

# College Attempts to Silence Evangelist in ‘Constitutional Whack-a-Mole’

Liberty Counsel submitted an amicus brief on behalf of Child Evangelism Fellowship (CEF) at the U.S. Supreme Court in support of the petitioners in *Uzuegbunam v. Preczewski*.

This case requests that the High Court uphold the 200-year-old tradition of giving constitutional litigants nominal damages when the government violates their free speech rights and then changes a policy to avoid accountability. CEF is often faced with unequal and unconstitutional treatment in public school districts throughout the country and faces a moot case when the government drops its unconstitutional policy after being sued in federal court.

In this case, Chike Uzuegbunam tried to share his faith in Christ with others on the taxpayer-funded school campus of Georgia Gwinnett College. The college silenced him because he was not standing in the “proper zone,” ironically labeled a “free speech zone,” when he distributed literature and shared his faith with other students. Officials required Uzuegbunam to get advance permission to use one of two small speech zones that made up less than 1% of the campus and were only open 10% of the week. Uzuegbunam complied and reserved time, then began sharing his faith in the zone. Two police officers ordered him to stop because they allegedly had received a complaint. Under the college’s policy, it is considered “disorderly conduct” if someone says that speech makes them uncomfortable. The officers said if Uzuegbunam continued to share his faith, he would face discipline. Uzuegbunam stopped speaking, and another student self-censored after seeing how officials treated Uzuegbunam.

After being sued, the college initially tried defending its unconstitutional policies by claiming Uzuegbunam's witnessing amounted to the constitutionally unprotected "fighting words." After the litigation continued in the district court, and perhaps sensing that labeling Christian witnessing to be disorderly conduct and fighting words was a constitutionally dubious position, the college changed its policy and requested the court to dismiss Uzuegbunam's lawsuit.

In essence, Uzuegbunam had prevailed but could not continue his litigation because all that was left was a nominal damages claim. Although every circuit court of appeals in the nation has held that nominal damages present a live controversy that federal courts can use to determine that the government violates a plaintiff's constitutional rights, the 11th Circuit dismissed his case, saying that nominal damages are not enough to maintain a federal case.

That decision ignores the vital role that nominal damages play in making sure the government is held to account for violating constitutional rights. As the Supreme Court said long ago, "The law recognizes the importance to organized society that [constitutional] rights be scrupulously observed," and nominal damages are the vehicle by which courts can do that.

Liberty Counsel founder and chairman Mat Staver said, "The Eleventh Circuit's decision in this case fails to recognize the vital role nominal damages play in constitutional litigation. Just because the damages are referred to as 'nominal' does not mean the vindication of constitutional rights is equally nominal. Government officials should not violate First Amendment rights, change course and then face no consequences for that abuse. That equates to games of constitutional whack-a-mole." {eo}

*This article originally appeared at .*