

U.S. Supreme Court Allows Recovery of Damages and Attorney Fees in §1983 Religious Freedom Claims

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On December 10, 2020, the Supreme Court of the United States ruled in *Tanzin v. Tanvir*, 592 U.S. ____ (2020), that 42 U.S.C. § 1983 allows for recovery of monetary damages and attorney fees from a government official in their individual capacity when they violate the Religious Freedom Restoration Act of 1993.

The RFRA “prohibits the Federal Government from imposing substantial burdens on religious exercise, absent a compelling interest pursued through the least restrictive means.” *Id.* at 1 (citing 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq.*) It also gives a person whose religious exercise has been unlawfully burdened the right to seek “appropriate relief.” *Id.* In *Tanzin*, the Court determined that “appropriate relief” includes monetary damages against the offending government officials in their individual capacities. *Id.*

The plaintiffs in *Tanzin* were practicing Muslims who claimed that FBI agents placed them on the no fly list in retaliation for their refusal to act as informants against their religious communities. *Id.* at 2. They sued the agents in their official capacities to be removed from the list and in their individual capacities for monetary damages. *Id.* The Southern District of New York ruled that the RFRA does not permit monetary relief, and the Second Circuit reversed, noting that the RFRA’s protections of religious liberties are broad and the phrase “appropriate relief” is open-ended. *Id.* The Supreme Court affirmed, reasoning that “[a] damages remedy is not just ‘appropriate’ relief as viewed through the lens of suits against Government employees. It is also the only form of relief that can remedy some RFRA violations.” *Id.* at 7. “Had Congress wished to limit the remedy . . . , it knew how to do so.” *Id.*

Government officials should be careful to stay cognizant of the RFRA, as the Supreme Court has indicated that it will interpret it broadly. They can expect suits when enforcing a statute or ordinance against a religious gathering or organization, particularly with COVID-19 closure orders. However, the Court reaffirmed in *Tanzin* in a footnote that qualified immunity will still apply to protect all but the “plainly incompetent.” *Id.* at 8.

The opinion can be found at: https://www.supremecourt.gov/opinions/20pdf/19-71_qol1.pdf.

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