
LEADING CASES

CONSTITUTIONAL LAW

Article III — Standing — Nominal Damages — Uzuegbunam v. Preczewski

Scholars often analyze exercises of judicial review as a tension between two models of adjudication: the “dispute resolution model,” which limits federal courts to resolving concrete disputes between litigants,¹ and the “law declaration model,” which contemplates that federal courts have “a special function of enforcing the rule of law, independent of the task of resolving concrete disputes.”² Justiciability doctrines in particular elucidate the tension between these two models.³ Last Term, in *Uzuegbunam v. Preczewski*,⁴ the Supreme Court held that an award of nominal damages can, by itself, redress a completed injury.⁵ As such, the Court ruled that a plaintiff’s constitutional challenge is not mooted by the termination of an unconstitutional policy where the plaintiff retains standing for nominal damages.⁶ *Uzuegbunam* raises two important issues: whether the implication that nominal damages can sustain an otherwise moot case will expand the law-declaration function of federal courts, and whether defendants can themselves moot otherwise live cases by voluntarily paying nominal damages. While both issues have implications for the role of federal courts along the law-declaration–dispute resolution spectrum, neither is likely to have an immediate practical effect on the role of courts or the practice of litigants.

In 2016, Chike Uzuegbunam, an evangelical Christian and a student at Georgia Gwinnett College, attempted to share his faith by distributing religious literature in a campus plaza.⁷ After a campus police officer intervened, a college official informed Uzuegbunam that the college required students to acquire permits to engage in religious speech and allowed religious speech only at two designated “free speech expression areas.”⁸ Uzuegbunam applied for and obtained the requisite permit.⁹ However, soon after he began speaking at the designated area during

¹ Henry Paul Monaghan, Essay, *On Avoiding Avoidance, Agenda Control, and Related Matters*, 122 COLUM. L. REV. 665, 668 (2012).

² RICHARD H. FALLON, JR., ET AL., HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 74 (7th ed. 2015). In this way, federal courts constitute “institution[s] with a distinctive capacity to declare and explicate norms that transcend individual controversies.” *Id.*

³ See Monaghan, *supra* note 1, at 711.

⁴ 141 S. Ct. 792 (2021).

⁵ *Id.* at 796.

⁶ See *id.* at 797, 802.

⁷ *Uzuegbunam v. Preczewski*, 378 F. Supp. 3d 1195, 1198 (N.D. Ga. 2018).

⁸ *Id.* at 1203; see *id.* at 1198.

⁹ *Id.* at 1198.

his authorized permit period, a campus police officer again intervened.¹⁰ The officer informed Uzuegbunam that others had complained about his speech, and that he was accordingly violating a campus policy prohibiting use of the free speech zone for activities that disturb “the peace and/or comfort” of others.¹¹ The officer threatened Uzuegbunam with disciplinary action if he continued to speak; Uzuegbunam complied.¹² He and another student who shares his faith, Joseph Bradford, decided not to engage in expressive religious speech due to these events.¹³

Uzuegbunam and Bradford (together, “the students”) brought suit against the officials in charge of enforcing the college’s speech policies in the U.S. District Court for the Northern District of Georgia, seeking monetary damages as well as declaratory and injunctive relief.¹⁴ During litigation, the officials amended the policies, then moved to dismiss the case as moot.¹⁵ The students argued that, even if the policy change precluded injunctive relief, their damages claim preserved a live controversy.¹⁶

The district court dismissed the case.¹⁷ It first determined that Uzuegbunam’s claims for declaratory and injunctive relief were moot, as he had graduated from Georgia Gwinnett College in 2017 and could not again be subject to the same injury.¹⁸ The court next held that Bradford’s claims for declaratory and injunctive relief were also moot, as the college had “unambiguously terminated” the subject speech policies, leaving “no reasonable basis to expect that it [would] return to them.”¹⁹ Finally, the court held that the students did not plead for compensatory damages and that their remaining claim for nominal damages could not sustain the case because nominal damages do not meet the Article III requirement that the court afford a “practical remedy” to redress a harm.²⁰

The Eleventh Circuit affirmed.²¹ In a per curiam opinion, the court held that the district court did not err in concluding that the students

¹⁰ *Id.* at 1199.

¹¹ *Id.*

¹² *Uzuegbunam*, 378 F. Supp. 3d at 1199.

¹³ *See id.*; *Uzuegbunam v. Preczewski*, 781 F. App’x 824, 826 (11th Cir. 2019) (per curiam).

¹⁴ *Uzuegbunam*, 378 F. Supp. 3d at 1198–99. The plaintiffs brought constitutional challenges, alleging that — both facially and as applied — the speech policies violated their First and Fourteenth Amendment rights. *Id.* at 1199.

¹⁵ *Id.*

¹⁶ *Id.* at 1206.

¹⁷ *Id.* at 1198.

¹⁸ *Id.* at 1200.

¹⁹ *Id.* at 1206. In reaching this determination, the district court engaged in a three-factor mootness analysis, specifically examining (1) “whether the change in conduct resulted from substantial deliberation or [was] merely an attempt to manipulate . . . jurisdiction”; (2) “whether the government’s decision to terminate the challenged conduct was ‘unambiguous’”; and (3) “whether the government has consistently maintained its commitment to the new policy or legislative scheme.” *Id.* at 1201 (quoting *Flanigan’s Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1257 (11th Cir. 2017)); *see id.* at 1201–06.

²⁰ *Id.* at 1208; *see id.* at 1207–09.

²¹ *Uzuegbunam v. Preczewski*, 781 F. App’x 824, 826 (11th Cir. 2019) (per curiam).

had not pleaded compensatory damages.²² The court reached this conclusion because the students' complaint made only ambiguous references to damages, did not allege that they suffered actual injuries, and did not evidence an appropriate form of relief beyond the expressly requested injunctive relief and nominal damages.²³ The panel further held that the students' case was not one in which a claim for nominal damages alone constituted a live case or controversy.²⁴ In so holding, the court confined such cases to those in which a claim for "only nominal damages would have a practical effect on the parties' rights or obligations" or in which "nominal damages [are] the only appropriate remedy to be awarded to a victorious plaintiff in a live case or controversy."²⁵

The Supreme Court reversed.²⁶ In an opinion written by Justice Thomas,²⁷ the Court held that an award of nominal damages can, by itself, redress a past injury.²⁸ Justice Thomas first differentiated between standing and mootness, stating that the former "generally assesses whether [the plaintiff's] interest exists at the outset," while the latter "considers whether it exists throughout the proceedings."²⁹ The "'irreducible constitutional minimum' of Article III standing,"³⁰ Justice Thomas explained, requires that a plaintiff satisfy each of the three standing requirements by establishing not only an injury in fact "that is fairly traceable to the challenged conduct" but also "a remedy that redresses that injury."³¹ Because a plaintiff must maintain a personal stake in the case at all stages of litigation, he continued, a case generally becomes moot when a court can no longer grant "any effectual relief."³²

Justice Thomas then turned to the sole element of standing in dispute: whether Uzuegbunam's claim for nominal damages could redress the constitutional violation.³³ He began by stating that, in order to determine whether nominal damages satisfy the redressability element of

²² See *id.* at 829–30.

²³ *Id.* at 828–30. The panel also found that the district court did not abuse its discretion in denying Uzuegbunam and Bradford leave to amend their complaint to incorporate an explicit request for compensatory damages in response to the motion to dismiss. *Id.* at 832–33.

²⁴ *Id.* at 831–32.

²⁵ *Id.* at 830 (quoting *Flanigan's Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1263–64 (11th Cir. 2017)).

²⁶ *Uzuegbunam*, 141 S. Ct. at 796.

²⁷ Justice Thomas was joined by Justices Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, and Barrett.

²⁸ *Uzuegbunam*, 141 S. Ct. at 796.

²⁹ *Id.*

³⁰ *Id.* at 797 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)).

³¹ *Id.* at 796.

³² *Id.*

³³ *Id.* at 797. The Court "[d]id not decide whether Bradford [could] pursue nominal damages." *Id.* at 802 n.*. Because nominal damages "are unavailable where a plaintiff has failed to establish a past, completed injury," the Court left the district court to determine "whether the enforcement against Uzuegbunam also violated Bradford's constitutional rights." *Id.*

standing, the Court “look[s] to the forms of relief awarded at common law.”³⁴ Justice Thomas maintained that common law courts awarded nominal damages to provide both prospective and retrospective relief.³⁵ Notably, he explained, because nineteenth-century courts “reasoned that *every* legal injury necessarily causes damage . . . they [frequently] awarded nominal damages absent evidence of other damages.”³⁶ Acknowledging that neither English nor American common law courts were homogenous in this regard, Justice Thomas characterized this practice as “decisively settled,”³⁷ though “not universally followed.”³⁸

Justice Thomas next concluded that pleas for nominal damages do not require pleas for compensatory damages to satisfy standing’s redressability requirement.³⁹ Rather than serve a “purely symbolic” function,⁴⁰ he contended, nominal damages “affec[t] the behavior of the defendant towards the plaintiff” and provide redress by “effectuat[ing] a partial remedy.”⁴¹ Justice Thomas also noted that early courts frequently awarded nominal damages as a sole form of relief.⁴² Yet “[b]ecause redressability is an irreducible component of standing,”⁴³ and because “a plaintiff must maintain a personal interest in the dispute at every stage of litigation . . . for each form of relief sought,” early courts had jurisdiction to award nominal damages only if such damages satisfied the redressability element of standing.⁴⁴ Given that courts awarded nominal damages as a sole form of relief in analogous circumstances at common law, Justice Thomas concluded that “a request for nominal damages satisfies the redressability element of standing where a plaintiff’s claim is based on a completed violation of a legal right.”⁴⁵

Justice Kavanaugh filed a brief concurring opinion. He agreed with the Court that, “as a matter of history and precedent,” nominal damages claims could “satisfy the redressability requirement for Article III standing,” shielding some cases from mootness.⁴⁶ However, he wrote separately to state that a defendant should be able to end litigation without

³⁴ *Id.* at 797–98.

³⁵ *See id.* at 798–800.

³⁶ *Id.* at 798; *see also id.* at 799.

³⁷ *Id.* at 799 (quoting *Parker v. Griswold*, 17 Conn. 287, 303 (1845)).

³⁸ *Id.*

³⁹ *Id.* at 800.

⁴⁰ *Id.* at 801.

⁴¹ *Id.* (first alteration in original) (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987); *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)).

⁴² *Id.*

⁴³ *Id.* (internal quotation marks omitted) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)).

⁴⁴ *Id.* (internal quotation marks omitted) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)).

⁴⁵ *Id.* at 802.

⁴⁶ *Id.* (Kavanaugh, J., concurring).

a decision on the merits by “accept[ing] the entry of a judgment for nominal damages against it.”⁴⁷

Chief Justice Roberts dissented. He argued that nominal damages alone cannot preserve a live controversy because they do not afford effectual relief to a plaintiff.⁴⁸ When a court awards nominal damages even though a plaintiff alleges neither actual damages nor the prospect of future injury, he argued, it acts “not as an Article III court, but as a moot court.”⁴⁹ He then examined the Court’s historical analysis of common law precedent. The Chief Justice pointed out that the majority had not cited any cases in which plaintiffs sought only nominal damages to redress past injuries.⁵⁰ At the same time, he argued, the Court had overstated the weight of cited authorities and overlooked instances in which those authorities offered contradictory statements regarding whether legal violations support nominal damages absent allegations of “actual damages or prospective harm.”⁵¹

Chief Justice Roberts concluded with a warning regarding the expansive scope of the Court’s ruling. Contending that the Court’s holding lacked a limiting principle, he argued that it would be difficult to “conceive of a case in which a plaintiff would be unable to append a claim for nominal damages, and thus insulate the case from the possibility of mootness.”⁵² Finally, he argued that the “sweeping exception to the case-or-controversy requirement” the Court had created should itself be subject to a broad exception: when a plaintiff pleads only nominal damages, a defendant should be able to pay those nominal damages, ending the case without a decision on the merits.⁵³

On its face, *Uzuegbunam* raises two issues of potential significance for litigants: whether its core holding — that nominal damages can establish and maintain standing in a case that would be moot otherwise — will expand federal courts’ law-declaration function, and whether defendants can themselves moot otherwise live cases by voluntarily paying nominal damages. Both issues wrestle with the proper role of federal courts along the law declaration–dispute resolution spectrum, albeit from opposite directions.⁵⁴ However, Justice Thomas’s majority

⁴⁷ *Id.* (citing *id.* at 808 (Roberts, C.J., dissenting); Brief for the United States as Amicus Curiae Supporting Petitioners at 29–30, *Uzuegbunam*, 141 S. Ct. 792 (No. 19-968)).

⁴⁸ *See id.* at 803, 807 (Roberts, C.J., dissenting).

⁴⁹ *Id.* at 804. Chief Justice Roberts further argued that the structure of English common law courts as derivatives of the Crown distinguished them from the independent American judiciary system, a “difference in organization [that] yielded a difference in operation.” *Id.*

⁵⁰ *Id.* at 805–06.

⁵¹ *Id.* at 806.

⁵² *Id.* at 808 (quoting *Utah Animal Rts. Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1266 (10th Cir. 2004) (McConnell, J., concurring)).

⁵³ *Id.*

⁵⁴ As the Chief Justice argued in dissent, *Uzuegbunam*’s holding seems to require federal courts “to give advisory opinions whenever a plaintiff tacks on a request for a dollar,” potentially situating

opinion on redressability remains meaningfully constrained by standing's other two elements, particularly the requirement that the plaintiff suffer an injury in fact. At the same time, there are good reasons to believe that federal courts will hesitate to allow defendants to end litigation without resolution by effectuating full tender of plaintiffs' requested relief. Thus, while these two issues help to draw out the Court's persistent anxieties regarding the proper role of federal courts, *Uzuegbunam* itself is unlikely to have significant near-term effect.

First, while the *Uzuegbunam* Court held that nominal damages satisfy the redressability element of standing,⁵⁵ standing's remaining requirements are likely to cabin *Uzuegbunam*'s reach. Standing functions, inter alia, to attempt to "restrict[] courts to cases possessing the requisite concrete adversity for judicial resolution."⁵⁶ To have standing, a plaintiff must have suffered an injury in fact that is causally connected to the defendant's challenged conduct and is likely to be redressed by the plaintiff's requested relief.⁵⁷ The injury-in-fact requirement constitutes a particularly rigorous standard: "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'"⁵⁸ Because a plaintiff must still satisfy standing's injury-in-fact and causation requirements, *Uzuegbunam*'s holding that nominal damages satisfy the redressability element of standing does not mean "that a request for nominal damages guarantees entry to court."⁵⁹ Thus, the doctrine of standing may still cabin federal courts' law-declaration function even if, under *Uzuegbunam*, a claim for nominal damages can keep an otherwise moot case alive.

Admittedly, standing's injury-in-fact requirement may be easier to satisfy in some areas of law than others. Due to the Court's fragmented approach to the requirement, plaintiffs' ability to establish "a judicially cognizable injury . . . frequently turns on the provision of law under which a plaintiff seeks relief."⁶⁰ In *Carey v. Piphus*,⁶¹ the Court held that deprivations of the "absolute" right to procedural due process are "actionable for nominal damages without proof of actual injury."⁶² In

courts to declare law rather than to decide live controversies. *Id.* at 803. At the same time, the "sweeping exception" that the Chief Justice identified to this holding — defendants' ability to moot cases by tendering relief — assumes a strict view of what constitutes a "live controversy," thus pulling the federal courts back toward the traditional dispute-resolution role.

⁵⁵ *Id.* at 801 (majority opinion).

⁵⁶ Heather Elliott, *The Functions of Standing*, 61 STAN. L. REV. 459, 516 (2008).

⁵⁷ See *Allen v. Wright*, 468 U.S. 737, 751 (1984).

⁵⁸ *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

⁵⁹ *Uzuegbunam*, 141 S. Ct. at 802.

⁶⁰ Richard H. Fallon, Jr., *The Fragmentation of Standing*, 93 TEX. L. REV. 1061, 1071 (2015).

⁶¹ 435 U.S. 247 (1978).

⁶² *Id.* at 266.

Heckler v. Mathews,⁶³ it similarly concluded that violations of the substantive guarantees of the Equal Protection Clause constitute a cognizable injury.⁶⁴ And in *Uzuegbunam*, the Court treated the completed violation of Uzuegbunam’s right to free speech as an injury notwithstanding a lack of otherwise articulated harm.⁶⁵ At the same time, the Court has elsewhere “emphasized that ‘an “injury” consisting solely of an alleged violation of a “personal constitutional right”’ does not alone constitute injury for standing purposes.”⁶⁶ Yet, as *Carey*, *Heckler*, and *Uzuegbunam* make clear, the Court has decided that bare violations of certain constitutional rights give rise to injuries in fact.⁶⁷

If *Uzuegbunam* “turn[s] judges into advice columnists,”⁶⁸ it likely does so only in the context of those constitutional rights the violation of which constitutes a cognizable injury. Logically, where plaintiffs are required to establish an actual, concrete, and particularized injury that is separate from a bare violation of a right, they likely have a sufficient basis to plead compensatory damages. Such damages can keep an otherwise moot case alive without the need for *Uzuegbunam*’s holding regarding nominal damages. Where, however, the violation of certain rights is “actionable for nominal damages without proof of actual injury”

⁶³ 465 U.S. 728 (1984).

⁶⁴ See *id.* at 739 (“[L]ike the right to procedural due process, the right to equal treatment guaranteed by the Constitution is not coextensive with any substantive rights to the benefits denied the party discriminated against.” (citation omitted) (citing *Carey*, 435 U.S. at 266)); see also Fallon, *supra* note 60, at 1076 (citing *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297 (2013); and *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), as cases challenging affirmative action programs in which “[t]he Court has upheld standing under reasoning that similarly ties judicially cognizable injury to the substantive guarantees of the Equal Protection Clause”).

⁶⁵ See *Uzuegbunam*, 141 S. Ct. at 802.

⁶⁶ William Burnham, *Injury for Standing Purposes When Constitutional Rights Are Violated: Common Law Public Value Adjudication at Work*, 13 HASTINGS CONST. L.Q. 57, 59 (1985) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 489 n.26 (1982)); see also *id.* (citing *Allen v. Wright*, 468 U.S. 737 (1984), for the same principle); Ashutosh Bhagwat, Essay, *Injury Without Harm: Texas v. Lesage and the Strange World of Article III Injuries*, 28 HASTINGS CONST. L.Q. 445, 450 (2001) (“[T]he nature of constitutionally cognizable injuries . . . depend[s] on the substantive area of law at issue.”).

⁶⁷ *Uzuegbunam* itself complicates this issue. Justice Thomas’s majority opinion states that “every violation [of a right] imports damage.” *Uzuegbunam*, 141 S. Ct. at 802 (alteration in original) (quoting *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 509 (C.C.D. Me. 1838) (No. 17,322)). Such a statement can be read as lessening standing’s injury-in-fact requirement by assuming an injury where such a violation has occurred. See *id.* at 808 (Roberts, C.J., dissenting). Indeed, Justice Thomas has previously argued that “the concrete-harm requirement [of standing] does not apply as rigorously when a private plaintiff seeks to vindicate his own private rights.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1552 (2016) (Thomas, J., concurring). And just last Term in *N.Y. State Rifle & Pistol Ass’n v. City of New York*, 140 S. Ct. 1525 (2020), Justice Alito argued in dissent that “[w]hen a plaintiff’s constitutional rights have been violated, nominal damages may be awarded without proof of any additional injury,” *id.* at 1535 (Alito, J., dissenting) — an argument that Justice Thomas joined.

⁶⁸ *Uzuegbunam*, 141 S. Ct. at 804 (Roberts, C.J., dissenting).

beyond the deprivation of the right itself,⁶⁹ post-*Uzuegbunam* plaintiffs may be less likely to plead compensatory damages. In this relatively cabined context of constitutional rights, *Uzuegbunam*'s holding may have the practical effect of keeping otherwise moot cases alive where the plaintiff "tacks on a request for a dollar."⁷⁰

Still, even within this context, *Uzuegbunam*'s effect is likely limited. Bare violations of constitutional rights can involve not only tangible injuries but also "all manner of intangible-yet-compensable harms, including impairment of reputation, personal humiliation, and mental and emotional distress."⁷¹ In *Uzuegbunam* itself, the petitioners asserted that Uzuegbunam had incurred actual damages pertaining to travel expenses and reputational harm.⁷² The Chief Justice may be correct that "[i]t is hard to conceive of a case in which a plaintiff would be unable to append a claim for nominal damages, and thus insulate the case from the possibility of mootness."⁷³ However, it is equally difficult to conceive of a case in which "imaginative lawyers" cannot conceive of "imaginative damages theories."⁷⁴ Thus, while *Uzuegbunam*'s holding may enable plaintiffs to sustain cases on the basis of nominal damages alone, plaintiffs likely could have avoided mootness through creative damages pleadings, a difference largely in form.

Second, just as *Uzuegbunam* is unlikely to cause federal courts to throw open their doors in a manner that expands their law-declaration function, it is unlikely to lead federal courts to adopt Chief Justice Roberts's "sweeping exception" in a manner that expands their dispute-resolution function.⁷⁵ While Chief Justice Roberts and Justice Kavanaugh argued that a defendant may end litigation without resolution of the merits by accepting the entry of a judgment for nominal damages against them,⁷⁶ the Court has not yet ruled on this issue. In *Campbell-Ewald Co. v. Gomez*,⁷⁷ the Court held that "an unaccepted settlement offer or offer of judgment does not moot a plaintiff's case."⁷⁸ Adopting Justice Kagan's analysis in dissent in *Genesis HealthCare*

⁶⁹ *Carey*, 435 U.S. at 266.

⁷⁰ *Uzuegbunam*, 141 S. Ct. at 803 (Roberts, C.J., dissenting).

⁷¹ Brief in Opposition at 10, *Uzuegbunam*, 141 S. Ct. 792 (No. 19-968).

⁷² *Id.* at 12.

⁷³ *Uzuegbunam*, 141 S. Ct. at 808 (Roberts, C.J., dissenting) (quoting *Utah Animal Rts. Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1266 (10th Cir. 2004) (McConnell, J., concurring)).

⁷⁴ Transcript of Oral Argument at 19, *Uzuegbunam*, 141 S. Ct. 792 (No. 19-968); see Brief for Respondents at 50, *Uzuegbunam*, 141 S. Ct. 792 (No. 19-968) (collecting cases and arguing that plaintiffs "routinely allege compensatory damages" in constitutional cases involving, inter alia, restrictions on speech, restrictions on religious exercise, and Fourth Amendment claims).

⁷⁵ *Uzuegbunam*, 141 S. Ct. at 808 (Roberts, C.J., dissenting).

⁷⁶ *Id.*; *id.* at 802 (Kavanaugh, J., concurring).

⁷⁷ 577 U.S. 153 (2016).

⁷⁸ *Id.* at 165.

*Corp. v. Symczyk*⁷⁹ and “basic principles of contract law,” the Court reasoned that such an offer, whether rejected or unaccepted, does not alter the adverse relationship of the parties.⁸⁰ The Court reserved judgment on the question of “whether the result would be different if a defendant deposits the full amount of the plaintiff’s individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount.”⁸¹ However, at least three Justices would have resolved the question in the affirmative.⁸²

While, after *Campbell-Ewald*, some lower courts and commentators have reasoned that the tender of full relief to a plaintiff moots the plaintiff’s claims,⁸³ there are good reasons to believe that federal courts will resist this view. First, to the extent the common law is instructive, proper effectuations of tender were not necessarily sufficient to moot a case at common law.⁸⁴ Second, at least in the class action context, most contemporary federal “courts have reacted with ‘suspicion or outright hostility’ to attempts by defendants to render moot putative class actions by tendering full relief to the named plaintiff with respect to his or her individual claims.”⁸⁵ Third, it is not clear that there is a logical distinc-

⁷⁹ 569 U.S. 66 (2013).

⁸⁰ See *Campbell-Ewald Co.*, 577 U.S. at 162–63.

⁸¹ *Id.* at 166.

⁸² Chief Justice Roberts filed a dissenting opinion, joined by Justices Scalia and Alito, in which he answered the question in the affirmative. *Id.* at 182–83 (Roberts, C.J., dissenting) (“If the defendant is willing to give the plaintiff everything he asks for, there is no case or controversy to adjudicate, and the lawsuit is moot.”). Justice Alito also filed a dissenting opinion articulating his agreement with the Chief Justice. *Id.* at 184 (Alito, J., dissenting) (“I agree that a defendant may extinguish a plaintiff’s personal stake in pursuing a claim by offering complete relief on the claim, even if the plaintiff spurns the offer. Our Article III precedents make clear that, for mootness purposes, there is nothing talismanic about the plaintiff’s acceptance.”). Although Justice Thomas’s concurring opinion did not resolve this question, it did not preclude an affirmative resolution. See *id.* at 173 (Thomas, J., concurring) (“Because *Campbell-Ewald* only offered to pay Gomez’s claim but took no further steps, the court was not deprived of jurisdiction.”).

⁸³ See, e.g., *Kuntze v. Josh Enters.*, 365 F. Supp. 3d 630, 640–42 (E.D. Va. 2019) (collecting cases and noting that “courts have split on whether actual payment of full relief moots an individual’s claim, with multiple decisions turning on whether the case was a class action,” *id.* at 640); *Fam. Med. Pharmacy, LLC v. Perfumania Holdings, Inc.*, No. 15-0563, 2016 U.S. Dist. LEXIS 87028, at *16 & n.7 (S.D. Ala. July 5, 2016) (collecting cases); 13 THOMAS D. ROWE, JR., MOORE’S FEDERAL PRACTICE § 68.04 (2021) (“In a case comprising only the plaintiff’s individual claim, the sounder view is that the unconditional deposit of an amount that provides full relief moots the case.”).

⁸⁴ *Campbell-Ewald*, 577 U.S. at 171 (Thomas, J., concurring) (“At common law, a plaintiff was entitled to ‘deny that [a potential defendant’s properly effected tender was] sufficient to satisfy his demand’ and accordingly ‘go on to trial.’” (quoting *Raiford v. Governor*, 29 Ala. 382, 384 (1856))).

⁸⁵ *Gammella v. P.F. Chang’s China Bistro, Inc.*, 120 N.E. 3d 690, 705 n.22 (Mass. 2019) (quoting Katrina Christakis et al., “So You’re Telling Me There’s A Chance!”: The Post-Campbell-Ewald Possibility of Mooting a Class Action by “Tender” of Complete Relief, 71 CONSUMER FIN. L.Q. REP. 237, 253 (2017)); see also *Fam. Med. Pharmacy, LLC*, 2016 U.S. Dist. LEXIS 87028, at *16 (“[T]here appears to be an emerging consensus against a finding of mootness.”). Courts’ hesitance in the class action context may be due to concerns regarding the effect of a moot class representative’s individual claim on the remaining class claims. See Christakis et al., *supra*, at 250–52.

tion between the rejection of an offered payment, as occurred in *Campbell-Ewald*, and the rejection of a tendered payment, as might occur in the hypothetical the *Campbell-Ewald* Court reserved.⁸⁶ When a plaintiff rejects a tendered payment, “the parties ‘remain[] adverse’ and, hence, retain ‘the same stake in the litigation they had at the outset.’”⁸⁷ And, were a court to dismiss litigation as moot on the basis of such tendered but rejected payment, it would leave the plaintiff “empty-handed” with an unsatisfied claim.⁸⁸ Finally, since *Campbell-Ewald*, the Court has denied certiorari to at least one case presenting the factual hypothetical *Campbell-Ewald* posed,⁸⁹ suggesting that even the Court is not yet positioned to “place the defendant in the driver’s seat”⁹⁰ by allowing defendants to moot plaintiffs’ claims via tendered relief.

Although the Chief Justice characterized *Uzuegbunam*’s holding as a “sweeping exception to the case-or-controversy requirement,”⁹¹ its immediate practical effect is likely limited. The holding is unlikely to expand federal courts’ law-declaration function. Post-*Uzuegbunam*, a claim for nominal damages alone may preserve a live controversy and overcome mootness when a defendant permanently ceases the alleged violative conduct, precluding injunctive relief. While this holding has import, it gives rise to a difference only in form — nominal damages may now take the place of imaginative damages claims. At the same time, federal courts are unlikely to advance Chief Justice Roberts’s efforts to cabin their law-declaration function in the near term. There are good reasons to believe that federal courts will not rush to hold that defendants may terminate litigation before a determination on the merits by rendering payment for the plaintiffs’ claimed relief. Thus, while clearly articulating for the first time that a claim for nominal damages may sustain an otherwise moot case or controversy, *Uzuegbunam*’s practical implications are likely “more academic than real.”⁹²

⁸⁶ See *Ung v. Universal Acceptance Corp.*, 190 F. Supp. 3d 855, 860–63 (D. Minn. 2016); *Gammella*, 120 N.E. 3d at 705 (“[L]ike most courts to have considered that open issue, we do not find the defendant’s distinction between its tender offer and its rule 68 offer persuasive: ‘[a]lthough the means are technically different, the result is the same.’” (second alteration in original) (quoting 1 WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 2:15, at 133 (5th ed. 2011))).

⁸⁷ *Ung*, 190 F. Supp. 3d at 860 (alteration in original) (quoting *Campbell-Ewald*, 577 U.S. at 163).

⁸⁸ *Id.*

⁸⁹ *Geismann v. ZocDoc, Inc.*, 909 F.3d 534 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 1605 (2019).

⁹⁰ *Campbell-Ewald*, 577 U.S. at 165.

⁹¹ *Uzuegbunam*, 141 S. Ct. at 808 (Roberts, C.J., dissenting).

⁹² Brief in Opposition, *supra* note 71, at 12.