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U.S. Supreme Court Rules that $1 Qualifies as Redressable Injury

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

In *Uzuegbunam v. Preczewski* the U.S. Supreme Court held 8-1 that to have a "redressable injury" required to bring a lawsuit a plaintiff need only ask for nominal damages ($1). The State and Local Legal Center (SLLC) filed an *amicus* brief in this case asking the Court to hold that a lawsuit for nominal damages only is moot.

Chike Uzuegbunam was threatened with disciplinary action for speaking about his religion in the "free speech expression areas" at Georgia Gwinnett College, a public college where he was enrolled.

He and another student, Joseph Bradford, who decided not to speak about his religion because of what happened to Uzuegbunam, sued the college claiming its campus speech policies violated the First Amendment. They asked for nominal damages and an injunction requiring the college to change its speech policies.

The college got rid of the challenged policies and argued the case was now moot. Had Uzuegbunam also brought a claim for actual damages (for example, bus fare getting to and from campus) both parties agree his case would not be moot.

To establish standing, among other requirements, a plaintiff must ask for a remedy that is redressable, meaning likely to address his or her past injuries. In an opinion written by Justice Thomas, the Court held that Uzuegbunam's claim for nominal damages is intended to redress a past injury. According to the Court, the prevailing rule, "well established" as common law, was "that a party whose rights are invaded can always recover nominal damages without furnishing any evidence of actual damage."

The Court stated a request for nominal damages doesn't "guarantee entry to court" as it only addressed whether nominal damages satisfy the redressability element of standing. The Court also didn't decide whether Bradford could pursue a nominal damages claim noting nominal damages "are unavailable where a plaintiff has failed to establish a past, completed injury."

In his solo dissent Chief Justice Roberts questioned the merits of relying on British common law to resolve this case because in England "all jurisdictions of courts [were] either mediately or immediately derived from the crown" and advisory opinions were permitted. But the U.S. Constitution Framers "sought to limit the judicial power to 'Cases' and 'Controversies.'" Regardless, Roberts read the common law differently than the Court concluding it is "entirely unclear whether common law courts would have awarded nominal damages in a case like the one before us."

Roberts' dissenting opinion repeatedly mentions one of the concerns the SLLC articulated in its *amicus* brief that per the Court's opinion, "federal courts [must now] open their doors to any plaintiff who asks for a dollar."

But Roberts, and Kavanaugh, in a one-paragraph concurring opinion, see a "sweeping exception" to the Court's "sweeping exception to the case-or-controversy requirement." "Where a plaintiff asks only for a dollar, the defendant should be able to end the case by giving him a dollar, without the court needing to pass on the merits of the plaintiff's claims." According to Roberts: "This is a welcome caveat, and it may ultimately save federal courts from issuing reams of advisory opinions." It may also save state and local governments the burden of briefing the court and defending a policy which they have abandoned - over $1.

Patrick M. Kane, Kip D. Nelson, and Christopher McNamara of Fox Rothschild wrote the SLLC *amicus* brief which the following organizations joined: National Conference of State Legislatures, The Council of State Governments, National Association of Counties, National League of Cities, US Conference of Mayors, International City/County Management Association, International Municipal Lawyers Association, Government Finance Officers Association, and National School Boards Association.

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