

High Court Sides With Christian Students In Free Speech Fight

By **Carolina Bolado**

Law360 (March 8, 2021, 10:42 AM EST) -- The U.S. Supreme Court ruled Monday that two former students can continue their suit contesting Georgia Gwinnett College's now-rescinded policies that prevented them from speaking on campus about their Christian faith, saying the students' claims for nominal damages are enough to maintain their standing in the suit.

In an 8-1 decision authored by Justice Clarence Thomas, the court said that the claim for nominal damages — generally a small sum of money that vindicates a legal wrong — requested by former students Chike Uzuegbunam and Joseph Bradford was enough to fuel their free speech suit against the state-run college even after part of the suit became moot when the college chose to change its policies rather than fight their claims.

The court said the claim is enough, without compensatory damages, to satisfy the third element required by Article III of the U.S. Constitution to establish standing, which requires showing an injury that is fairly traceable to the challenged conduct and can be remedied. The court cited a long history in common law in analogous cases to come to determine that nominal damages are enough to satisfy the redressability requirement when a claim is based on a completed violation of a legal right.

"It is undisputed that Uzuegbunam experienced a completed violation of his constitutional rights when respondents enforced their speech policies against him," the court said. "Because 'every violation [of a right] imports damage,' nominal damages can redress Uzuegbunam's injury even if he cannot or chooses not to quantify that harm in economic terms."

The sole dissenting justice, Chief Justice John Roberts, wrote that the decision would turn judges into "advice columnists" by forcing them to weigh in on disputes over small amounts of money that would never actually alleviate any damage done to plaintiffs.

"If nominal damages can preserve a live controversy, then federal courts will be required to give advisory opinions whenever a plaintiff tacks on a request for a dollar," Justice Roberts said. "Because I would place a higher value on Article III, I respectfully dissent."

In a brief concurring opinion, Justice Brett Kavanaugh said that while he sided with the majority on the issue of nominal damages satisfying the redressability requirement for standing, he also agreed with Justice Roberts that a defendant should be able to accept a judgment for nominal damages against it to resolve litigation without a resolution on the merits.

The ruling reverses the Eleventh Circuit's dismissal of the case on the grounds that the nominal damages claim was not enough to sustain the controversy in court without compensatory damages.

According to case documents, while Uzuegbunam was a student in 2016, college officials stopped him from distributing religious materials on campus outside of two spaces designated for "free speech expression" that the plaintiffs said amounted to 0.0015% of the Gwinnett campus. When Uzuegbunam reserved time in one of the free-speech spaces, he was stopped again because someone had complained about his evangelizing. Under college policy, the complaint made his speech "disorderly conduct" for disturbing the "peace and/or comfort of person(s)."

Bradford, who also wanted to evangelize during his time as a student, joined the suit, claiming that he censored himself after hearing about what happened to Uzuegbunam, fearing possible punishment, according to the students' petition. The Supreme Court said it did not decide whether Bradford could pursue nominal damages, as it is unclear if he will be able to show a past, completed injury.

After the former students filed their suit, the state lifted the restrictions at Georgia Gwinnett College and other state colleges and universities, leading to the trial court's dismissal of the case, which the Eleventh Circuit affirmed.

In their briefs, the students told the Supreme Court that the Eleventh Circuit stood alone among appeals courts in holding that a government's policy change moots nominal damages claims for "past, completed constitutional violations." Six circuits have held that such nominal damages claims provide federal courts with stand-alone jurisdiction, and two other circuits agree with that position unless the challenged policies have not been applied against the plaintiff, they said.

On Monday, the students' attorney Kristen Waggoner of Alliance Defending Freedom hailed the Supreme Court's decision for those seeking to hold government officials accountable.

"Officials within our public institutions shouldn't get a free pass for violating constitutional rights on campus or anywhere else," Waggoner said in a statement. "When such officials engage in misconduct but face no consequences, it leaves victims without recourse, undermines the nation's commitment to protecting constitutional rights, and emboldens the government to engage in future violations."

A representative for the Attorney General of Georgia declined to comment on the ruling.

The case has been closely watched, drawing friend-of-the-court briefs from numerous groups in support of the students, including Jewish, Islamic and Catholic organizations, as well as the Foundation for Individual Rights in Education, the American Humanist Association and Young Americans for Liberty, among others.

In 2017, the U.S. Department of Justice, under the direction of then-U.S. Attorney General Jeff Sessions, also filed a statement of interest in the case, voicing disapproval of the policies and arguing that the suit adequately presented violations of the students' First and Fourteenth Amendment rights.

Carlton Fields attorney Aaron Weiss, who has a consumer class action defense practice, says the Supreme Court's ruling could be felt not just in civil rights cases but in suits brought under consumer statutes as well. Some recent federal court rulings have found that only nominal damages were not enough to establish standing for statutes like the Telephone Consumer Protection Act and the California Unfair Competition Law.

"I expect that the concept of nominal damages under Uzuegbunam will become part of issues in the mix in cases under various consumer statutes, especially class actions," Weiss said.

Appellate attorney Kevin King of Covington & Burling LLP added that an issue to watch now is whether lower courts will adopt the suggestions by Justices Roberts and Kavanaugh to allow defendants to avoid judgment on the merits by paying the nominal damages.

"It is not clear that the majority's ruling would allow that approach, so in answering one question the Uzuegbunam decision may also tee up another for the future," King said.

The former students are represented by Kristen K. Waggoner of Alliance Defending Freedom.

The defendants are represented by Georgia Solicitor General Andrew A. Pinson.

The U.S. Department of Justice is represented by Counselor to the Solicitor General Hashim M. Mooppan.

The case is Uzuegbunam et al. v. Preczewski et al., case number 19-968, in the Supreme Court of the United States.

--Additional reporting by Nathan Hale. Editing by Alyssa Miller and Emily Kokoll.