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Nominal damages can enable a constitutional challenge of a campus speech policy

By Steven M. Richard

In an 8-1 decision issued on March 8, 2021, the United States Supreme Court held, in *Uzuegbunam v. Preczewski*,¹ that a dispute over free speech on a public college's campus may proceed under a nominal damages claim after a college abandoned its speech policy. Justice Thomas authored the majority's opinion protecting a plaintiff's right to seek redress (however small or symbolic) for alleged past constitutional violations, while Chief Justice Roberts warned in his dissent against judicial advisory opinions with as little as one dollar at stake.

Background

In 2016, Chike Uzuegbunam, an evangelical Christian, was enrolled at Georgia Gwinnett College, a public institution. At an outdoor plaza on campus near the library, Uzuegbunam conversed with students about his religious beliefs and handed out religious literature. Campus police stopped his interactions because the plaza was not designated as a campus free speech area.

Uzuegbunam visited the Director of the Office of Student Integrity, who was responsible for the campus speech policy. The official explained that Uzuegbunam could speak about his religion or distribute materials only in two designated "free speech expression areas," which required a permit to be able to do so. Uzuegbunam applied for and received a permit.

As Uzuegbunam exercised his rights under the permit, a campus police officer ordered him to stop because of complaints about his speech. Campus policy prohibited using a "free speech zone" to say anything that "disturbs the peace and/or comfort of person(s)." The officer told Uzuegbunam that his speech violated the policy because it led to complaints and threatened him with disciplinary action. Uzuegbunam complied with the order and ceased his exercise of speech.

Another student, James Bradford, who shares Uzuegbunam's faith, decided not to speak about religion on campus because of these events. Both students asserted First Amendment violations against college officials for their enforcement of the campus speech policy. The plaintiffs did not seek compensatory damages for any monetary losses, but sought nominal damages and injunctive

¹ No. 19-968, 2021 WL 850106, 2021 U.S. Lexis 1372 (Mar. 8, 2021).

relief. The college officials initially defended the policy, portraying Uzuegbunam's discussion of his religious beliefs as arguably rising to the level of "fighting words." The officials soon dropped this strategy and abandoned the challenged policy. The officials then sought to dismiss the litigation as moot because of the policy change. The plaintiffs agreed that injunctive relief was no longer an available remedy, but contended that their case still presented a live controversy because of their nominal damages claims.

A district court dismissed the case as moot. On appeal, the Eleventh Circuit held that because the students did not request compensatory damages, their plea for nominal damages could not by itself save their case following the policy's repeal.

The United States Supreme Court granted *certiorari* to address whether a post-filing change of policy moots a nominal damages claim seeking redress for alleged past violations of constitutional rights. When the case reached the Court, it was in the following posture: the plaintiffs had lost no money and did not seek compensatory damages, the college had abandoned its challenged policy so there was no need for an injunction or declaration to stop its enforcement, and the plaintiffs no longer attended at the college.

The majority opinion²

Justice Thomas wrote that Uzuegbunam had plausibly alleged that he was injured and that his injury was caused by the official's conduct. The Court's focus concerned whether he sought a remedy that is likely to redress and correct the alleged constitutional violation. Justice Thomas undertook a historical analysis of the longstanding role of nominal damages in English and American law. Because the remedy has been historically recognized, nominal damages can support a plaintiff's claim of an alleged violation of rights that has already concluded.

The Court's ruling does not "guarantee[] entry to court" for every claim of nominal damages. But here, there is no dispute that "Uzuegbunam experienced a completed violation of his constitutional rights," after the college officials' enforcement of the policy impacted his right to speech. The case may proceed because "nominal damages can redress Uzuegbunam's injury even if he cannot or chooses not to quantify that harm in economic terms." While a single dollar cannot provide full redress, the result can effectuate a partial remedy to satisfy redressability, thereby allowing the claim to survive.

The dissent

In his first solo dissent on the Court, Chief Justice Roberts advocated for judicial restraint by stressing the Constitution's requirement in Article III that the federal judiciary hears cases and controversies, which imposes "fundamental restrictions on who can invoke federal jurisdiction and what types of disputes federal courts can resolve." Because the speech restrictions had been removed and there was no claim for actual damages, the Chief Justice concluded that it was impossible to grant any effectual relief. "When plaintiffs like Uzuegbunam and Bradford allege neither actual damages nor the prospect of future injury, an award of nominal damages does not change their status or condition at all. Such an award instead represents a judicial determination that the plaintiffs' interpretation of the law is correct—nothing more."

² The Court's analysis focused on Uzuegbunam's claim for nominal damages to redress an alleged past, completed wrong caused by speech policy. The justices did not address whether Bradford's case should be reinstated, leaving the district court to determine on remand whether his rights had been violated.

The Chief Justice warned that the majority's ruling will turn judges into "advice columnists," opening the federal courthouse doors to any plaintiff who asks for a dollar. "For those who want to know if their rights have been violated, the least dangerous branch will become the least expensive source of legal advice." Also, as a practical matter, the Chief Justice concluded that where a plaintiff seeks only a dollar, the defendant should be able to end the case by paying the dollar without a court's need to adjudicate the merits of the claims.³

Takeaways

A plaintiff must show injury, causation, and redressability in the pursuit of claims. The majority's ruling sends a message that governmental officials (here, college officials) cannot avoid judicial accountability by electing to abandon a policy in the face of a lawsuit. Where actual damages or injunctive relief are not remedial options, a nominal damages claim may still enable adjudications to clarify and define permissible legal boundaries. The decision furthers accessibility of courts to civil rights and constitutional claims. Yet, it poses operational and financial challenges to colleges and universities, which will bear the costs of litigation defending policies or practices that may have since been amended or abandoned. Future cases will define the extent that courts will allow the quick resolution of a lawsuit through the acceptance of a judgment and the payment of nominal damages. Also, an attorneys' fee demand will likely ensue when, as a prevailing party, a plaintiff vindicates a past legal wrong through a nominal damages award.

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³ In a single paragraph concurring opinion, Justice Kavanaugh joined the majority in concluding that a plaintiff's request for nominal damages can satisfy the redressability requirement to keep an otherwise moot case alive, but he agreed with the Chief Justice's view that a defendant should be able to accept the entry of a judgment for nominal damages to end the litigation without a resolution of the merits.