No. 19-968

In The
Supreme Court of the United States

CHIKE UZUEGBUNAM and JOSEPH BRADFORD,
Petitioners,
v.

STANLEY C. PRECZEWSKI, et al.,
Respondents.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, DELANEY WYSINGLE, RENTBERRY, INC., LUIS RAMIREZ, MICHAEL JACKSON, TORY SMITH, AND JILLIAN OSTREWICH IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a government's post-filing change of an unconstitutional policy moots nominal damages claims that vindicate the government's past, completed violation of a plaintiff's constitutional rights.

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Pacific Legal Foundation (PLF) is a nonprofit 501(c)(3) organization that provides pro bono assistance to individuals seeking to challenge government infringement on their constitutional rights. PLF attorneys represent the additional amici who join this brief in cases raising a variety of constitutional claims. In each of their respective cases, these amici should be entitled to nominal damages as "symbolic vindication" of various constitutional rights if they prevail. These cases raise issues well beyond the campus speech and religious liberty contexts, but, as in this case, government defendants have moved to dismiss their claims as moot, notwithstanding the availability of nominal damages for past, completed constitutional violations.

Delaney Wysingle owns a single rental property in the City of Seattle. He would have used Rentberry, a rent-bidding website, to fill a vacancy but for a city ordinance that banned landlords from using such platforms. Wysingle and Rentberry sued to strike down the ordinance as a violation of their First Amendment rights. The federal district court dismissed the case and Wysingle and Rentberry appealed. On the eve of oral argument before the Ninth Circuit, Seattle repealed the ban and replaced

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[1] Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to the brief's preparation or submission. Both petitioners and respondents have given blanket consent to the filing of amicus briefs.

it with an ordinance to study the effects of rent-bidding. Legislative history underlying the new ordinance anticipates future action up to and including a total ban on rent-bidding websites in perpetuity. Upon enacting this new ordinance, the city moved to dismiss the case. In supplemental briefing on mootness before the Ninth Circuit, Wysingle argued that he would be entitled to recover nominal damages, even though he did not specifically request them, as symbolic vindication of his First Amendment rights because the ban prevented him from speaking via a rent-bidding website. *See Floyd v. Laws*, 929 F.2d 1390, 1401 (9th Cir. 1991) (In the Ninth Circuit, a plaintiff who prevails in a civil rights action under section 1983 "is entitled to nominal damages as a matter of law."). The Ninth Circuit nonetheless vacated the decision below and ordered the district court to dismiss the case as moot. *Rentberry v. City of Seattle*, No. 19-35308, 2020 WL 4364016 (9th Cir. July 30, 2020) (mem.).

Luis Ramirez owns Roxy Nails Design, LLC, a nail salon in Hartford, Connecticut. His salon was shut down by arbitrary regulations and executive orders issued by the Connecticut Department of Economic and Community Development and Connecticut Governor Ned Lamont ostensibly in response to Covid-19. Ramirez sued under state and federal statutes, including 42 U.S.C. § 1983, alleging federal equal protection and substantive due process claims. He seeks to enjoin the state defendants' abusive use of emergency power that arbitrarily selected which businesses were "essential" and could safely reopen and which would remain shuttered. The state moved to dismiss based, in part, on grounds of mootness because the closure orders were lifted after Ramirez sued. Ramirez's prayer for relief specifically seeks nominal damages as symbolic vindication for the past violation of his federal constitutional rights. The motion is pending. *Roxy Nails Design, LLC v. Lamont*, Connecticut Superior Court, Hartford Judicial District docket no. HHD-CV20-61128585-S.

Michael Jackson and Tory Smith work in the Parking Management department at the University of California, San Diego (UCSD). After they learned about this Court's decision in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018), they tried to ask their employer how they could assert their First Amendment right to refrain from paying union dues. Under a California law enacted the same day that *Janus* issued, public employers in the state are forbidden to communicate with their employees about *Janus* or First Amendment rights related to the payment of union dues (the Gag Rule statute). The law requires all public employees to communicate solely with the public employee union about the potential exercise of their First Amendment rights. Jackson and Smith filed First and Fourteenth Amendment claims under 42 U.S.C. § 1983. They seek invalidation of the Gag Rule statute and other relief—including nominal and actual damages. The defendant Teamsters union filed a motion to dismiss based on mootness allegedly caused by an unaccepted settlement offer. The union's motion ignores the noneconomic harm caused by the Gag Rule statute, for which Jackson and Smith would be entitled to nominal damages if they prevail. The court granted the union's motion to dismiss with leave to amend. *Jackson v. Napolitano*, Order Granting in Part Motion to Dismiss, No. 3:19-cv-01427-LAB-AHG, docket no. 54 (S.D. Cal. Sept. 24, 2020).

Jillian Ostrewich is a self-described "fire wife." Her husband is a fireman who serves in the Houston Fire Department and is a member of the International Association of Fire Fighters, affiliated with the AFL-CIO. On the November 2018 ballot, Houston voters were presented with an initiative measure affecting firefighter pay, Proposition B. During the early voting period, Ostrewich went to vote while wearing an IAFF/AFL-CIO Houston Fire Fighters t-shirt. Although the shirt made no reference to Proposition B, an election worker confronted Ostrewich and told her she could not wear her shirt because they were "voting on that." The worker instructed Ostrewich to go to the restroom and turn her shirt inside-out before she would be allowed to vote. Ostrewich complied and voted. She then sued to invalidate the Texas electioneering statutes that were enforced against her as violating her First Amendment rights. She seeks nominal damages in addition to declaratory and injunctive relief. The county and state defendants moved to dismiss her case as moot because the election was over and, they claimed, it was unlikely that an initiative similar to Proposition B would again be on the ballot. The court denied the motions to dismiss, noting that the Fifth Circuit consistently holds that a claim for nominal damages avoids mootness. *Ostrewich v. Trautman*, Memorandum Opinion and Order, No. 4:19-cv-00715 (S.D. Tex. April 30, 2020) (citing *Duarte ex rel. Duarte v. City of Lewisville, Tex.*, 759 F.3d 514, 521 (5th Cir. 2014)). The court's order permitted the defendants to raise this issue again when the parties filed cross-motions for summary judgment and they have done so.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici ask this Court to make two clear statements in an opinion reversing the Eleventh Circuit. First, successful civil rights plaintiffs proceeding under 42 U.S.C. § 1983 are entitled to recover nominal damages as symbolic vindication of their rights regardless of whether they specifically request them in the prayer for relief. *See* Fed. R. Civ. P. 54(c) ("[F]inal judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings."). Second, an award of nominal damages furthers the goals of the Civil Rights Act, encourages plaintiffs to challenge unconstitutional government action, and does not violate sovereign immunity.

Each of the civil rights plaintiffs on this brief are currently challenging government infringement of their constitutional rights. Their cases arise in contexts well beyond the campus speech and religious liberty issues presented by Petitioners. Instead, they are public employees challenging state laws that forbid communications with their employer about their First Amendment rights; a landlord seeking to speak to potential tenants via an online rent-bidding platform; a small businessman trying to stay afloat in the face of arbitrary business closure orders that violate due process and equal protection; and a voter confronted by election officials and ordered to the bathroom to turn her shirt inside-out because she wore a union shirt to the polls. While compensatory damages may be available for some constitutional injuries, many are intangible and cannot be monetized. It is precisely to account for these types of constitutional injuries that nominal damages are available without proof of any monetary harm. *Carey v. Piphus*, 435 U.S. 247, 266 (1978); *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 308 n.11 (1986).

The proposed statements that amici urge this Court to adopt reflect the majority view among the Circuit courts and would bring clarity and consistency to litigants nationwide. They also promote the express legislative purpose underlying civil rights laws to encourage private enforcement of constitutional rights and pro bono representation of those brave plaintiffs willing to challenge their own government.

ARGUMENT

I

ALL SUCCESSFUL CIVIL RIGHTS PLAINTIFFS SHOULD RECOVER NOMINAL DAMAGES AS A MATTER OF LAW

A. Nominal Damages Serve Key Functions in Constitutional Litigation

When the government violates a plaintiff's constitutional rights, courts may award nominal damages without proof of any additional injury. *See Carey*, 435 U.S. at 266 (violation of procedural rights); *Stachura*, 477 U.S. at 308 n.11 (violation of substantive rights). While *Carey* used the discretionary "may," the Court later suggested that *Carey required* an award of nominal damages in cases of proven constitutional injury. *Farrar v. Hobby*, 506 U.S. 103, 112 (1992) ("*Carey* obligates a court to award nominal damages when a plaintiff establishes the violation of his right to procedural due process but cannot prove actual injury.").

Recognizing the importance of nominal damages, several circuit courts adopted this mandatory approach, establishing nominal damages as an entitlement for successful civil rights plaintiffs. *See, e.g.*, *George v. City of Long Beach*, 973 F.2d 706, 708 (9th Cir. 1992) ("In this Circuit, nominal damages *must be awarded* if a plaintiff proves a violation of his constitutional rights.") (emphasis added); *Gibeau v. Nellis*, 18 F.3d 107, 111 (2d Cir. 1994) (nominal damages are "*compelled by law* upon proof of a substantive constitutional violation") (emphasis added); *Guzman v. City of Chicago*, 689 F.3d 740, 748 (7th Cir. 2012) (nominal damages available when there is no possibility of compensatory damages related to a constitutional injury).

Treating nominal damages as mandatory for vindication of constitutional rights elevates their role beyond a trivial sum of money. "Recovery of nominal damages is important not for the amount of the award, but for the fact of the award." *Cummings v. Connell*, 402 F.3d 936, 945 (9th Cir. 2005). First, nominal damages provide "moral satisfaction" to a plaintiff that a federal court agrees that his or her constitutional rights were violated. *Hewitt v. Helms*, 482 U.S. 755, 761 (1987). Second, an award of nominal damages "holds [the government] responsible for its actions and inactions," *Amato v. City of Saratoga Springs*, 170 F.3d 311, 318 (2d Cir. 1999), and creates an "enforceable judgment requiring the alteration of defendant's behavior." *Cummings*, 402 F.3d at 946 (nominal damages must be paid to each member of a plaintiff class).

B. Rule 54(c) Allows Recovery of Nominal Damages Without Special Pleading

Federal Rule of Civil Procedure 54(c) explicitly permits courts to award relief to which a prevailing plaintiff is "entitled" regardless of whether such relief is specifically requested in the complaint. The rule is meant to protect plaintiffs from a "technical oversight" in a pleading that "might deprive [them] of a deserved recovery," such as damages, attorneys' fees, costs, and interest, *USX Corp. v. Barnhart*, 395 F.3d 161, 165 (3d Cir. 2004), and to ensure "a just result in light of the circumstances of the case." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 424–25 (1975) (internal quotes omitted).[2] Under this rule, a "party should experience little difficulty in securing a remedy other than that demanded in his pleadings when he shows he is entitled to it." *Metro-North Commuter R. Co. v. Buckley*, 521 U.S. 424, 455 (1997) (Ginsburg, J., concurring in the judgment and dissenting in part) (citing 10 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2662, at 135 (2d ed. 1983)). *See also Sheet Metal Workers' Int'l Ass'n Local 19 v. Herre Bros., Inc.*, 201 F.3d 231, 249 (3d Cir. 1999) (awarding specific performance as "just and proper" relief); *Fed. Sav. and Loan Ins. Corp. v. Texas Real Estate Counselors, Inc.*, 955 F.2d 261, 269–70 (5th Cir. 1992) (prejudgment interest included in "any other relief, both special and general, to which [plaintiff] may be justly entitled").

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[2] Courts may decline to make a nonrequested award if it would be prejudicial to the opposing party. *Albermarle*, 422 U.S. at 424. However, an award of nominal damages alone cannot be prejudicial. *See Innovation Ventures, LLC v. Custom Nutrition Laboratories, LLC*, 912 F.3d 316, 331 (6th Cir. 2018).

Seeking to cover all bases, complaints frequently contain a prayer for "other such additional relief as may be just and proper." This is not mere boilerplate; it provides notice that the plaintiff seeks other relief—as authorized by Rule 54—to which he or she would be entitled to recover under the law. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 66 (1978) (Per Rule 54(c), "a federal court should not dismiss a meritorious constitutional claim because the complaint seeks one remedy rather than another plainly appropriate one."); *Z Channel Ltd. P'ship v. Home Box Office, Inc.*, 931 F.2d 1338, 1341 (9th Cir. 1991) (a party does "not foreclose relief in damages by failing to ask for them"); *Equal Employment Opportunity Commission v. Massey-Ferguson, Inc.*, 622 F.2d 271, 277 (7th Cir. 1980) (applying Rule 54(c) to authorize backpay during conciliation in Title VII case although no such relief sought in the complaint); *Doe v. United States Dep't of Justice*, 753 F.2d 1092, 1104 (D.C. Cir. 1985) ("it need not appear that the plaintiff can obtain the *specific* relief demanded as long as the court can ascertain from the face of the complaint that *some* relief can be granted").

So long as a complaint gives notice of a plaintiff's claims and their grounds, omissions in a prayer for relief are no barrier to redress of meritorious claims. As Judge DeMoss explained in *Harris v. City of Houston*, 151 F.3d 186, 195 (5th Cir. 1998) (DeMoss, J., dissenting), because federal courts "operate under a system of notice pleading," the general, catch-all relief prayer ensures that the "failure to recite magic words should not preclude relief." *See also Town of Portsmouth, R.I. v. Lewis*, 813 F.3d 54, 61 (1st Cir. 2016) (Under Rule 54(c) and pursuant to the complaint's "general prayer for relief," a court may award restitution not specifically requested.). Thus, in *State of Idaho Potato Comm'n v. G&T Terminal Packaging, Inc.*, 425 F.3d 708, 720 (9th Cir. 2005), a district court erred in awarding one dollar as a "civil penalty" because it lacked authority under the civil penalty statute. However, the Ninth Circuit held that the dollar could be "viewed as nominal damages" and was therefore within the court's power to award even though nominal damages were not requested in the complaint.

Beyond relief that is "noticed," Rule 54 covers relief to which a plaintiff is "entitled," and that must include relief that is *mandatory* upon proving the plaintiff's case. *See Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 466 (1981) (equating the definition of a "constitutional entitlement" with a "mandated 'shall'"). As noted above, *supra* at 6–7, many lower courts apply a general rule based on *Carey* and *Farrar* that nominal damages are mandatory upon a finding of a constitutional violation. Additionally, in *Risdal v. Halford*, the Eighth Circuit held that "the rationale of *Farrar requires* an award of nominal damages upon proof of an infringement of the first amendment right to speak." 209 F.3d 1071, 1072 (8th Cir. 2000) (emphasis added) (plain error to give the jury discretion not to award nominal damages on a finding of a violation of free speech rights). *See also Searles v. Van Bebber*, 251 F.3d 869, 879 (10th Cir. 2001) (nominal damages are mandatory upon a finding of a constitutional violation, even in the absence of compensatory or punitive damages, and with no explicit request for nominal damages).

This Court's decision in *New York State Rifle & Pistol Ass'n (NYSRPA) v. City of New York*, 140 S. Ct.

1525 (2020), foreshadows this result. There, the Court considered whether a government's strategic reversal of policy, intended to deprive this Court of jurisdiction, mooted the case. The per curiam decision remanded the case to the lower courts to consider whether petitioners could claim damages, even though "they have not previously asked for damages with respect to the City's old rule." *Id.* at 1526. The remand order makes sense only if the Court presumed both that nominal damages are available for past constitutional violations and that allegations of actual injuries are not required to establish entitlement for damages in a Section 1983 case. Had these presumptions not underlie the per curiam opinion (and Justice Kavanaugh's concurrence), the Court would have simply dismissed the case as moot since a majority of justices agreed that injunctive relief was unavailable and the only request for damages was implicit, via the general pleading for such other relief. *Id.* at 1526–27.

The dissenting opinion in *NYSRPA* does not conflict with the majority's approach—it would have gone further and turned these presumptions into explicit holdings that eliminated the need for a remand. The dissenting justices noted that the operative complaint's prayer for relief sought to enjoin New York's travel restrictions, a declaration that the challenged restrictions violated the Second Amendment, attorneys' fees, costs of suit, and "*[a]ny such further relief as the [c]ourt deems just and proper*." *NYSRPA*, 140 S. Ct. at 1535 (Alito, J., dissenting) (citation omitted). Based on this last claim for relief, the dissenters explained that should the petitioners prevail, they would be *entitled* to damages under 42 U.S.C. § 1983 even without expressly requesting them. *Id.* The dissent's opinion on this point—which reflects the majority view of the lower courts—was not addressed in the *NYSRPA* per curiam majority opinion or Justice Kavanaugh's concurrence and should be adopted by the full Court in this case.[3]

II

NOMINAL DAMAGES ENCOURAGE LITIGATION TO CHALLENGE STATE ACTION THAT VIOLATES CIVIL RIGHTS

State sovereign immunity is not unlimited. Most fundamentally, the United States Constitution is the supreme law of the land, and state judges are required to enforce it as such. U.S. Const. art. VI, cl. 2. The Fourteenth Amendment "embod[ies] significant limitations on state authority." *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976). It specifically authorizes citizens to initiate private lawsuits against "States or state officials which are constitutionally impermissible in other contexts." *Id.*; *Alabama State Conf. of Nat'l Ass'n for the Adv. of Colored People v. Alabama*, 949 F.3d 647, 649 (11th Cir. 2020) (acknowledging the Voting Rights Act as "among the most effective civil rights statutes . . . largely due to the work of private litigants"). In *Alden v. Maine*, 527 U.S. 706, 756 (1999), the Court explained that in ratifying the Fourteenth Amendment the states

[3] On a related note, the Court should clarify that *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997), does not preclude an award of nominal damages to successful civil rights plaintiffs. *Arizonans* noted in dicta that a claim for damages "asserted solely to avoid otherwise certain mootness" should be inspected closely. But rarely would there exist a reason that nominal damages could not be awarded to civil rights plaintiffs should they ultimately prevail in proving a completed, past constitutional violation.

understood that "federal interests are paramount" and "surrender[ed] a portion of the sovereignty that had been preserved to them by the original Constitution." *Cf. Fairmont Creamery Co. v. Minn.*, 275 U.S. 70, 77 (1927) (Supreme Court may assess costs against state that is losing party).

The Civil Rights Act of 1871, enacted pursuant to U.S. Const. amend. XIV, § 5 and codified as 42 U.S.C. § 1983, gives citizens authority to sue state actors who violate their federally protected rights. *Owen v. City of Independence, Mo.*, 445 U.S. 622, 651 (1980) ("How 'uniquely amiss' it would be, therefore, if the government itself—'the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct'—were permitted to disavow liability for the injury it has begotten.") (citation omitted). Section 1983 thus provides an avenue by which civil rights plaintiffs can "vindicate important civil and constitutional rights that cannot be valued solely in monetary terms." *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986).

Among other relief, under Section 1983, plaintiffs who prove constitutional civil rights violations are entitled to recover symbolic nominal damages. *E.g.*, *id.*; *Carey*, 435 U.S. at 266; *Stachura*, 477 U.S. at 308 n.11; *Calhoun v. DeTella*, 319 F.3d 936, 941 (7th Cir. 2003) ("nominal damages 'are not compensation for loss or injury, but rather recognition of a violation of rights'") (citation omitted); *Larez v. City of Los Angeles*, 946 F.2d 630, 640 & n.4 (9th Cir. 1991) (discussing the importance of vindicating constitutional rights through symbolic awards). There was no formal request for nominal damages mentioned in *Carey*. Rather, the plaintiffs' complaint requested "declaratory and injunctive relief, together with actual and punitive damages." *Carey*, 435 U.S. at 250–51. Despite this omission, the plaintiffs were entitled to nominal damages, based on the violation of their constitutional rights, with no apparent infringement on sovereign immunity. *Id.* at 248.

The function of nominal damages is similar to that of declaratory judgment,[4] especially in cases that "provide needed clarity and prevent stagnation in constitutional tort law, which helps deter other violations." Megan E. Cambre, Note, *A Single Symbolic Dollar: How Nominal Damages Can Keep Lawsuits Alive*, 52 Ga. L. Rev. 933, 962 (2018). *See also Pagan v. Village of Glendale, Ohio*, 559 F.3d 477, 478 n.1 (6th Cir. 2009) ("Nominal damages are a symbolic recognition of harm that may be awarded without proof of actual harm and 'have only declaratory effect.'") (citation omitted); *Butler v. Dowd*, 979 F.2d 661, 673 (8th Cir. 1992) (nominal damages award "amounts to an implicit declaration of the same things that plaintiffs are requesting in their motion for declaratory relief"). They are not identical. A declaratory judgment may be considered more forward-looking, as it describes the legal relationship between the parties whether in the past, present, or future. Nominal damages serve as acknowledgement for a past, completed constitutional violation that caused (at a minimum) a nonmonetary injury that demands and deserves redress. *See, e.g.*, *Comm. for*

[4] The Eleventh Amendment does not bar suits for injunctive or declaratory relief against individual state officers acting in violation of federal law. *Ex parte Young*, 209 U.S. 123, 155–56 (1908).

First Amendment v. Campbell, 962 F.2d 1517, 1526 (10th Cir. 1992) ("The nominal damages claim . . . relates to past (not future) conduct."); 13A Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 3533.3, at 266 ("The very determination that nominal damages are an appropriate remedy for a particular wrong implies a ruling that the wrong is worthy of vindication by an essentially declaratory judgment.").[5]

An award of nominal damages also furthers the goals of civil rights legislation by changing the legal relationship between the parties and making it possible for prevailing civil rights plaintiffs to seek attorneys' fees under 42 U.S.C. § 1988. *Farrar*, 506 U.S. at 112; *Lewis v. County of San Diego*, 798 Fed. App'x 58, 62 (9th Cir. 2019) (awarding fees after a case resulted in nominal damages and "a deterrent effect" against the county's continuing an unconstitutional policy); *Fast v. School Dist. of City of Ladue*, 728 F.2d 1030, 1033–35 (8th Cir. 1984) (Section 1983 plaintiff who proves a constitutional violation is entitled to nominal damages and attorneys' fees). The potential for fees promotes Congress's goal of protecting civil rights, even when—perhaps especially when—

[5] Because the nature of nominal damages is more equitable than compensatory, a court can add them to a jury award without running afoul of the Seventh Amendment prohibition on augmenting a jury's award. *Lowry v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 762 (8th Cir. 2008) ("The jury was required to award plaintiffs nominal damages, and therefore the district court did not abuse its discretion in amending the judgment to reflect a nominal damage award as a matter of law."). *See also Robinson v. Cattaraugus County*, 147 F.3d 153, 162 (2d Cir. 1998) (because a plaintiff who proves a constitutional violation is entitled to nominal damages "as a matter of law," it is "plain error" to instruct the jury that it "may" award nominal damages).

plaintiffs could not otherwise afford to litigate to defend their rights. As Justice O'Connor explained, Section 1988 is "a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory." *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring). *See also Savage v. Toan*, 636 F. Supp. 156, 157 (W.D. Mo. 1986) (Section 1988 fees properly assessed against state defendants even though they agreed with plaintiffs' claims because the state bowed to the federal government's pressure to enact constitutionally invalid regulations and, in doing so, "threw the monkey onto plaintiffs' backs and forced plaintiffs to take the initiative"). Thus, potential liability for attorneys' fees under 42 U.S.C. § 1988 "provides additional—and by no means inconsequential—assurance that the agents of the State will not deliberately ignore [constitutional] rights." *Carey*, 435 U.S. at 257 n.11.

CONCLUSION

Completed, past constitutional violations always justify an award of nominal damages and should prevent dismissal of a case for mootness. The Eleventh Circuit's ruling to the contrary should be reversed and, in so doing, this Court should hold that successful civil rights plaintiffs proceeding under 42 U.S.C. § 1983 always are entitled to recover nominal damages as symbolic vindication of their rights regardless of whether they specifically request them in the prayer for relief and that a civil rights plaintiff's explicit demand for nominal damages does not implicate sovereign immunity under the Eleventh Amendment.

DATED: September, 2020.

Respectfully submitted,

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Respondents.

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

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, DELANEY WYSINGLE, RENTBERRY, INC., LUIS RAMIREZ, MICHAEL JACKSON, TORY SMITH AND JILLIAN OSTREWICH IN SUPPORT OF PETITIONERS contains 4,321 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept. 24, 2020.

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AFFIDAVIT OF SERVICE

I, Andrew Cockle, of lawful age, being duly sworn, upon my oath state that I did, on the 25th day of September, 2020, send out from Omaha, NE 2 package(s) containing 3 copies of the BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, DELANEY WYSINGLE, RENTBERRY, INC., LUIS RAMIREZ, MICHAEL JACKSON, TORY SMITH, AND JILLIAN OSTREWICH IN SUPPORT OF PETITIONERS in the above entitled case. All parties required to be served have been served by third-party commercial carrier for delivery within 3 calendar days. Packages were plainly addressed to the following:

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Subscribed and sworn to before me this 25th day of September, 2020.
I am duly authorized under the laws of the State of Nebraska to administer oaths.

GENERAL NOTARY-State of Nebraska
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My Comm. Exp. September 5, 2023

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