *Id*.

Appellant's espoused concern of a chain-reaction threatening the viability of other Spending Clause legislation is inapposite and inconsequential. Leaving aside that Appellant cites to clearly articulated provisions of medical acts contemplating comprehensive regulatory schemes wherein those subject to civil and criminal penalties include direct recipients of federal funds, the RLUIPA is no less subject to the above interpretation and limitations simply because other acts may be likewise construed or limited. Indeed, even if Appellant's professed fears come true, it is self-evidence that the sound application of basic constitutional principles sometimes requires broader statutory realignment. Of course, the RLUIPA is certainly not the first Spending Clause legislation whose enforcement has been limited to direct recipients of federal funding. See, e.g., *Kinman v. Omaha Pub. Sch. Dist.*, 171 F.3d 607, 611 (8th Cir. 1999) (holding that because 20 U.S.C. § 1681(a) (Title IX) was enacted pursuant to the Spending Clause, only funding recipients could be held liable such that Title IX does not support individual capacity claims).

Finally, the Necessary and Proper Clause does not authorize the expansive exercise of federal power under the Spending Clause envisioned by the Appellant. That clause authorizes Congress to "make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers…" *Haight*, 763 F.3d at 570 (quoting U.S. Const. Art. I, § 8, cl. 18). Its use has been limited to

applications "narrow in scope" where such authority is "derivative of, and in service to, a granted power." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 560 (2012) (citations omitted). Thus, the clause justified the imposition of criminal liability upon officers involved in bribes in organizations receiving a specified threshold amount of federal funds without offending the Spending Clause because the federal interest was clearly implicated, given the fungible nature of money, by the regulation of specifically economic conduct impacting directly upon congressional spending power. *Sabri v. United States*, 541 U.S. 600, 607-608, (2004); 18 U.S.C.§ 666. Such statute is thus specific and narrow "authority to bring federal power to bear directly on individuals who convert public spending into unearned private gain, not a means for bringing federal economic might to bear on a State's own choices of public policy." *Sabri*, 541 U.S. at 608. The regulation of such specifically financial misconduct therefore purports only to impact individuals who "bring themselves within the sphere of federal regulation." *Sebelius*, 567 U.S. at 560. RLUIPA presents no such circumstance related to the federal purse, and expanding its scope as Appellant suggests is therefore neither necessary nor proper.

B. The RLUIPA Does Not Provide for the Recovery of Damages from A County

That the definition of "appropriate relief" does not unambiguously provide for the recovery of damages against an individual also prohibits any effort to obtain

damages from a county. Appellant criticizes the District Court's reliance on *Van Wyhe*, 581 F.3d at 654 as inapposite authority limited to sovereign immunity defenses inapplicable to counties. However, despite the sovereign immunity context, the salient point of *Van Wyhe* is that "RLUIPA's 'appropriate relief' language does not *unambiguously* encompass monetary damages." (emphasis added). It is therefore the use of such open-ended and ambiguous verbiage failing to scale a threshold limitation of the Spending Clause, and not the application of sovereign immunity, which prohibits the recovery of damages against a county under the RLUIPA. This limitation observes the "maximum extent" of construction available to the RLUIPA under the Constitution. 42 U.S.C. § 2000cc-3(g).

Appellant relies on *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 289–90 (5th Cir. 2012) for the proposition that "appropriate relief" under the RLUIPA allows recovery of monetary damages against municipal and county defendants. Brief p. 19. Indeed, that case flatly states as much in its reversal and remand of a denial of a preliminary injunction. *Id*. at 290, 299. But the reasoning in *Opulent Life* is flawed because, *inter alia*, it misreads the Supreme Court precedent in *Sossamon II* as being limited to sovereign immunity cases, construing that holding to mean that "[t]he phrase 'appropriate relief' does not include money damages *against states*," *Opulent Life Church*, 697 F.3d at 289.

While it is the express holding of *Sossman II* that the phrase "appropriate relief" under the RLUIPA "does not include suits for damages against a State," that conclusion was also based in part on the broader recognition that the question in that case was "whether Congress has given clear direction that it intends to *include* a damages remedy." *Sossamon II*, 563 U.S. at 289 (emphasis in original). *Sossamon II* weighed that lack of clarity against the requirements of sovereign immunity waivers that such expression be clear - a requirement also demanded by the Spending Clause regardless of the doctrine of sovereign immunity. Thus, *Opulent Life* and other cases sharing in its logic have taken an unjustifiably narrow view of the "clear statement" requirement in service of an unjustifiably broad view of congressional power under the Spending Clause.

Appellant also argues that *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 70–71, 112 S. Ct. 1028, 1035, 117 L. Ed. 2d 208 (1992) supports a longstanding presumption that "appropriate relief" includes money damages. Brief p. 20. However, *Franklin* reiterates a general rule that "absent clear direction to the contrary by Congress, the federal courts have the power to award any *appropriate relief* in a cognizable cause of action brought pursuant to a federal statute." *Id.* at 70-71 (emphasis added). As the Supreme Court later observed in *Sossamon II*, the term "appropriate relief" as used in the judicial statement of the general rule in *Franklin* was not itself a statutory term for which it supplied interpretive guidance;

rather it was an articulation of a rule used to construe available remedies pursuant to an implied right where congress was silent. *Sossamon II,* 563 U.S. at 289.

Appellant urges that "Congress knows how to exclude money damages as an available remedy when it wants to do so,"[4] but here, the Court must grapple with an express congressional statement and thus answer not the question of whether Congress intended to *exclude* a damage remedy where it has been silent, but whether it has clearly *included* one where it has spoken; therefore, "[w]hatever 'appropriate relief' might have meant in those cases[5] does not translate to this context." *Sossamon II,* 563 U.S. at 288.[6]

III. THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED COMPLAINT AGAINST DEFENDANT SHORT UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA), 42 U.S.C. 2000CC-1, IN THAT BRENDA SHORT IS ENTITLED TO QUALIFIED IMMUNITY

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009) (citations omitted, cleaned up). Because the RLUIPA does not authorize

[4] Brief p. 20.
[5] (citing to *Franklin* and *Barnes v. Gorman*, 536 U.S. 181 (2002)).
[6] Appellant cites other cases as assuming the availability of damages under the RLUIPA, but such cases do not provide any insight into the arguments before this Court and warrant no discussion. See Brief p. 19, n. 2.

individual capacity claims, the doctrine of qualified immunity is not implicated. "Qualified immunity only applies to claims against public officials in their individual capacities." *Serna v. Goodno*, 567 F.3d 944, 952 (8th Cir. 2009) (citations omitted). However, even were this Court to recognize such a right, it has not heretofore been clearly established. This Court may recognize the qualified immunity defense in a preservice dismissal such as this. See *Maness v. Dist. Court of Logan Cnty.-N. Div.*, 495 F.3d 943, 944 (8th Cir. 2007). Brenda Short is therefore, under any circumstance whereby individual damages might be available, entitled to qualified immunity.

IV. THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED COMPLAINT BECAUSE PLAINTIFF ALLEGES NO SUBSTANTIAL BURDEN ON RELIGIOUS RIGHTS

"[T]o establish a substantial burden under RLUIPA, plaintiff must show the government action significantly constrains his religious conduct or expression, meaningfully curtails his ability to express adherence to his faith, or denies him reasonable opportunities to engage in activities that are fundamental to his religion." *Bitzan v. Bartruff*, 916 F.3d 716, 717 (8th Cir. 2019). Although the RLUIPA provides greater protection than the First Amendment, it has been observed even continuing after RLUIPA enactment, that this Circuit and others have recognized that First Amendment rights can be curtailed to a greater degree for prisoners in disciplinary isolation. See, e.g., *Johnson v. Smith*, 211-CV-59-

RWS, 2011 WL 1134315, at *6 (N.D. Ga. Mar. 25, 2011) (citing *Gregory v. Auger,* 768 F.2d 287, 289–90 (8th Cir.1985); and *Daigre v. Maggio,* 719 F.2d 1310, 1313 (5th Cir.1983) ("[T]here can be no doubt ... that solitary confinement is a disciplinary measure whose very essence is the deprivation of interests the first amendment protects ...."")). Apropos to that history, this Circuit has also observed that "RLUIPA's legislative history suggests that th[e] statutory requirement [to demonstrate substantial burden] is intended to weed out false religious claims that are actually attempts to gain special privileges or to disrupt prison life." *Mbonyunkiza v. Beasley,* 956 F.3d 1048, 1053 (8th Cir. 2020) (citations omitted).

The Appellees do not suggest that the foregoing caselaw vitiates any right under the RLUIPA, only that it supplies context for the Plaintiff's burden to plead a substantial burden to his exercise of religion. The District Court appropriately concluded that Appellant failed to allege such a substantial burden, also specifically noting that the complaint alleges only that Appellant was denied access to a Bible for one day. (App. 34-35, R. Doc. 7, at 11-12). Appellant, on the other hand, contends that a fair reading of his complaint must conclude by implication not only the substantiality of the alleged burden while in solitary confinement based on a conclusory allegation that he was "denied religion," but that such denial lasted for nearly a month. Brief pp. 42-46.

Appellant's contentions would require the Court to supply facts that do not appear in the complaint, even to the point of considering an abandoned pleading. See, e.g., Brief at p. 48. As discussed *supra*, this is not the Court's obligation, nor is it the Court's place to advocate for the previously pro se litigant. "[A] *pro se* pleading is not a magic hat out of which a court may pull any claim it thinks should have been advanced." *Bracken v. Dormire*, 247 F.3d 699, 705 (8th Cir. 2001) (Arnold, J., dissenting). Meanwhile, on the face of the complaint it *can* be fairly construed that the Appellant was placed in solitary confinement as a disciplinary measure.

Nevertheless, even if the complaint can be construed to state that the Appellant was denied a Bible for 27 days while he was placed in solitary confinement, Plaintiff has provided no authority for such denial constituting a substantial burden resulting in a constitutional violation. Rather, the law within this Circuit indicates that a short denial is not substantial. See, e.g., *McCroy v. Douglas Cnty. Corr. Ctr.*, 394 Fed. Appx. 325, 326 (8th Cir. 2010) (unpublished) (two-week deprivation of religious texts not substantial). The other authorities cited by the District Court opinion support this conclusion. (App. 35, R. Doc. 7, at 12). In any event, it cannot be said that the law in this respect is clearly established; Brenda Short is therefore shielded by the doctrine of qualified immunity even in the event that this Court now clearly articulates that law otherwise.

V. THE DISTRICT COURT CORRECTLY DISMISSED THE AMENDED COMPLAINT BECAUSE PLAINTIFF ALLEGES NO VIOLATION OF 42 USC § 1983

Appellant's failure to allege a substantial burden on his religious rights is also fatal to his claim under § 1983. Even had Plaintiff crossed this threshold, he yet failed to state claims against Short and the County.

A. No Claim Against Short

"Liability under section 1983 requires a causal link to, and direct responsibility for, the deprivation of rights. To establish personal liability [plaintiff] must allege specific facts of personal involvement in, or direct responsibility for, a deprivation of his constitutional rights." *Mayorga v. Missouri*, 442 F.3d 1128, 1132 (8th Cir. 2006) (citations omitted, cleaned up). Here, Appellant does not dispute that the operative Complaint does not specifically state that Brenda Short herself denied him a Bible, or that she authored a response to his grievance regarding that alleged denial. Rather, Appellant assigns error to the District Court for not granting him sufficient leniencies in light of his pro se status.

Appellant argues, for instance that his original complaint *did* allege that Brenda Short authored the response to his grievance concerning the alleged denial of his Bible, and that his failure to include that allegation in his Amended Complaint should have been regarded as a mere "oversight" by a "pro se prisoner without legal training on drafting civil-rights complaints." Brief p. 48. However,

Appellant omits that the operative complaint represented the *fourth* attempt by Plaintiff across two actions to state this claim, and that the District Court specifically and previously advised Plaintiff in a prior order that his amended complaint would replace his previous complaint. (App 33, R. Doc. 7 at 10, n. 3). Appellant did not reference or incorporate that prior complaint, and Plaintiff was placed on notice of the well-established rule "that an amended complaint supercedes an original complaint and renders the original complaint without legal effect." *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000); (App. 24, R. Doc. 7, at 1). Again, it is not the place of a District Court judge to supply facts or claims for a pro se litigant or interpret procedure rules of civil litigation to excuse mistakes by pro se litigants. *See Stone v. Harry*, 364 F.3d at 914; and *McNeil v. United States*, 508 U.S. 106, 113 (1993).

Appellant even goes so far in seeking the Court's overindulgence as to suggest a handwriting comparison to confirm his championed inference that Brenda Short authored the unsigned initial grievance response. Brief p. 48. This is a particularly ironic ask, given that the Appellant has specifically presented evidence calling into question the efficacy of his own purported signature on pleadings in this case, presenting a "Memorandum for 1983 Civil Rights Complaint" and "Consent to Enforcing Legal Instruments" which purport to grant another inmate the right to sign his name on legal documents and pleadings and calls into question his very

compliance Federal Rule of Civil Procedure 11(a)(requiring personal signature), Eastern District of Missouri Local Rule 2.01(a)(1)(requiring signature); and Eastern District of Missouri Local Rule 2.11 (requiring physical signature of one other than attorney of record on documents to be filed electronically). (App. 5-6, R. Doc. 1-3, at 1-2). Regardless, even if Brenda Short authored the subject response to grievance, Appellant does not allege that any denial of a Bible was her act or decision, and Appellant's conclusion that the denial of his grievance "supports an inference that Ms. Short participated in the denying him access to a Bible," is plainly wrong in light of the law properly observed by the District Court that a grievance procedure does not confer a substantive right. See generally *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

The District Court correctly concluded that Appellant failed to state a § 1983 claims against Brenda Short. Further, to the extent Plaintiff is deemed to have some right beyond the scope of that recognized by the District Court, it is not clearly established and Brenda Short is entitled to Qualified Immunity.

B. No Claim Against the County

A local government may only be liable for its own unconstitutional policy or custom that is the moving force behind a constitutional violation. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). Therefore, ultimately:

> Plaintiffs who seek to impose liability on local governments under § 1983 must prove that action pursuant to official municipal policy

> caused their injury. Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law. These are action[s] for which the municipality is actually responsible.

Connick v. Thompson, 563 U.S. 51, 60–61 (2011) (citations omitted, cleaned up). An unconstitutional custom or usage cannot arise from a single act, but a single decision by final municipal policymakers can create liability under certain circumstances. See *Bolderson v. City of Wentzville, Missouri*, 840 F.3d 982, 985 (8th Cir. 2016); and *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986).

Appellant makes no effort to hold Jefferson County liable on the basis of an unconstitutional policy, custom or usage. Rather, he seeks to hold Jefferson County liable solely based upon the single event of his alleged deprivation. However, this argument is entirely premised on his conclusions that Defendant Brenda Short not only committed the alleged deprivation, which is denied as discussed *supra*, but also that she is a final policymaker capable of attaching liability to Jefferson County through a single act. Appellant is wrong.

Determination of a final policymaker is a matter of law and a threshold question. *Atkinson v. City of Mountain View, Mo.*, 709 F.3d 1201, 1214 (8th Cir. 2013); *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 946 (8th Cir. 2017). "[F]ederal courts are not justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it."

Id. (citations, internal quotation marks omitted). Additionally, to state a §1983 claim based on a delegation of authority, the complaint must contain facts supporting such delegation. See *Hess v. Ables*, 714 F.3d 1048, 1054 (8th Cir. 2013) (upholding dismissal where plaintiff failed to allege facts that City delegated final policymaking authority). Such facts must necessarily reflect that an official having been granted such authority "acts (1) free of review and (2) without any constraints imposed as a matter of policy by the original policymaker." *Soltesz*, 847 F.3d at 946 (citations omitted). If such allegations are absent, dismissal is appropriate. See, e.g., *A.J. ex rel. Dixon v. Tanksley*, No. 4:13-CV-1514 CAS, 2014 WL 1648790, at *7 (E.D. Mo. Apr. 24, 2014) (dismissing claim lacking factual allegations of a delegation of authority). Appellant has failed to plausibly plead any of these matters.

Appellant relies on conclusory allegations in the Complaint in the form of an exhibit, a letter authored by Plaintiff to a separate officer concerning a grievance wherein he stated that "[e]verything goes through Brenda Short in this jail. She is Judge Jury and Execution [sic]." (App. 21, R. Doc. 6-1 at 3). These allegations are vague and conclusory and entitled to no deference from this or any other Court. See *Lindenwood Female Coll. v. Zurich Am. Ins. Co.*, 61 F.4th 572, 574 (8th Cir. 2023) ("we need not give deference to conclusory allegations or bare legal assertions") (citing *Iqbal*, 556 U.S. at 678). They are insufficient to invoke the

factual circumstances whereby Brenda Short can be found to be a final policymaker or one with such delegated authority. At best, Appellant's allegations speak merely to decision making authority, and not the designation of legal power necessary to give rise to Municipal liability. *Soltesz*, 847 F.3d at 947; see also *Williams v. Butler*, 863 F.2d 1398, 1402 (8th Cir.1988); and *Bolderson*, 840 F.3d at 985–86 (recognizing Eighth Circuit's adoption of distinction between final policymakers and final decisionmakers).

Appellant also interjects unpled matters, including portions of the Jefferson County Charter[7] identifying the Jefferson County Sheriff as the person empowered and responsible for the supervision, management and administration of all corrections facilities, along with a Sheriff's 2023 Organizational Chart identifying the Jail Administrator among his subordinates. Brief p. 50. Far from assisting Appellant's position, these documents enforce that Brenda Short is subject to review, indeed by many superiors. Most germane to this issue, nowhere is there the slightest suggestion that the Sheriff has abdicated his legal authority and power of review to the Jail Administrator. Additionally, there is no authority presented to suggest that such power is even legally delegable, particularly given that the County Charter certainly makes no such provision. Appellant has asked this Court

[7] (which Appellant identifies as the "Jefferson County Code")

to indulge an assumption that Missouri law does not permit. *Soltesz*, 847 F.3d at 946.

Appellant clearly failed to state a claim against the County pursuant to 42 USC § 1983, and the District Court properly entered its dismissal.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's dismissal and enter final judgment in favor of the Appellees. The Appellees further alternatively seek a dismissal with prejudice as such relief is appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 15, 2024, a true and accurate copy of the foregoing was served via the Court's electronic filing system to counsel of record.

/s/ Rachel Bates

CERTIFICATE OF COMPLIANCE FED. R. AP. P. 32(g)

The undersigned hereby certifies that:

1. This brief complies with type-volume limitations of FRAP 32(a)(7)(C)(i) because this brief contains 11,492 words.

2. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2013 in 14 font size, Times New Roman type style. This document is in PDF format and has been scanned for viruses, and is virus-free.

/s/ Rachel Bates
Rachel Bates
Attorney for Appellee

Dated: March 15, 2024