No. 19-968

In the Supreme Court of the United States

CHIKE UZUEGBUNAM, ET AL., PETITIONERS

v.

STANLEY C. PRECZEWSKI, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a claim for nominal damages based on past injury-in-fact is sufficient to support an Article III case or controversy.

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INTEREST OF THE UNITED STATES

This case concerns whether a claim for nominal damages is sufficient to support an Article III case or controversy where intervening events have rendered moot prospective claims for equitable relief and where there is no live request for compensatory damages. Nominal damages are a recognized remedy under 42 U.S.C. 1983 for private individuals seeking to enforce their constitutional rights against state and local governments. The United States has a significant interest in whether that remedy authorized by an Act of Congress is constitutionally available in these circumstances. More generally, the United States has a substantial interest in the proper application of Article III's requirements for standing to sue in federal court.

STATEMENT

1. Georgia Gwinnett College, a public college in the state of Georgia, adopted a Freedom of Expression Policy and a Student Code of Conduct that significantly restricted students' expressive activities. See Pet. App. 137a-151a. Under the Policy and Code of Conduct in place in 2016, the College prohibited students from engaging in a number of expressive activities—including speeches, gatherings, marches, and distribution of written materials—outside of two designated "free speech expression areas." *Id.* at 146a; see *id.* at 33a. The areas comprised a single sidewalk and one outdoor patio. *Id.* at 146a. The College permitted students to use these areas only during limited hours on weekdays—restricted to four specific hours a day on Monday through Thursday and two specific hours on Friday—and closed the free speech expression areas entirely on weekends. *Ibid.* If a student wished to engage in covered expressive activities outside the free speech expression areas and times, the College permitted students to do so if they received preauthorization. *Ibid.*

To engage in covered expressive activities in the free speech expression areas or to reserve another location to engage in expressive activities, the student was required to submit a "[f]ree speech area request form[]" to a "designated Student Affairs official" at least three business days before the expressive activity. Pet. App. 146a-147a (emphasis omitted). The College required the student to "descri[be] * * * the event" on the form and to attach "[a]ll publicity materials" in order to obtain approval. *Id.* at 139a, 144a (capitalization and emphasis omitted). "Authorization of a speech, event or demonstration [wa]s contingent upon compliance with"

15 criteria, *id.* at 149a; see *id.* at 147a-149a, and the College official was required to "confirm[]" "use of free speech space * * * before the free speech area[] c[ould] be utilized," *id.* at 142a. The College also restricted the quantity of expressive activities: any individual or organization who obtained permission to engage in an expressive activity was required to "wait at least 30 calendar days after the last date of use" before submitting another request to engage in expressive activity. *Id.* at 142a-143a.

The College enforced its limitations on expressive activities through a variety of sanctions. Speakers who failed to abide by these limits could be charged with disorderly conduct in violation of the Student Code of Conduct, "asked to leave" the area, issued a trespass warning, subjected to "judicial action," or expelled from the College. Pet. App. 149a-150a; see *id.* at 85a-88a.

2. Petitioners Chike Uzuegbunam and Joseph Bradford are evangelical Christians who attended the College. See Pet. App. 61a. In July 2016, while a student at the College, Uzuegbunam began distributing religious literature in an open, outdoor plaza near the College's library. *Id.* at 3a, 23a, 90a. Campus police stopped him and explained that the school's Freedom of Expression Policy prohibited distribution of written materials at that location. *Id.* at 3a, 23a. Uzuegbunam then submitted a Free Speech Area Request Form seeking permission to use one of the designated free speech expression areas to distribute religious literature and communicate with students about his religious beliefs. *Id.* at 4a, 23a, 95a-96a. The College granted his request. *Id.* at 4a, 23a. At the approved time and in the approved area, Uzuegbunam began publicly speaking about his religious views and distributing his religious

literature. *Ibid.* Shortly after he began speaking, campus police approached him and asked him to stop because they had received "some calls" complaining about his speech. *Id.* at 4a; see *id.* at 23a-24a. After conferring with a College official, the campus officer informed Uzuegbunam that his speaking constituted "disorderly conduct" in violation of the Student Code of Conduct; that the College's approval of his expressive activities allowed speaking to other students one-on-one and distributing literature, but not addressing the public; and that if he continued to speak, he could be prosecuted. *Id.* at 4a, 24a, 97a-103a. Because of the threat of disciplinary action, Uzuegbunam stopped speaking entirely and left the designated speech zone, *id.* at 4a, and he did not again "attempt[] to speak publicly * * * because numerous [College] officials, including [respondents], have enforced th[e] policies against him," *id.* at 107.

Bradford was also a student at the College when the challenged policies were in place. See Pet. App. 4a, 24a. Bradford wished to engage in expressive activities on-campus that were similar to Uzuegbunam's, but "knowing how [respondents] enforced [the policies] against Mr. Uzuegbunam, Mr. Bradford fear[ed] that the expression in which he desires to engage would expose him to enforcement and disciplinary actions * * * and therefore, he [did not speak] in these ways." *Id.* at 86a; see *id.* at 4a, 24a, 105a. Once College officials stopped Uzuegbunam from engaging in expressive activities, neither Uzuegbunam nor Bradford attempted to have one-on-one discussions or distribute literature in any area outside of the two free speech expression areas, and neither student attempted to address the public anywhere on campus. *Id.* at 4a, 104a-105a.

3. In December 2016, petitioners Uzuegbunam and Bradford filed this lawsuit in federal court against respondents, who are officials and police officers at the College. Pet. App. 30a, 62a-72a. Petitioners brought suit under 42 U.S.C. 1983 and challenged the Freedom of Expression Policy and Student Code of Conduct as violating their freedom of speech and exercise of religion under the First Amendment and violating their rights to due process and equal protection under the Fourteenth Amendment. Pet. App. 115a-132a. Petitioners sought declaratory and injunctive relief, "damages in an amount to be determined by the evidence," nominal damages, attorney's fees and costs, and "[a]ll other further relief to which [they] may be entitled." *Id.* at 123a, 126a, 128a-129a, 132a-133a.

Shortly after petitioners' suit was filed, the College in February 2017 substantially revised its Freedom of Expression Policy and Student Code of Conduct. Pet. App. 5a. The new versions of these policies generally allow students to engage in expressive activities anywhere on campus without obtaining a permit, except in limited circumstances. See *id.* at 32a-38a.

4. Following these changes, respondents moved to dismiss the case as moot, and the district court granted that motion. Pet. App. 22a-46a. The court found that Uzuegbunam's claims for declaratory and injunctive relief were moot because he had graduated from the College since filing the complaint. *Id.* at 26a-27a. And the court found that Bradford's claims for declaratory and injunctive relief were moot because the College "has unambiguously terminated the Prior Policies and there is no reasonable basis to expect that it will return to them." *Id.* at 40a. The court further asserted that the only type of damages that petitioners pleaded was their

request for nominal damages, *id.* at 40a-42a—despite the fact that their complaint requested "damages in an amount to be determined by the evidence," *id.* at 123a, 126a, 128a-129a, 131a-132a. Relying on binding circuit precedent, the court held that the "lone remaining claim of nominal damages" was "insufficient to save this otherwise moot case" and dismissed the entire case as moot. *Id.* at 42a; see *id.* at 41a-46a.

5. The court of appeals affirmed. Pet. App. 1a-19a. The court first concluded that "the allegations in the complaint simply did not support a claim for compensatory damages." *Id.* at 12a. And then, relying on *Flanigan's Enterprises, Inc.* v. *City of Sandy Springs*, 868 F.3d 1248 (11th Cir. 2017) (en banc), cert. denied, 138 S. Ct. 1326 (2018), the court held that petitioners' "right to receive nominal damages as the result of any unconstitutional conduct on the part of [College] officials would have to flow from a well-pled request for compensatory damages." Pet. App. 15a. The court ruled that, absent such a request for compensatory damages, petitioners' "claim for nominal damages cannot save their otherwise moot constitutional challenge." *Id.* at 16a.

SUMMARY OF ARGUMENT

Nominal damages have deep roots in the common law and have long been awarded under 42 U.S.C. 1983 for violations of constitutional rights. As this Court confirmed in *Carey* v. *Piphus*, 435 U.S. 247 (1978), nominal damages are an appropriate remedy where a plaintiff has suffered a constitutional violation but lacks proof of loss that can readily be quantified with monetary value.

Article III of the Constitution generally permits nominal damages awards in such cases. A plaintiff ordinarily suffers a judicially cognizable injury-in-fact when his personal legal rights are infringed, regardless

of whether there are consequential harms that flow from the invasion that can be proven and quantified. In fact, abridgements of the freedom of speech, as petitioners allege here, are paradigmatic Article III injuries. Where, as here, actual or threatened enforcement that *will deter speech* causes imminent injury-in-fact that may be redressed by prospective injunctive relief, such enforcement that *has already deterred speech* causes past injury-in-fact that may be redressed by retrospective monetary relief, including nominal damages.

In particular, as confirmed by the historical tradition that informs the scope of the case-or-controversy requirement, an award of nominal damages to a plaintiff who has suffered an injury-in-fact from a violation of his legal rights provides sufficient redress to satisfy Article III, by vindicating his rights while also providing a modest measure of monetary recompense for his injury. That the financial redress is quite limited does not defeat Article III standing. Nor does the fact that nominal damages also serve a non-compensatory function; monetary relief may provide retrospective redress even if compensation is not its sole purpose—as underscored by federal courts' routine award of damages with other purposes, such as punitive and statutory damages.

Accordingly, a claim for nominal damages directed at a past injury-in-fact suffices to maintain a live Article III controversy at any point during litigation. Such a claim can be brought even on its own from the outset, or it can be initially accompanied by claims for prospective relief or compensatory damages, regardless of whether those additional claims are ultimately successful. Respondents' alternative approach—that a court may award nominal damages only if there is also a compensatory damages claim that remains live at the time the

court rules for the plaintiff on the merits—contradicts two basic Article III principles: that a plaintiff must demonstrate standing for each form of relief that he seeks, and that an Article III controversy must exist throughout the entire course of litigation. If there were no Article III jurisdiction over a stand-alone claim for nominal damages, then a court could not grant such relief even if the reason the claim stands alone is that a separate claim for compensatory damages has failed on the merits. That result, however, would be contrary to this Court's precedents, which have repeatedly approved of nominal damages awards. Likewise, there is no basis for a rule that an independent nominal damages claim is permitted by Article III only where supported by the type of prospective injury-in-fact that would support a claim for declaratory relief; such a rule would improperly conflate these two remedies and has no basis in Article III or historical tradition.

Finally, this Court should not be concerned about the practical consequences of permitting independent claims for nominal damages under Section 1983. Such claims are relatively rare to begin with, because most constitutional violations have adverse consequences for plaintiffs that can be adequately quantified and remedied by compensatory damages. And even where a plaintiff does seek only nominal damages, if the defendant does not wish to litigate the merits of its past conduct, it can simply decline to oppose the entry of a judgment for nominal damages. But Article III does not permit the defendant to avoid adjudication of the lawfulness of its past conduct if it is not willing to provide the plaintiff with the legally authorized redress for the injury caused by that conduct.

ARGUMENT

A CLAIM FOR NOMINAL DAMAGES BASED ON PAST INJURY-IN-FACT SATISFIES ARTICLE III INDEPENDENT OF ANY OTHER CLAIM FOR RELIEF

The "judicial Power" of federal courts is confined to resolving "Cases" and "Controversies." U.S. Const. Art. III, § 2. This fundamental limitation ensures "the judiciary's proper role in our system of government" by authorizing the adjudication of legal questions only when presented in the context of a dispute that is "traditionally thought to be capable of resolution through the judicial process." *Raines* v. *Byrd*, 521 U.S. 811, 818-819 (1997) (citations omitted). Such a dispute is present when a plaintiff asks an Article III court to award him nominal damages for an alleged past violation of his own legal rights by the defendant.

A. Nominal Damages Are A Long-Established Judicial Remedy For Invasions Of Personal Legal Rights

Damages are generally a retrospective "money remedy aimed at making good plaintiff's losses." Dan B. Dobbs & Caprice L. Roberts, *Law of Remedies: Damages – Equity – Restitution* § 1.1, at 3 (3d ed. 2018) (*Law of Remedies*). Compensatory damages, for example, seek "to restore the injured party as nearly as possible to the position he would have been in but for the wrong," typically through a payment representing the value of the loss incurred. Douglas Laycock, *Modern American Remedies: Cases and Materials* 15 (3d ed. 2002). But damages are not always solely compensatory in nature; "[t]he award of punitive * * * damages" for example, is "intended partly to punish or deter [the] defendant." *Law of Remedies* § 1.1, at 3. Nominal damages, which are awarded in a modest amount "such as

six cents or $1," *id.* § 3.3(2), at 225, may be available where a plaintiff has suffered a violation of his legal rights but is unable to demonstrate consequential or quantifiable harm that is easily translated to a monetary value. See Dan B. Dobbs, *Handbook on the Law of Remedies: Damages – Equity – Restitution* § 3.8, at 191 (1973) ("[Nominal d]amages are awarded in some cases to vindicate a legal right, even though it is clear that no economic harm has been done. In other cases, such damages are awarded when the plaintiff * * * has been unable to prove [substantial] damages with the required certainty.") (citation omitted).

1. Nominal damages have deep roots in the common law, where they were a traditional remedy for violations of legal rights when a plaintiff suffered a legal injury but did not seek or prove that he was entitled to compensatory damages. At English common law, nominal damages were repeatedly awarded in such cases; contrary to respondent's suggestion (Br. in Opp. 22), such awards were not limited to situations involving boundary disputes or reputational harms. See, *e.g.*, *Robinson* v. *Byron* (1788), reported in 30 Eng. Rep. 3, 3 (1903) (awarding nominal damages where the plaintiff's riparian rights were violated and where the plaintiff elected not to seek compensatory damages); *Marzetti* v. *Williams* (1830), reported in 109 Eng. Rep. 842, 846 (1910) (concluding "that wherever there is a breach of contract or any injury to the right arising out of that contract, nominal damages are recoverable"); see also F. Andrew Hessick, *Standing, Injury in Fact, and Private Rights*, 93 Cornell L. Rev. 275, 279-284 (2008).

Early American courts followed suit. As Justice Story explained, "it [is] laid up among the very elements of the common law, that, wherever there is a wrong,

there is a remedy to redress it * * * and, if no other damage is established, the party injured is entitled to a verdict for nominal damages." *Webb* v. *Portland Mfg. Co.*, 29 F. Cas. 506, 507 (C.C.D. Me. 1838) (No. 17-322). American courts awarded nominal damages in a wide variety of cases. See, *e.g.*, *Abel* v. *Bennet*, 1 Root 127, 128 (Conn. Super. Ct. 1789) (awarding nominal damages against a sheriff for "negligent escape" where a prisoner escaped but immediately returned to the prison); *Parker* v. *Griswold*, 17 Conn. 288, 303 (1845) ("Where * * * there has been a violation of a right, the person injured is entitled to an action. If he is entitled to an action, he is entitled at least to nominal damages."); *Browner* v. *Davis*, 15 Cal. 9, 11 (1860) ("In actions for the breach of a contract, nominal damages are presumed to follow as a conclusion of law, from proof of the breach."); *Connecticut & Passumpsic Rivers R.R.* v. *Holton*, 32 Vt. 43 (1859) (affirming the award of nominal damages for a trespass where the plaintiffs had not pursued a claim for compensatory damages); *Bond* v. *Hilton*, 47 N.C. (2 Jones) 149, 150 (1855) (per curiam) (holding that the plaintiffs were entitled to recover nominal damages for breach of contract even though "[n]o special loss or damage was proven").

Accordingly, by the late nineteenth century, it was "well established * * * that a party whose rights are invaded can always recover nominal damages without furnishing any evidence of actual damage." 1 Theodore Sedgwick, *A Treatise on the Measure of Damages* 71 n.9 (Arthur G. Sedgwick & G. Willett Van Nest 7th ed. 1880); see 1 J.G. Sutherland, *A Treatise on the Law of Damages* 9 (1882) ("If there is no inquiry as to actual

damages, or none appear on such inquiry, the legal implication of damage remains * * * therefore, nominal damages are given.").

2. Nominal damages play the same established role under 42 U.S.C. 1983 in redressing violations of federal constitutional rights by state and local government officials. As this Court "ha[s] repeatedly noted," Section 1983 "creates 'a species of tort liability.'" *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 305-306 (1986) (quoting *Carey* v. *Piphus*, 435 U.S. 247, 253 (1978)); see *Manuel* v. *City of Joliet*, 137 S. Ct. 911, 916 (2017) (similar). "Accordingly * * * the level of damages is ordinarily determined according to principles derived from the common law of torts," *Stachura*, 477 U.S. at 306, with the "basic purpose of * * * compensat[ing] persons for injuries caused by the deprivation of constitutional rights," *Carey*, 435 U.S. at 254; see 42 U.S.C. 1983 (authorizing, among other things, "an action at law").

In some cases, however, a defendant's violation of the plaintiff's constitutional rights may not result in additional loss or consequential harms cannot be proven. This occurred, for example, in *Farrar* v. *Hobby*, 506 U.S. 103 (1992), where the jury found that a state government official had deprived the plaintiff of due process in connection with the closing of his business, but no compensable damages had been proximately caused by the violation. *Id.* at 106-107. A claim for compensatory damages under Section 1983 is unavailable in like circumstances because it must be "grounded in determinations of plaintiffs' actual losses." *Stachura*, 477 U.S. at 307.

In such cases, this Court has held that nominal damages are the appropriate remedy. *Carey*, 435 U.S. at

265-267. *Carey* explained that "[t]he purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated." *Id.* at 258. Denials of constitutional rights are therefore "actionable [under Section 1983] for nominal damages" even without proof of loss that can readily be quantified with a monetary value. *Id.* at 266-267. This Court emphasized that permitting nominal damages awards accords with the tradition of "[c]ommon-law courts * * * vindicat[ing] deprivations of certain 'absolute' rights that are not shown to have caused actual injury through the award of a nominal sum of money." *Id.* at 266; see pp. 10-12, *supra*. In the context of constitutional rights, "[b]y making the deprivation of such rights actionable for nominal damages * * * the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey*, 435 U.S. at 266; accord *Stachura*, 477 U.S. at 308 n.11.

B. For Article III Purposes, When A Plaintiff Suffers A Cognizable Injury-In-Fact, Nominal Damages Provide Redress

Unsurprisingly given its traditional pedigree, a suit seeking nominal damages for violation of a personal right generally satisfies Article III's standing requirement. So long as the alleged legal violation causes an Article III injury-in-fact—as is typically the case, and is certainly the case for First Amendment violations like the ones alleged here—then an award of nominal damages provides at least some Article III redress.

1. Article III standing is "an essential and unchanging part of the case-or-controversy requirement." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In order for a party to have standing to sue, it "must

have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540, 1547 (2016). Each of these elements "must be supported * * * with the manner and degree of evidence required at the successive stages of the litigation," from complaint through trial. *Lujan*, 504 U.S. at 561.

This Court has repeatedly emphasized that "standing is not dispensed in gross," such that "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester* v. *Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (citations omitted). Accordingly, where a past legal violation has ended, the plaintiff may still seek retrospective damages, see, *e.g.*, *City of Richmond* v. *J. A. Croson Co.*, 488 U.S. 469, 478 & n.1 (1989), but that alone does not entitle it also to seek a prospective injunction, see, *e.g.*, *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 111 (1983).

In short, a plaintiff bringing a claim for nominal damages must always demonstrate an injury-in-fact, causation, and redressability, regardless of what other claims for relief are sought for the alleged legal violation. As demonstrated below, where the violation concerns a violation of the plaintiff's own rights, a claim for nominal damages will typically satisfy these Article III requirements, even if the alleged violation has ended.

2. a. Article III injury-in-fact occurs where there is "an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (citations, footnote, and internal quotation marks omitted). A "particularized" injury is one that "affect[s]

the plaintiff in a personal and individual way," and a "concrete" injury is one that is "real" rather than abstract." *Spokeo*, 136 S. Ct. at 1548 (citations omitted).

While "tangible injuries" like the loss of money are paradigmatic examples, even "intangible injuries can nevertheless be concrete." *Spokeo*, 136 S. Ct. at 1549. For example, this Court has held that a plaintiff's "inability to obtain information" to which it allegedly has a statutory right is a judicially cognizable injury-in-fact, *FEC* v. *Akins*, 524 U.S. 11, 21 (1998), as is the "denial of equal treatment" from an alleged violation of the Equal Protection Clause, *Northeastern Fla. Chapter of the Associated Gen. Contractors* v. *City of Jacksonvill*e, 508 U.S. 656, 666 (1993). Although there are some circumstances in which a violation of a plaintiff's own personal legal rights, without a further showing of concrete harm, will not qualify as an Article III injury-in-fact sufficient to support *any* type of relief, those exceptions prove the rule. See *Spokeo*, 136 S. Ct. at 1550 (discussing "a bare procedural violation" unconnected to any substantive entitlement, or allegedly "incorrect" reporting of immaterial information); see also *id.* at 1552-1553 (Thomas, J., concurring).

Like all other claims for relief, a claim for nominal damages must satisfy the injury-in-fact requirement. The plaintiffs thus must demonstrate "some real, if intangible, injury." *Carey*, 435 U.S. at 261. Although this Court has occasionally stated that nominal damages are available in Section 1983 suits without "proof of actual injury," *id.* at 248; see *Stachura*, 477 U.S. at 308 n.11, that language merely describes situations in which injuries cannot readily be quantified or assigned a value for purposes of compensatory damages, see, *e.g.*, *Stachura*, 377 U.S. at 308 (compensatory damages may not

rest on the "subjective perception of the importance of constitutional rights as an abstract matter" and "the abstract value of a constitutional right may not form the basis for § 1983 damages"). This Court has not questioned the basic principle that a plaintiff must establish an Article III injury-in-fact before a federal court can exercise jurisdiction over a nominal damages claim. Cf. *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 772 (2000) (*Vermont Agency*) (holding that a monetary "bounty" for proving a legal violation that does not injure the plaintiff "is insufficient to give [the] plaintiff standing").

b. A government's actual abridgement of a person's own freedom of speech, as alleged here, is unquestionably an intangible Article III injury-in-fact *itself*, even apart from the tangible punishment that would be imposed for violating the speech restriction. See *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (recognizing that standing exists to challenge enforcement of a speech restriction based on "self-censorship[,] a harm that can be realized even without an actual prosecution"). Uzuegbunam alleges that he was affirmatively prevented from engaging in constitutionally protected speech by the university's enforcement of the challenged policies against him. See Pet. App. 90a-113a. And Bradford alleges that the existence of the policies and their enforcement against Uzuegbunam compelled him to refrain from engaging in the same kind of protected, yet prohibited, expressive activity. See *id.* at 104a-113a. Thus, in "challeng[ing] governmental action as a violation of the First Amendment," petitioners sufficiently pleaded "'a claim of specific [past] objective harm.'" *Meese* v. *Keene*, 481 U.S. 465, 472 (1987) (quoting *Laird* v. *Tatum*, 408 U.S. 1, 14 (1972)).

To be sure, "[a]llegations of a subjective 'chill' are not an adequate substitute" for past objective harm. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 418 (2013) (quoting *Laird*, 408 U.S. at 13-14) (brackets in original). Here, however, Bradford's claim does not rest merely on subjective chill, but on the existence and active enforcement of a rule that prohibited his intended conduct. See p. 4, *supra*. And Uzuegbunam was affirmatively censored by respondents. See pp. 3-4, *supra*.

Petitioners' alleged injuries are therefore both particularized and concrete. After all, before the policy was changed, the likelihood of imminent future infringements on their freedom of speech was sufficient to establish Article III injury for prospective injunctive relief—without any further showing of harm. See, *e.g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 155, 164 (2014) (finding that plaintiffs had standing to bring a pre-enforcement challenge where they alleged the "'prospect of [their] speech and associational rights * * * being chilled'" by the "threat of future enforcement") (citation omitted). And if that *impending* invasion of petitioners' freedom of speech qualified as an Article III injury, then the *actual* infringement of that freedom alleged here is *a fortiori* an Article III injury.

3. Because petitioners have alleged cognizable Article III injuries-in-fact caused by respondents' challenged conduct, the only remaining question for purposes of Article III standing is whether nominal damages redress the injuries. See *Summers* v. *Earth Island Inst.*, 555 U.S. 488, 492 (2009) ("[T]he traditional role of Anglo-American courts * * * is to redress or prevent actual or imminently threatened injury."). They do. As historical practice confirms, nominal damages are a recognized form of redress for violations of a

plaintiff's legal rights, and they provide that redress by vindicating legal rights while also providing a modest measure of monetary recompense. See *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) (redressability exists where plaintiff "personally would benefit in a tangible way from the court's intervention").

a. At the outset, the historical provenance of nominal damages strongly supports the conclusion that they satisfy Article III's redressability requirement. Historical practice "is particularly relevant to the constitutional standing inquiry since * * * Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vermont Agency*, 529 U.S. at 774 (quoting *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 102 (1998)); see *Sprint Commc'ns Co., L. P.* v. *APCC Servs., Inc.*, 554 U.S. 269, 274 (2008) ("[H]istory and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider.").

"Common-law courts traditionally have vindicated deprivations of certain 'absolute' rights that are not shown to have caused actual injury through the award of a nominal sum of money." *Carey*, 435 U.S. at 266. As discussed above, plaintiffs at common law were not required to show that they had suffered compensable injuries in order to recover nominal damages, and nominal damages were characteristically awarded where plaintiffs failed to prove entitlement to a compensatory damages award—or did not seek compensatory damages in the first place. See pp. 10-12, *supra*; see also *Stachura*, 477 U.S. 308 n.11 (reaffirming that nominal damages "are the appropriate means of 'vindicating'"

violations of constitutional and other personal legal rights in appropriate circumstances).

b. Importantly, the means through which nominal damages vindicate the past deprivation of a plaintiff's own legal rights is not through an abstract declaration, but through a concrete award of monetary relief. Nominal damages thus provide a measure of recompense, however modest, for the injury-in-fact suffered by the plaintiff. Of course, such an award "is not exactly a bonanza, but it constitutes relief on the merits." *Farrar*, 506 U.S. at 116 (O'Connor, J., concurring). And for Article III purposes, it is sufficient that a judicial remedy "would at least *partially* redress" the plaintiff's injuries. *Keene*, 481 U.S. at 476 (emphasis added); cf. *Church of Scientology* v. *United States*, 506 U.S. 9, 13 (1992) (holding that the availability of a "partial remedy" was "sufficient to prevent th[e] case from being moot").

To be sure, nominal damages also have a significant non-compensatory element in vindicating a plaintiff's legal rights, but it is well established that Article III courts can award monetary relief as a means of redressing past injury even where that relief is non-compensatory. For example, "[p]unitive damages by definition are not intended to compensate the injured party." *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 266-267 (1981). Rather, they "advance the interests of punishment and deterrence, which are also among the interests advanced by the criminal law." *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 504 (2008) (quoting *Browning-Ferris Indus., Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 275 (1989)); see Restatement (Second) of Torts § 908 (1979). Punitive damages are nonetheless an accepted remedy for willful or reckless violations of constitutional rights under Section 1983, without regard to

whether *the plaintiff himself* faces a threat of future injury that is being prevented. *Smith* v. *Wade*, 461 U.S. 30, 56 (1983); see *Stachura*, 477 U.S. at 305 n.8. Because "standing is not dispensed in gross," *Town of Chester*, 137 S. Ct. at 1650 (citation omitted), standing for punitive damages must exist separate and apart from standing for compensatory damages—and a punitive damages award thus necessarily provides Article III redress for past violations *despite* its non-compensatory character. Indeed, without any suggestion of Article III concerns, courts of appeals have authorized punitive damages under Section 1983 even when compensatory damages are not awarded. See, *e.g.*, *Cush-Crawford* v. *Adchem Corp.*, 271 F.3d 352, 358 (2d Cir. 2001) ("In cases brought under Section 1983 * * * punitive damages are available regardless whether other damages have been awarded."); *Louisiana ACORN Fair Hous.* v. *LeBlanc*, 211 F.3d 298, 303 (5th Cir. 2000) ("[T]he general rule [is] that a punitive award may stand in the absence of actual damages where there has been a constitutional violation."), cert. denied, 532 U.S. 904 (2001).

Likewise, there is no Article III impediment to a legislature's providing for a fixed award of statutory damages for a plaintiff's past injury-in-fact, regardless of whether compensable harm or a threat of future violations exists. If Congress were to amend Section 1983 to authorize a minimum $1000 award for First Amendment violations, a plaintiff whose own speech had been suppressed would have standing to seek that remedy without any further showing. See *Spokeo*, 136 S. Ct. at 1548-1550; *Vermont Agency*, 529 U.S. at 773-778; cf. *Doe* v. *Chao*, 540 U.S. 614, 616, 620-627 (2004) (interpreting a particular federal statute to provide that "adversely affected" plaintiffs "must prove some actual

damages to qualify for a minimum statutory award of $1,000," without suggesting that the contrary interpretation would have raised Article III concerns). Such fixed monetary relief for a past legal violation does not somehow cease to provide redress for the plaintiff's injury-in-fact if Congress or the courts instead choose to fix the quantum of damages below some floor that is deemed "non-compensatory," such as $100, $10, or $1. Article III provides neither a legal principle nor a workable standard to second-guess the amount of monetary relief awarded.

In sum, once a plaintiff has suffered injury-in-fact, monetary relief is a traditional and established means of providing some measure of redress for that injury—regardless of the amount of redress or whether the proffered rationale for such relief is compensation, punishment, or deterrence.

C. A Nominal Damages Claim For A Past Legal Violation Supports An Article III Suit Regardless Of Whether It Is Accompanied By Other Claims For Relief

As demonstrated, an award of nominal damages provides effectual Article III redress for an injury-in-fact caused by a past violation of a plaintiff's own legal rights. That being so, while such a claim undoubtedly keeps a controversy alive where prospective relief has become moot or compensatory damages have not been established, the claim is sufficient to maintain an Article III suit even standing alone from the outset.

1. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox* v. *Service Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) (citation and internal quotation marks omitted). Because nominal damages "at least partially redress" the plaintiff's injury-

in-fact from a past violation of his own legal rights, *Keene*, 481 U.S. at 476, they suffice to provide "effectual relief," *Knox*, 567 U.S. at 307 (citation omitted), and cannot be rendered moot by subsequent changes in the defendant's prospective course of conduct—just as such changes cannot moot claims for compensatory damages or other forms of retrospective monetary relief. See *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019) ("[N]othing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents. * * * If there is any chance of money changing hands, [plaintiff's] suit remains live."). The possibility of nominal damages, "however small," continues to represent a "concrete interest * * * in the outcome of the litigation." *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (citation omitted); see *Powell* v. *McCormack*, 395 U.S. 486, 499 (1969) (rejecting the argument that "mootness of a 'primary' claim requires a conclusion that all 'secondary' claims are moot").

Under these basic Article III principles, if a claim for nominal damages is pleaded alongside claims for prospective relief (as was petitioners' claim here), and the claims for prospective relief become moot due to the cessation of the challenged conduct, the nominal damages claim survives. See *New York State Rifle & Pistol Ass'n* v. *City of New York*, 140 S. Ct. 1525, 1536 (2020) (Alito, J., dissenting) ("[I]t is widely recognized that a claim for nominal damages precludes mootness."); 13C Charles Alan Wright et al., *Federal Practice and Procedure* § 3533.3, at 30 (3d ed. 2008) ("Nominal damages * * * suffice to deflect mootness."). Indeed, the plaintiff could have sought nominal damages even if the challenged conduct had ceased before litigation commenced, such that the plaintiff lacked standing to seek

injunctive relief in the first place. Cf. *Lyons*, 461 U.S. at 109 (plaintiff "ha[d] a claim for damages * * * that appear[ed] to meet all Art[icle] III requirements," even where his claim for injunctive relief was moot).

Similarly, the viability of a nominal damages claim under Article III does not depend on whether it was originally pleaded alongside a claim for compensatory damages or other retrospective relief. Respondents assert that a federal court is empowered to award nominal damages only "after [it] ha[s] decided the case and found a constitutional violation, in a case where a plaintiff ha[s] sought actual damages." Br. in Opp. 24-25 (emphasis omitted). Respondents' approach—that a court may award nominal damages if the claim journeys through the litigation alongside a claim for compensatory damages, but may not award nominal damages if the claim is pleaded alone—runs afoul of two basic Article III principles.

To begin, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester*, 137 S. Ct. at 1650 (citation omitted). A nominal damages claim thus must satisfy Article III's requirements independent of any compensatory damages claim. Moreover, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67 (1997) (citation omitted). A nominal damages claim thus must satisfy Article III's requirements even after the compensatory damages claim has failed. Accordingly, the necessary implication of respondents' position that Article III does not permit a stand-alone nominal damages claim for a completed legal violation is that such an award is impermissible even when issued in a case

where the plaintiff pleaded but failed to establish compensatory damages. Respondents have not urged that result, which is contrary to this Court's decisions repeatedly affirming the propriety of such nominal damages awards (albeit without expressly deeming them to satisfy Article III's requirements). See pp. 12-13, *supra*.

2. Respondents nevertheless insist (Br. in Opp. 21) that the only instance in which a stand-alone claim for nominal damages might be sufficient to support an Article III controversy is where the claim plays a role "similar to * * * a declaratory judgment"—in other words, where the challenged conduct is ongoing or may recur, such that a nominal damages award "could * * * serve as an authoritative legal determination of a dispute that settles the legal relationship between the parties going forward." This argument disregards critical differences between declaratory judgments and nominal damages.

a. Unlike a retrospective award of nominal damages, a declaratory judgment is exclusively prospective. That is why it is not available in the absence of a future controversy, but nominal damages are.

In 1934, Congress for the first time authorized federal courts to issue declaratory judgments to resolve "the rights and other legal relations of any interested party" in "a case of actual controversy." See *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 126 (2007) (quoting 28 U.S.C. 2201(a) (2000)). This Court has upheld declaratory judgments as consistent with Article III where the "parties hav[e] adverse legal interests" that present a "real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of

facts." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240-241 (1937). To be sure, declaratory judgments are "not ultimately coercive" in the sense that they are not enforceable through contempt, *Steffel* v. *Thompson*, 415 U.S. 452, 471 (1974) (citation omitted); cf. *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 155 (1963)—which differentiates them from injunctions. But like injunctions, declaratory judgments nevertheless operate *prospectively* to alter the defendant's future conduct by providing a binding determination that the defendant may not take certain actions against the plaintiff. See *MedImmune*, 549 U.S. at 126-127.

Accordingly, although a declaratory judgment alone could in some sense vindicate a plaintiff's past deprivation of his own legal rights, that novel form of nonmonetary relief has not been viewed as a proper form of redress for purely past injuries that are not accompanied by any prospect of future recurrence. See, *e.g.*, *FCC* v. *ITT World Commc'ns, Inc.*, 466 U.S. 463, 468 n.5 (1984) ("[I]t seems questionable whether a complaint that sought only a declaration that past conduct was unlawful would present * * * a case or controversy over which [a district court] could exercise subject-matter jurisdiction."); *Ashcroft* v. *Mattis*, 431 U.S. 171, 172-173 (1977) (per curiam) (ordering dismissal, for lack of Article III controversy, of a suit for declaratory relief regarding the legality of a police officer's killing of the plaintiff's son). After all, a declaratory judgment about the defendant's past conduct, absent the prospect of any future recurrence of the conduct that would be prevented by the judgment, has no operative effect whatsoever on the defendant; it thus is effectively "the same thing as an advisory opinion, disapproved by this Court from the beginning." *Steel Co.*, 523 U.S. at 101.

By contrast, an award of nominal damages is necessarily retrospective in that it compels the defendant to pay money as redress for his past conduct. As this Court explained in *Farrar*, "[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." 506 U.S. at 113; see *ibid.* (explaining that a "material alteration of the legal relationship between the parties" occurs only when "the plaintiff becomes entitled to *enforce* a judgment" against the defendant) (emphasis added). It is that payment of monetary relief, an essential aspect of the vindication of the plaintiff's deprivation of his own legal rights, that explains why nominal damages have traditionally been recognized as appropriate Article III redress for past violations. See pp. 17-21, *supra*.

b. This fundamental distinction between declaratory judgments and nominal damages is confirmed by their different treatment in other respects.

Most obviously, because nominal damages are requests for retrospective monetary relief, rather than declaratory judgments by another name, such damages, when sought against an individual officer in his official capacity, are subject to the defenses of sovereign immunity and qualified immunity. See, *e.g.*, *American Civil Liberties Union* v. *United States Conference of Catholic Bishops*, 705 F.3d 44, 53 n.7 (1st Cir. 2013) (finding that sovereign immunity bars award of nominal damages against federal officers); *Johnson* v. *Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1022 & n.5 (9th Cir. 2010) (explaining that if a state entity had timely asserted sovereign immunity, that would have barred a claim for nominal damages), cert. denied, 563

U.S. 936 (2011); *Hopkins* v. *Saunders*, 199 F.3d 968, 978 (8th Cir. 1999) (noting that "[s]everal * * * circuits have * * * implicitly recognized the legal nature of nominal damages by finding them to be barred by qualified immunity"), cert. denied, 531 U.S. 873 (2000). Similarly, while "federal courts [have] unique and substantial discretion in deciding whether to declare the rights of litigants," *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995); see 28 U.S.C. 2201(a) (a court "*may* declare the rights and other legal relations of any interested party seeking such declaration") (emphasis added), this Court has instead stated that district courts are "oblig[ed] * * * to award nominal damages when a plaintiff establishes the violation of" his constitutional rights in a Section 1983 action "but cannot prove actual injury," *Farrar*, 506 U.S. at 112. The mandatory nature of nominal damages closely identifies them with compensatory damages, which are likewise mandatory. See *Smith*, 461 U.S. at 52 ("Compensatory damages * * * are mandatory; once liability is found, the jury is required to award compensatory damages in an amount appropriate to compensate the plaintiff for his loss.").

As nominal damages are thus fundamentally different from declaratory judgments, they are not limited to situations in which declaratory relief would be appropriate. Even if a nominal damages award does not require a defendant to change his conduct beyond paying the plaintiff a sum of money, however modest, for a past legal violation, a federal court still has Article III jurisdiction over that claim for retrospective redress.

D. The Practical Impact Of Recognizing Stand-Alone Claims For Nominal Damages Is Limited

Finally, acknowledging—as most courts have held, see Pet. 10-22—that nominal damages claims may stand alone will not lead to a flood of litigation requiring the adjudication of constitutional questions that otherwise would be moot. There are unlikely to be many cases under Section 1983 where a freestanding nominal damages claim is brought, and such cases will not necessarily require resolving the underlying merits of the plaintiff's constitutional claim.

1. On the one hand, constitutional violations usually have adverse consequences for plaintiffs beyond the fact of the violation itself, which can be readily quantified and remedied by compensatory damages. See Br. in Opp. 9-11 (listing "all manner of intangible-yet-compensable harms, including impairment of reputation, personal humiliation, and mental and emotional distress"). In this case, in addition to the harm resulting from the suppression of their speech, petitioners allege that they suffered loss of time and money traveling to the College to speak, reputational harm, and personal humiliation. Pet. App. 10a. The court of appeals did not question whether petitioners in fact suffered these harms or whether such harms could be remedied by compensatory damages; it merely found that petitioners did not "identif[y] these injuries to the district court." *Ibid.*; see *id.* at 14a.

As petitioners' experience suggests, plaintiffs who allege past violations of their constitutional rights frequently will have suffered injuries that support a claim for compensatory damages. And a compensatory damages claim, like a nominal damages claim, will survive

subsequent changes in the defendant's course of conduct that moot claims for prospective relief. See p. 22, *supra*. In such cases, a claim for nominal damages is unlikely to play a significant role in the litigation independent of the compensatory damages claim. Indeed, respondents themselves concede that a nominal damages claim is permissible if it accompanies a compensatory damages claim, even if the plaintiff ultimately fails to establish compensable harm. See p. 23, *supra*.

2. On the other hand, even where the plaintiff has no live claim for prospective relief or compensable harm, and thus seeks only nominal damages to redress past injury, the defendant should be able to end the litigation without a resolution of the constitutional merits, simply by accepting the entry of judgment for nominal damages against him. Although "an unaccepted settlement offer or offer of judgment does not moot a plaintiff's case," *Campbell-Ewald Co.* v. *Gomez*, 136 S. Ct. 663, 672 (2016), a court should "halt a lawsuit by entering judgment for the plaintiff when the defendant unconditionally surrenders and only the plaintiff's obstinacy or madness prevents her from accepting total victory," *Genesis Healthcare Corp.* v. *Symczyk*, 569 U.S. 66, 85 (2013) (Kagan, J., dissenting); see also *Radha Geismann, M.D., P.C.* v. *ZocDoc, Inc.*, 909 F.3d 534, 542 (2d Cir. 2018) ("[W]here a defendant surrenders to 'complete relief' in satisfaction of a plaintiff's claims, the district court may enter default judgment against the defendant —even without the plaintiff's agreement thereto.") (citation omitted), cert. denied, 139 S. Ct. 1605 (2019).[*]

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[*] Indeed, this Court has reserved the question of whether a defendant's formal tender of judgment, by "deposit[ing] the full amount of the plaintiff's individual claim in an account payable to the plaintiff," would moot the case. *Campbell-Ewald*, 136 S. Ct. at 672.

Accordingly, the defendant might accept the plaintiff's prayer for relief in its answer to the complaint, or might move for entry of judgment on the nominal damages claim when no other claims for relief remain. In those situations, a district court should enter judgment on the basis of defendants' concession alone, without adjudicating the merits of the constitutional claim. After all, courts resolve constitutional questions only as a necessary means to decide an underlying dispute between the parties, not as the ultimate end itself. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Principles of constitutional avoidance would also militate in favor of this approach. See *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 450 (2008) ("[C]ourts should [not] 'anticipate a question of constitutional law in advance of the necessity of deciding it.'") (quoting *Ashwander* v. *Tennessee Valley Auth.*, 297 U.S. 288, 346 (1936) (Brandeis, J., concurring)). To be sure, such an approach may well not be available or appropriate if the defendant instead successfully litigates the constitutional merits of its policy in district court but then tries to insulate itself from appellate review by abandoning its policy and agreeing to pay nominal damages. Cf. *New York State Rifle & Pistol Ass'n*, 140 S. Ct. at 1527-1528, 1544 (Alito, J., dissenting); *Young* v. *United States*, 315 U.S. 257, 258-259 (1942) (refusing to dispose of an appeal based simply on the appellee's belated agreement with the appellant). But so long as a plaintiff's only claim is for nominal damages and the defendant does not oppose the district court's summary entry of that judgment, the court should be able to dispose of the live controversy between the parties without resolving the underlying merits of their constitutional dispute.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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