

No. 19-968

IN THE

Supreme Court of the United States

CHIKE UZUEGBUNAM, ET AL.,

Petitioners,

v.

STANLEY C. PREZEWSKI, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

**BRIEF OF AMICUS CURIAE PUBLIC CITIZEN
IN SUPPORT OF PETITIONERS**

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September 2020

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INTEREST OF AMICUS CURIAE¹

Public Citizen is a nonprofit consumer advocacy organization with members and supporters in all 50 states. Public Citizen appears before Congress, administrative agencies, and courts on a wide range of issues, and works for the enactment and enforcement of laws protecting consumers, workers, and the public. Reflecting its longstanding interest in preserving access to the courts in civil litigation, Public Citizen has filed many briefs in this Court and the lower courts on the doctrines of standing and mootness. Public Citizen submits this brief because it believes that a proper understanding of the standing and mootness doctrines recognizes that claims for nominal damages redressing injuries already sustained are not mooted by a change in circumstances, and that claims for nominal damages play a critical role in securing important constitutional rights.

SUMMARY OF ARGUMENT

A claim for nominal damages as a remedy for past injuries is not moot, regardless of whether a change in circumstances would moot claims for prospective relief. A claim becomes moot only if a court can no longer order *any* effectual relief. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Respondents here cannot meet that demanding standard with respect to petitioners' claim for nominal damages, which seeks

¹ This brief was not authored in whole or part by counsel for a party, and no one other than amicus curiae or its counsel made a monetary contribution to preparation or submission of the brief. Counsel for both parties have consented in writing to its filing, through blanket consents filed with the Court.

redress for constitutional injuries that cannot be valued in solely monetary terms. An award of nominal damages would alter the legal relationship between the parties in a way that would redress the injuries petitioners suffered due to respondents' policies. That is all that this Court's cases require.

A claim for nominal damages is fundamentally different from a claim for declaratory relief. A claim for declaratory relief seeks to determine the legal rights and obligations of the parties with prospective effect. Because it is prospective, such a claim may be mooted by changed circumstances, including changes in a defendant's policies that make it "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw*, 528 U.S. 167, 189 (2000). By contrast, claims for retrospective relief, including claims for nominal damages, are unaffected by such a change in circumstances. "[S]o long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 608–09 (2001).

Claims seeking nominal damages as a retrospective remedy for past violations serve two important additional purposes. First, they facilitate the sound development of constitutional law in contexts in which traditional compensatory damages may not be appropriate. Second, they enable cases to reach judgment on the merits, thus providing an opportunity for the plaintiff to obtain an award of attorney's fees, which this Court has recognized is often essential to enable plaintiffs to bring claims for the violation of their constitutional rights.

ARGUMENT

Petitioners allege that, while they were students at Georgia Gwinnett College, respondents' unconstitutional policies prevented them from exercising their rights under the First Amendment. Their suit initially sought injunctive and declaratory relief to prevent those unconstitutional violations of their rights from continuing or recurring, as well as nominal damages. After respondents formally revised their policies to allow the speech that had previously been prohibited and one of petitioners graduated, the district court held that the claims for prospective relief were moot. *See* Pet. App. 26a, 40a. Petitioners do not challenge that holding here. The court of appeals subsequently held that the claim for nominal damages "cannot save their otherwise moot constitutional challenge." Pet. App. 16a. That holding, at issue here, was incorrect.

Contrary to the ruling of the court of appeals, a claim seeking retrospective relief that provides genuine redress for injuries caused by past unlawful conduct is not mooted by circumstances that foreclose prospective relief. That conclusion holds true both for claims seeking compensatory damages and, as here, for claims seeking nominal damages as a retrospective remedy for a past violation of a right that defies monetary quantification.

I. A claim for nominal damages to remedy unquantifiable injuries attributable to a past violation of a right confers standing and defeats mootness.

A. Under well-settled principles of standing and mootness, petitioners' claim for nominal damages is not moot. That claim seeks a remedy that would meaningfully redress the injury they allegedly suffered due to respondents' unconstitutional policies.

To satisfy Article III's standing requirements, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Laidlaw*, 528 U.S. at 180–81 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). The injury need not be large. See *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14 (1973) ("[A]n identifiable trifle is enough for standing."). Nor need the injury be tangible, such as physical or pecuniary harm. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) ("[This Court] has confirmed in many of [its] previous cases that intangible injuries can nevertheless be concrete.").

A case that initially satisfied the requirements of standing "becomes moot *only* when it is *impossible* for a court to grant *any* effectual relief whatever to the prevailing party." *Chafin*, 568 U.S. at 172 (emphases added). Just as at the outset of a case, "[a]s long as the parties have a concrete interest,

however small, in the outcome of the litigation, the case is not moot.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307–08 (2012); *see also Ellis v. Bhd. of Ry. Emps.*, 466 U.S. 435, 442 (1984) (“The amount at issue [in damages] is undeniably minute. But as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.”); *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 571 (1984) (“[T]he parties have a concrete interest in the outcome [and] the case is not moot notwithstanding the size of the dispute.”). When a claim seeks a remedy that would “materially alter[] the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff,” *Farrar v. Hobby*, 506 U.S. 103, 111–12 (1992), and would “remedy the injury suffered” by the plaintiff, *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998), it is not moot regardless of whether the defendant has ceased its unlawful conduct. In particular, “[i]f there is any chance of money changing hands, [the] suit remains live.” *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019).

Here, petitioners’ claim for nominal damages for the past violation of their First Amendment rights satisfies these requirements. Their injury is clear and concrete: One petitioner alleges that he actively attempted to exercise his First Amendment rights but respondents prevented him from doing so; the other alleges that he would have exercised his First Amendment rights but was chilled from doing so by respondents’ policies. Pet. App. 23a–24a. Because neither alleged physical or pecuniary injury, and their claim is not based on emotional distress or

other psychological harm, their concrete but intangible injury is not quantifiable as traditional compensatory damages. Accordingly, they sought nominal damages as a retrospective remedy. In seeking a remedy that would “directly and tangibly benefit[]” them by awarding them damages that would provide a measure of real redress for their injuries, *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam), petitioners have a “concrete private interest in the outcome of [the] suit,” *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772 (2000) (quoting *Lujan*, 504 U.S. at 573).

Defendants, too, have a concrete stake in the controversy over plaintiffs’ entitlement to nominal damages. This Court has explained that a “judgment for damages in any amount, whether compensatory or nominal, modifies the defendant’s behavior for the plaintiff’s benefit by forcing the defendant to pay an amount of money he otherwise would not pay” pursuant to a court order. *Farrar*, 506 U.S. at 113; *see also Hewitt v. Helms*, 482 U.S. 755, 761 (1987) (“The real value of the judicial pronouncement ... is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*” (emphasis in original)).

Thus, “it is widely recognized that a claim for nominal damages precludes mootness.” *N.Y. State Rifle & Pistol Ass’n v. City of New York*, 140 S. Ct. 1525, 1536 (2020) (Alito, J., dissenting) (citing 13C Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice & Procedure* § 3533.3 n.47 (3d ed. Supp. 2019)). That conclusion is no mere technicality. When a “civil rights plaintiff seeks to vindicate important civil and constitutional rights,”

the violation of those rights frequently “cannot be valued solely in monetary terms.” *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986). As a result, “nominal damages, and not damages based on some undefined ‘value’ of infringed rights, are the appropriate means of ‘vindicating’ rights” when the injury caused by their deprivation is not quantifiable in monetary terms. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 n.11 (1986). Accordingly, courts “traditionally have vindicated deprivations of certain ‘absolute’ rights ... through the award of a nominal sum of money.” *Carey v. Piphus*, 435 U.S. 247, 266 & n.23 (1978) (citing Dan B. Dobbs, *Law of Remedies* § 3.8, pp. 191–93 (1973); Charles T. McCormick, *Law of Damages* §§ 20–22 (1935); Restatement of Torts § 907 (1939)).

This Court’s cases, although not squarely answering the question presented here, illustrate these principles. In *Carey v. Piphus*, the Court “consider[ed] the ... prerequisites for recovery of damages by students who were suspended from public ... schools without procedural due process.” 435 U.S. at 248. The complication was that, although it was undisputed by the time the case came to this Court that the students were denied procedural due process, the trial court had not yet decided whether their suspensions were substantively unjustified. *Id.* at 252. The Court concluded that “substantial damages,” *id.* at 266, would be inappropriate if the suspensions were justified—that is, if the students would have been suspended even if they had been accorded procedural due process—but that the students would nonetheless be entitled to recover “nominal damages” to redress the undisputed violation of their procedural rights. *Id.* at 248. The

Court's conclusion relies on the premise that the proper remedy for the violation of a constitutional right that does not give rise to traditional compensatory damages is nominal damages. *See also Memphis Cmty. Sch. Dist.*, 477 U.S. at 309 (applying *Carey's* holding to deprivation of “substantive [First Amendment] constitutional right”).

This Court confirmed the importance of nominal damages as a form of meaningful relief in *Farrar v. Hobby*. The Court explained that a “plaintiff ‘prevails’ when *actual relief* on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” 506 U.S. at 111–12 (emphasis added). And it went on to hold that “a plaintiff who wins nominal damages is a prevailing party.” *Id.* at 112. That conclusion is inconsistent with the decision below, because a plaintiff cannot qualify as a “prevailing party” without securing a remedy that also suffices to ground that party’s standing. A plaintiff who asserts a claim for nominal damages seeks “actual relief” that establishes standing and the parties’ stake in the outcome of the litigation is “enough to save [it] from mootness.” *Chafin*, 568 U.S. at 176.

Petitioners here allege precisely the sort of injury that is properly redressed by nominal damages. The alleged restriction of their freedom to exercise their First Amendment rights to speak on a public college campus is without question a “constitutionally cognizable injury.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 153 (2010). The nature of that injury, like the violation of procedural due process rights in *Carey*, nonetheless defies monetary quantification. Thus, as this Court has recognized, the

appropriate retrospective remedy for the violation of the right to free speech is nominal damages. See *Memphis Cmty. Sch. Dist.*, 477 U.S. at 309–10 (holding that “damages based on the abstract ‘value’ or ‘importance’ of constitutional rights are not a permissible element of compensatory damages” for violation of the right of free speech). In such cases, nominal damages provide concrete redress for the actual injury inherent in a past deprivation of a constitutional right.

B. The court of appeals’ contrary conclusion rested on its view that nominal damages serve no function other than providing abstract declarations about the lawfulness of past actions that have no current or ongoing consequences. The court relied on circuit precedent that “s[aw] no reason to treat nominal damages and declaratory relief differently” because they “may be closely analogized.” *Flanigan’s Enters., Inc. v. City of Sandy Springs*, 868 F.3d 1248, 1268 & n.22 (11th Cir. 2017) (en banc) (quoting *Utah Animal Rights v. Salt Lake City Corp.*, 371 F.3d 1248, 1265 (10th Cir. 2004) (McConnell, J., concurring)). On the basis of that analogy, the court of appeals stated that, “given the similarities between the two remedies,” a “prayer for nominal damages” alone is moot just as “a prayer for declaratory relief—by itself and in an otherwise moot case—is insufficient to give a federal court jurisdiction.” *Id.* at 1268–69.

The analogy between declaratory relief and the nominal damages sought in this case, however, is fundamentally flawed. Claims for declaratory relief typically seek a declaration of the legal rights or obligations of the parties with some *prospective* impact. See *L.A. Cty. v. Humphries*, 562 U.S. 29, 31

(2010) (discussing “prospective relief, such as an injunction or a declaratory judgment”); *Christian Legal Soc’y v. Martinez*, 561 U.S. 661, 676 n.6 (2010) (lawsuit “seeks only declaratory and injunctive—that is, prospective—relief”); Samuel L. Bray, *The Myth of the Mild Declaratory Judgment*, 63 Duke L.J. 1091, 1123 (2014) (“[I]n many cases in which a plaintiff seeks prospective relief, a declaratory judgment and an injunction are interchangeable.”). In such cases, as this Court has made clear, “an appropriate action for declaratory relief *can* be a case or controversy under Article III.” *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) (emphasis in original) (citing *Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace*, 288 U.S. 249 (1933); *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937)); *see also, e.g., Steffel v. Thompson*, 415 U.S. 452, 458–60 (1974). However, a claim for declaratory relief that will not resolve an ongoing dispute in a way that has concrete practical consequences for the parties does not present an Article III case or controversy. *See, e.g., Golden v. Zwickler*, 394 U.S. 103, 108–09 (1968).

Thus, for example, a defendant’s voluntary cessation of its unlawful conduct may moot a claim for prospective relief, whether injunctive or declaratory, “if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Laidlaw*, 528 U.S. at 189 (citation omitted). In that circumstance, a declaratory judgment would provide no meaningful relief for the plaintiff because the judgment would have no additional effect on the defendant’s future conduct toward the plaintiff or the likelihood that the conduct will injure the plaintiff.

A claim for nominal damages, as a retrospective remedy, is inherently different from a claim for prospective declaratory relief. A plaintiff seeking nominal damages does not ask the court to command the defendant to cease its unlawful conduct in the future—at least, not any more than any claim for compensatory damages asks that—and instead asks the court to provide relief to redress the injury inflicted by the defendant’s past misconduct. A defendant’s cessation of its unlawful conduct does not remedy the injuries that the defendant already inflicted. Likewise, a change in circumstances, such as a student’s graduation, that might moot a claim for prospective relief does not resolve a claim seeking redress for those past injuries. Only a retrospective remedy can provide that relief. *See Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 77 (2013) (“[A] claim for damages cannot evade review; it remains live until it is settled [or] judicially resolved.”); *Buckhannon*, 532 U.S. at 608–09 (“[S]o long as the plaintiff has a cause of action for damages, a defendant’s change in conduct will not moot the case.”). For that reason, respondents’ voluntary cessation of their policies does not moot petitioners’ claim for nominal damages as a remedy for their past injuries.

II. The court of appeals’ contrary conclusion undermines the adjudicatory role of Article III courts.

Adjudication of the merits of claims for nominal damages is critical to fulfilling the federal courts’ constitutional obligation to “say what the law is.” *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322 (2016) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)). The rule adopted by every other circuit,

holding that claims for nominal damages present an Article III case or controversy, serves that purpose in two ways.

First, adjudicating claims for nominal damages facilitates the development of aspects of constitutional law that might otherwise languish. Claims of constitutional violations that give rise to no compensatory damages frequently arise across a diverse range of doctrinal contexts. Such claims arise under the First Amendment. *See, e.g., Klein v. Laguna Beach*, 810 F.3d 693, 697 (9th Cir. 2016) (free speech); *Project Vote/Voting for America, Inc. v. Dickerson*, 444 F. App'x. 660, 661 (4th Cir. 2011) (per curiam) (free speech). They arise under the Fourteenth Amendment's Due Process Clause and Equal Protection Clause. *See, e.g., Carey v. Piphus*, 435 U.S. 247 (procedural due process); *Price v. Charlotte*, 93 F.3d 1241, 1257 (4th Cir. 1996) (equal protection). They arise under the Fourth Amendment's prohibition on unreasonable searches and seizures. *See, e.g., Stoedter v. Gates*, 704 F. App'x 748, 762 (10th Cir. 2017); *Amato v. Saratoga Springs*, 170 F.3d 311, 317 (2d Cir. 1999). In each of these contexts, declining to proceed to judgment on the basis of a claim for nominal damages both leaves real injuries unredressed and also deprives courts, the government, and the public of important guidance on the contours of constitutional requirements.

Second, the rule adopted by the court below could significantly impair the ability of victims of constitutional wrongs to vindicate their rights by undermining the availability of attorney's fees. To secure counsel, plaintiffs in cases like this one often rely on Congress's determination to provide attorney's fees to prevailing plaintiffs in suits under Section 1983. *See*

42 U.S.C. § 1988. Congress intended Section 1988 to facilitate plaintiffs' vindication of constitutional rights by providing a financial incentive to attorneys to take cases for clients who otherwise would be unable to afford representation. *See* H.R. Rep. No. 94-1558, at 1 (1976) ("Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their cases to the courts. ... [Section 1988] is designed to give such persons effective access to the judicial process."); S. Rep. No. 94-1011, at 2 (1976) ("If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court."); *see also Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968) (*per curiam*) (Congress "enacted the provision for counsel fees ... to encourage individuals injured by racial discrimination to seek judicial relief.").

The decision below, by preventing meritorious claims for nominal damages from proceeding to judgment, undermines Congress's statutory scheme. To be eligible for an award of attorney's fees under Section 1988, a plaintiff must be a "prevailing party." *Farrar*, 506 U.S. at 109. But under Section 1988 and other civil rights statutes, a plaintiff who has "failed to secure a judgment on the merits or a court-ordered consent decree" does not qualify as a prevailing party, even if she has "nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Buckhannon*, 532 U.S. at 600. As a result, under the rule of the court below, petitioners here would not be eligible for an award of attorney's fees,

notwithstanding the merits of their claim for retrospective relief for past injuries, simply because respondents will not injure them again.

As Congress and this Court have recognized, such a rule would impede meritorious cases from being brought in the first place, thereby denying effective relief to plaintiffs who suffer violations of their constitutional rights. Every member of this Court has authored or joined opinions recognizing the essential role of attorney's fee awards in enabling the proper resolution of litigation about constitutional and other rights.² That unanimous recognition of the importance of attorney's fees in cases seeking vindication of constitutional rights under Section 1983 applies in full force in this case.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

² See, e.g., *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016) (Kagan, J.) (unanimous opinion of the Court) (adopting test for fee awards “because it both encourages parties with strong legal positions to stand on their rights and deters those with weak ones from proceeding with litigation”); *N.Y. State Rifle & Pistol Ass’n*, 140 S. Ct. at 1538 (Alito, J., dissenting, joined by Gorsuch, J. and Thomas, J.) (“Relief would be particularly appropriate here because the City’s litigation strategy caused petitioners to incur what are surely very substantial attorney’s fees in challenging the constitutionality of a City ordinance that the City went to great lengths to defend.”); *Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 325 (D.C. Cir. 2006) (Kavanaugh, J.) (“The attorney’s fees provision was designed ... to ‘enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights.’”).

Respectfully submitted,

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September 2020