IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

Chelsey Nelson Photography LLC, and **Chelsey Nelson**, Plaintiffs, v. **Louisville/Jefferson County Metro Government**; and **Louisville Metro Human Relations Commission-Enforcement**, Defendants.	**Case No. 3:19-cv-00851-BJB-CHL** **Plaintiffs' Supplemental Motion for Summary Judgment and Memorandum in Support**

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INTRODUCTION

Nominal damages redress completed constitutional injuries. Over a ten-month period, Plaintiffs Chelsey Nelson and her photography studio (Nelson) objectively and reasonably chilled their speech about marriage and faith to avoid being prosecuted under Louisville's public-accommodations law (Metro Ord. § 92.05(A)–(B)). This Court already held that the restriction on Nelson's speech caused a completed injury. MSJ Order, Doc. 130, PageID.5359–5364; MPI Order, Doc. 47, PageID.1207–1211. Based on that injury, this Court also ruled that Nelson had standing to challenge the law and enjoined the law as applied to Nelson to stop ongoing First Amendment violations. MSJ Order, Doc. 130, PageID.5396; MPI Order, Doc. 47, PageID.1203. Later cases bolster those holdings. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (standing and the merits); *Christian Healthcare Centers, Inc. v. Nessel*, 117 F.4th 826 (6th Cir. 2024) (standing).

But this Court need not revisit these settled issues about injury-in-fact or the merits. On remand, the Sixth Circuit narrowed the remaining dispute and left this Court's prior standing and merits holdings "in place." Sixth Cir. Op., Doc. 143, PageID.5427. In doing so, the Sixth Circuit also left "in place" this Court's prior holdings that Nelson sustained a past injury. Now, the issue is "whether under *Uzuegbunam* [Nelson] can maintain her claim for nominal damages" given that she has established injury-in-fact for standing and success on the merits. *Id.* She can. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021), and Sixth Circuit precedent confirm that nominal damages redress past injuries caused by chilled speech. Because this Court already found a chilling injury and constitutional violation in the past that justified injunctive relief, that same past injury justifies awarding nominal damages to Nelson. Nelson requests one dollar in nominal damages.

STATEMENT OF FACTS

Nelson desires to operate her photography studio consistent with her religious beliefs. Doc. 92–2, PageID.2882. Those beliefs include being transparent about her views on marriage, being honest about the messages she's willing to express, and trying to persuade the public to adopt her position. *Id.* at PageID.2844, 2886. At the same time, Nelson knew government commissions had prosecuted other artists for declining to celebrate same-sex wedding ceremonies and she worried about facing similar penalties. *Id.* at PageID.2882–2883. Her fears were confirmed when she realized that Louisville had a law that forced her to express messages about marriage that she disagreed with and restricted her from explaining her views on marriage. *Id.* at PageID.2883.

Even so, Nelson hoped to post statements "with a more comprehensive expression of [her] religious beliefs about God designing marriage to be the union of one man and one woman." *Id.* at PageID.2887. Her desire "was to more faithfully honor God in how [she] market[ed] [her] business, represent[ed] [her] beliefs in business and be transparent to potential clients." App. to Pls.' Suppl. Summ. J. Mot. (Suppl. App.) 25–26; *accord* Doc. 97–7, PageID.3992. To that end, Nelson drafted two statements that she wanted to publish on her studio's website. Doc. 92–2, PageID.2887. She finished them and had them ready to publish on November 8, 2019. Doc. 97–7, PageID.3990–3991; Suppl. App. 23–29; Doc. 92–6, PageID.3223–3224. But Nelson did not post them right away. She feared the statements exposed her to prosecution under the Publication and Accommodations Provisions of Louisville's law. Doc. 92–2, PageID.2885–2887.

The Publication Provision prohibits public accommodations like Nelson's studio from publishing communications indicating (1) that a service "will be refused, withheld, or denied an individual" (Denial Clause) or (2) that a persons' "patronage of, or presence … is objectionable, unwelcome, unacceptable, or undesirable"

because of sexual orientation (Unwelcome Clause). Metro Ord. § 92.05(B). The Accommodations Provision prohibits public accommodations from denying a person the "full and equal enjoyment" of their services because of sexual orientation. Metro Ord. § 92.05(A). Both provisions are mutually dependent—the Publication Provision bans communications about activities the Accommodations Provision prohibits. This Court and the Supreme Court have explained why laws like these are intertwined. *See* MPI Order, Doc. 47, PageID.1211 n. 68 (noting the Accommodations Provision's "constitutionality" "affects the constitutionality of the Publication Provision"); *303 Creative LLC*, 600 U.S. at 581 n.1 ("The Communication Clause … prohibits any speech inconsistent with the Accommodation Clause."). Louisville agrees. Doc. 97, PageID.4515 ("Just as there is no constitutional right to discriminate, there is no concomitant right to advertise an illegal policy of discrimination.").

To avoid prosecution under both provisions of Louisville's law, Nelson chilled her speech and filed this lawsuit and a contemporaneous preliminary-injunction motion to ensure she had the freedom to communicate honestly to the public about how her faith influenced the messages she created. Doc. 92–2, PageID.2888.

Louisville has confirmed that Nelson's fear of prosecution was objectively reasonable. Louisville has admitted that Nelson's statements and policy violate the law in its Answer, admissions, and many briefs. Doc. 104–4, PageID.4592; Doc. 92–7, PageID.3265–3267, 3333–3334; Doc. 52, PageID.1349; Doc. 151, PageID.5449; Doc. 15–1, PageID.769, 772, 774 (Nelson's "business model is discriminatory" and her statements "discriminat[e] against same-sex couples."); Doc. 97, PageID.3821 (describing statements as "undisputed violations of" the "law"); Defs.' Reply Brief in Supp. of Mot. to Remand to Dist. Ct. 4, Case No. 22-5884, Doc. 70 (6th Cir. Sept. 19, 2023). And Louisville's two 30(b)(6) witnesses confirmed that Nelson's policy of only photographing consistent with her beliefs on marriage and statements to that effect violate the law. Doc. 92–7, PageID.3668; Suppl. App. 60–62.

Louisville makes it easy to file complaints against public accommodations, further justifying Nelson's restraint. Complaints can be filed by "any member" of the public, a person who "associates" with "someone from a protected class," and "testers." MSJ Order, Doc. 130, PageID.5361–5362 (cleaned up). The motive of the complainant is irrelevant. Testers may file complaints because "they desire the service to be made available" generally even if "not necessarily for them." Suppl. App. 63, 88–90. Louisville has never dismissed a complaint for "be[ing] frivolous." Doc. 92–7, PageID.3648. And the Commission often files in its own name without independently investigating the allegations. Suppl. App. 83, 87.

Louisville also broadly interprets its law. In 2010, Louisville investigated one Christian ministry for allegedly "teach[ing] against homosexuality" Doc. 129–2, PageID.5307. A public-advocacy organization named the Lexington Fair Housing Council, Inc. filed the complaint after seeing articles in local newspapers—LEO Weekly and the Courier-Journal. *Id.* at PageID.5321, 5326–5327, 5329–5331, 5336–5345; Suppl. App. 72 (describing Lexington Fair Housing Council).

And the Publication Provision's Unwelcome Clause is vague because it has no standards to rein in enforcement officials. In one instance, in 2020, during the time when Nelson was chilling her speech, Louisville investigated a restaurant for violating the Unwelcome Clause after it published the following sign and a separate social media post. Doc. 129–1, PageID.5269; Doc. 92–7, PageID.3690.

An LGBT advocacy organization called the Fairness Campaign brought the sign and the post to the Commission's attention by tagging it in a social media post. Doc. 129–1, PageID.5269; Suppl. App. 66. After the Commission's former executive director "scroll[ed] through social media" and saw "controversial things" about the sign, Louisville filed a complaint. Doc. 92–7, PageID.3662. The complaint relied solely on the Unwelcome Clause. Doc. 129–1, PageID.5269; Suppl. App. 67–68. Louisville had never heard of the restaurant before and did not know if the restaurant had denied service to anyone who identified as LGBT. Doc. 92–7, PageID.3663, 3729–3730; Suppl. App. 83.

As Louisville prosecuted the restaurant, Louisville admitted that the sign was "political speech" on "a highly controversial political" topic. Doc. 129–1, PageID.5276–5277. But Louisville punished the restaurant's speech anyway because the sign "may cause negative secondary effects," "constitute[d] fighting words," and could "potentially cause disruption in the community." *Id.* at PageID.5274, 5276–5278. Louisville has no policy defining "negative secondary effects" or "fighting words." Suppl. App. 71. Louisville eventually forced the restaurant to remove the sign. Doc. 129–1, PageID.5300–5301.

Given Louisville's position on Nelson's statements, how easy it is for complainants to launch complaints, Louisville's active enforcement history, the vagueness of the Unwelcome Clause, and other evidence, this Court held that Louisville's law injured Nelson by forcing her to restrict her speech to avoid being prosecuted. MSJ Order, Doc. 130, PageID.5359–5364; MPI Order, Doc. 47, PageID.1207–1211. Indeed, Nelson refrained from posting her two statements on her website for ten months—from November 8, 2019 until September 3, 2020. Nelson Decl. in Supp. of Suppl. Summ. J. Mot. (Nelson Suppl. Decl.) ¶¶ 23–26. Nelson only posted her statements after this Court granted her request for a preliminary injunction. MPI Order, Doc. 47, PageID.1203. Because of this Court's

ongoing injunctive relief, Nelson has been free to fully explain her religious views on marriage on her studio's website without the threat of punishment. Doc. 92–2, PageID.2890; Nelson Suppl. Decl. ¶ 27; Supp. App. 1–12.

ARGUMENT

This Court already awarded Nelson summary judgment finding a past, completed constitutional injury and, because of that, nominal damages legally follow. This request turns on "a matter of law" because no party disputes a "material fact." F.R.C.P. 56. This Court has already held (twice) that Nelson refrained from posting two statements explaining her religious beliefs about marriage on her studio's website to avoid being prosecuted under Louisville's law. By chilling her speech based on an objectively reasonable fear of prosecution, Nelson suffered a past, completed injury. Nominal damages redress that kind of injury, as both the Supreme Court and Sixth Circuit have held. What's more, *Uzuegbunam* and Sixth Circuit cases interpreting it control here—not *Morrison v. Bd. of Educ. of Boyd County*, 521 F.3d 602 (6th Cir. 2008). And awarding Nelson nominal damages aligns with the purpose of that remedy.

I. Nominal damages redress the injury Nelson sustained when she chilled her speech to avoid prosecution under Louisville's law.

For an injury to claim nominal damages, Nelson must show that (1) Louisville's law caused her (2) to suffer an injury that (3) can be redressable in court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Judge Walker dismissed Nelson's request for nominal damages after finding that it was not redressable. Since then, *Uzuegbunam* clarified that nominal damages redress "a completed violation" of a constitutional right. 141 S. Ct. at 802. This Court already held that Louisville caused Nelson an injury by chilling her speech sufficient to support her claims for prospective relief. And (A) that same injury also means

Nelson has experienced a completed First Amendment harm which (B) this Court can redress by awarding her nominal damages.

A. Nelson suffered an injury when she chilled her speech as this Court already held.

An Article III injury can be either "actual" *or* "imminent." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). A plaintiff can show an "imminent" injury through "the threatened enforcement of a law." *Id.* Nelson met this standard when she chilled her speech because of the "substantial risk" of being harmed by Louisville's law. *Id.* For this type of injury, Nelson need not have been "subject to" an actual "prosecution[] or other enforcement action." *Id.* It was enough to show that Louisville's law arguably "proscribed" her from engaging in activities "affected with a constitutional interest" and presented her with "a credible threat of prosecution." *Id.* at 159 (cleaned up). Nelson made that showing.

This Court agreed. Twice. First, this Court explained that Nelson "undeniably alleged" that she refrained from speaking because of Louisville's law. MPI Order, Doc. 47, PageID.1209. Then, this Court held that Nelson proved that she would censor herself unless she received a "permanent injunction." MSJ Order, Doc. 130, PageID.5360. Each time, this Court observed that Nelson's decision to restrict her own speech was a past injury caused by Louisville's law. *Id.* at PageID.5364 ("Nelson's fear of prosecution amounts to a constitutional injury chilling her speech."); MPI Order, Doc. 47, PageID.1223 (holding law caused Nelson an "irreparable injury" (cleaned up)).

Those rulings are sufficient for an award of nominal damages. Nelson's self-censorship from November 8, 2019, until September 3, 2020, is a past, completed injury. The Supreme Court and the Sixth Circuit have consistently held that a plaintiff suffers an "injury in fact" when she refrains from speaking in the face of a "credible fear of enforcement." *Platt v. Bd. of Comm'rs on Grievances & Discipline of*

Ohio Sup. Ct., 769 F.3d 447, 452 (6th Cir. 2014) (cleaned up); *accord Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988) (noting "harm" of "self-censorship" "can be realized even without an actual prosecution"). So too here.

To be sure, this Court held that Nelson's chilled speech was an injury that supported her request for *prospective* relief. But standing for prospective and retrospective relief emanate from the same Article III injury-in-fact requirement. *See Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1027 (6th Cir. 2024) (same injury ratified both types of relief). *Cf. Morrison*, 521 F.3d at 609 n.7 (making no standing distinction "between allegations of a past-experienced chill and allegations of chill seeking forward-looking relief"). The difference is that prospective relief requires an ongoing injury whereas retrospective relief requires a past injury. *See, e.g.*, *Kareem*, 95 F.4th at 1027 (making this point); *Tandy v. City of Wichita*, 380 F.3d 1277, 1283–84 (10th Cir. 2004) (same). Both types of injury are present here. Nominal damages redress Nelson's past injury—her chilled speech.

Other evidence further bolsters this Court's prior finding of a completed injury. For example, Louisville has maintained since 2019 that Nelson's statements violate its law. *Supra* Statement of Facts 3 (collecting statements). Louisville has also pursued complaints against a religious ministry for allegedly "teach[ing] against homosexuality." Doc. 129–2, PageID.5307. And the vagueness of the Unwelcome Clause arguably covers Nelson's speech. *Supra* Statement of Facts 4–5. Louisville broadly interprets that clause to prohibit any speech which may cause an undefined set of "negative secondary effects"—even if Louisville recognizes the speech as "political speech." Doc. 129–1, PageID.5274, 5276; Suppl. App. 71. Considering Louisville's explicit ban on Nelson's desired statements and Louisville's expansive enforcement authority, it was objectively reasonable for Nelson to censor her speech until this Court enjoined Louisville from enforcing the law against her.

B. Nelson is entitled to nominal damages to redress her self-censorship.

As this court already found, "Nelson's fear of prosecution amounts to a constitutional injury chilling her speech." MSJ Order, Doc. 130, PageID.5364; MPI Order, Doc. 47, PageID.1223 (noting Nelson had shown "irreparable injury" (cleaned up)). That entitles Nelson to nominal damages to "redress" that "injury" caused by a "completed violation of a legal right." *Uzuegbunam*, 141 S. Ct. at 802.

The Sixth Circuit confirmed this principle in *Kareem*. There, a voter took a "ballot selfie"—i.e., she photographed herself with a marked ballot. *Kareem*, 95 F.4th at 1021. She hoped to post the photograph on social media but decided not to because of Ohio laws that prohibited the display of marked ballots. *Id.* The voter also would have posted future ballot selfies but for the laws. *Id.* For that past and future restriction, the voter sought injunctive relief *and* nominal damages. *Id.* The laws had "not been enforced against" the voter. *Id.* at 1022. Neither had the voter been "threatened … with prosecution" nor "received any communications" from the government about the photographs. *Kareem v. Cuyahoga Cnty. Bd. of Elections*, No. 1:20-CV-02457, 2023 WL 2734636, at *1, *5 (N.D. Ohio Mar. 31, 2023). For that reason, the voter's injury turned on whether she faced "a credible threat that Ohio's ballot prohibitions could be enforced against her." *Kareem*, 95 F.4th at 1022. The Sixth Circuit confirmed that the voter faced such a threat. *Id.* at 1022–27.

Next came redressability. The court noted that injunctive relief redressed "her alleged prospective harm." *Id.* at 1027. And, relying on *Uzuegbunam*, it held that "nominal damages redress[]" the voter's "alleged retrospective harm." *Id.* Put differently, in *Kareem*, a voter, who chilled her speech in response to a credible threat of prosecution, could pursue nominal damages for that restriction even though the law had "not been enforced against" her. *Id.* at 1022, 1027.

Kareem resolves Nelson's nominal-damages request. As in *Kareem*, Nelson suffered an injury-in-fact because she reasonably chilled her speech. *Supra* § I.A. And, as in *Kareem*, nominal damages redress that harm. But Nelson has taken one step further than the voter in *Kareem*. The voter only established that she "should have her day in court" to bring her nominal-damages request, but she had not yet shown that she won on the "merits." 95 F.4th at 1027. Meanwhile, Nelson has proven that she has standing *and* has already won on the merits. MSJ Order, Doc. 130, PageID.5387–5390; MPI Order, Doc. 47, PageID.1207–1224. Those showings entitle her to nominal damages. *Uzuegbunam*, 141 S. Ct. at 802.

Kareem's holding is like appellate courts in the Third, Fifth, Seventh, Eighth, and Ninth Circuits who have likewise awarded nominal damages or allowed those forms of relief to proceed based on injuries attendant to credible threats.[1] Multiple district courts have reached that same conclusion.[2] This Court should too.

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[1] *See Rd.-Con, Inc. v. City of Philadelphia*, No. 23-1782, 2024 WL 4597253, at *4 (3d Cir. Oct. 29, 2024) (holding nominal damages would redress injury from policy that allegedly violated the First Amendment); *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 804 (7th Cir. 2016) (awarding nominal damages for past chill because "the chilling effect of a statute that violates the First Amendment … support[s] a [damages] claim"); *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 486, 490 (9th Cir. 2024) (reinstating pre-enforcement nominal damages); *Barilla v. City of Houston*, 13 F.4th 427, 430, 434 (5th Cir. 2021) (same); *Harmon v. City of Kansas City*, 197 F.3d 321, 326–27 (8th Cir. 1999) (plaintiff had standing for "damages" when police only "threatened and harassed him").

[2] *Messina v. City of Fort Lauderdale,* 713 F. Supp. 3d 1292, 1333 (S.D. Fla. 2024) (awarding nominal damages for plaintiffs who were "'deterred from panhandling'"); *Downtown Soup Kitchen v. Municipality of Anchorage*, 576 F. Supp. 3d 636, 662 (D. Alaska 2021) (same for past chill based on "well-founded fear of prosecution"); *Norton v. City of Springfield*, 324 F. Supp. 3d 994, 1000 (C.D. Ill. 2018) (allowing nominal damages when plaintiff "did refrain from protected speech" for three months "because of the threat of enforcement of the Ordinance"); *Trewhella v. City of Lake Geneva*, 249 F. Supp. 2d 1057, 1062 (E.D. Wis. 2003) (similar and awarding nominal damages); *Fehribach v. City of Troy*, 412 F. Supp. 2d 639, 640, 646 (E.D. Mich. 2006) (awarding nominal damages after official "advised" front yard sign violated local ordinance).

II. *Uzuegbunam* and *Kareem* control Nelson's entitlement to nominal damages, not *Morrison*.

Nelson's nominal damages claim was dismissed because of *Morrison*. MPI Order, Doc. 47, PageID.1212 n.73. But *Morrison* does not control this case. *Morrison* (A) is distinguishable because the student there never established an injury-in-fact while Nelson has. And (B) *Uzuegbunam* overruled *Morrison* in relevant ways.

A. Unlike the student in *Morrison*, Nelson sustained an injury.

Morrison is distinguishable because the student failed to show an injury-in-fact. 521 F.3d at 608–10. The student challenged a school-district policy that exempted speech of the kind he desired to express. *Id.* at 605 (exempting "speech" protected by the "federal constitution[]"); *id.* at 610 (same). And no evidence showed that the district "threatened to punish or would have punished" the student "for protected speech in violation of its policy." *Id.* at 610. Because the student failed to show an injury, there was nothing for the court to redress. *Id.* at 610–11. But this Court has held Nelson suffered an injury because of Louisville's law.

On the last point, *Uzuegbunam* and *Morrison* are two sides of the same coin. *Uzuegbunam* held that "every violation of a right imports damage"—including nominal damages. 141 S. Ct. at 802 (cleaned up). *Morrison* held that without an injury, there can be no damages—nominal or otherwise. 521 F.3d at 610–11. Nelson's case falls on the *Uzuegbunam* side of the line because Louisville's law harmed her as this Court concluded. *Supra* § I.A. So *Uzuegbunam* controls and nominal damages redress Nelson's injury. *See Kareem*, 95 F.4th at 1022.

The gap between *Morrison* and this case broadens after comparing the school's policy and enforcement intentions with Louisville's law and intentions. In *Morrison*, the text of the school district's policy arguably exempted the student's speech. 521 F.3d at 610. And the student could not "point to anything beyond his own subjective apprehension" to justify his refusal to speak. *Id.* (cleaned up). By

contrast, for the last five years, Louisville has consistently interpreted its law to prohibit Nelson's statements about her editorial policy. *Supra* Statement of Facts 3. Louisville also admitted that it actively enforces its law, seeks to eliminate "'every single instance of discrimination,'" and doggedly defended its asserted compelling interest in enforcing its law against Nelson. MSJ Order, Doc. 130, PageID.5361, 5377–5387. Unlike the school district in *Morrison* which would have been "in violation of its policy" protecting expression if it punished the student for his speech, 521 F.3d at 610, Louisville would have *furthered* its stated interests by prosecuting Nelson for her speech as this Court already held, MSJ Order, Doc. 130, PageID.5377–5387.

Kareem confirms this distinction between Nelson's case and *Morrison*. In *Kareem*, the court cited *Morrison* several times to offer the student as a foil to the voter—i.e., to explain by contrast why the voter had alleged an injury and the student hadn't. 95 F.4th at 1025, 1027–28; *id*. at 1028 (J. Gibbons, concurring). And because the voter had alleged an injury, she had a right to pursue nominal damages. *Id.* at 1027. Nelson is like the voter. She proved an injury. *Uzuegbunam* and *Kareem* dictate that nominal damages redress that injury.

B. *Uzuegbunam* overruled *Morrison* and Judge Walker's basis for dismissing Nelson's nominal damages claim.

Uzuegbunam also overruled *Morrison* in two significant ways. *Morrison* said there was "[n]o readily apparent theory" on "how nominal damages might redress past chill." 521 F.3d at 610. Judge Walker relied on that exact language to dismiss Nelson's nominal damages claim. MPI Order, Doc. 47, PageID.1212. But *Uzuegbunam* rejected that argument. The student in *Uzuegbunam* "stop[ped] speaking" when confronted with the threat of discipline. 141 S. Ct. at 797. Drawing on common-law tradition, the Supreme Court held that nominal damages redress that kind of past, completed chilled-speech injury. *Id.* at 797–800. Under the theory

that "*every* legal injury necessarily causes damage," nominal damages redress a prior speech restriction "absent evidence of other damages." *Id.* at 798.

Next, *Morrison* said that nominal damages are like declaratory judgments and only effectuate relief "with respect to future dealings between the parties." 521 F.3d at 610–11 (cleaned up). The college in *Uzuegbunam* made that same claim. 141 S. Ct. at 798. But the Supreme Court disagreed because "cases at common law paint a different picture." *Id.* To the Supreme Court, nominal damages give relief for past injuries because those damages provide a "concrete" remedy, change the status of the successful plaintiff, and effect the behavior of the errant defendant. *Id.* at 800–01. Awarding nominal damages to Nelson would have that same outcome.

III. Awarding nominal damages here will not inundate federal courts with needless litigation.

Constitutional violations cause harm that can be difficult to reduce to dollars and cents. For centuries, nominal damages have resolved that valuation dilemma by awarding injured plaintiffs with relief even if they could not show specific monetary loss. *Uzuegbunam*, 141 S. Ct. at 798 (collecting cases). Nominal in name but not significance, such awards provide "concrete … relief on the merits," "affect the behavior of the defendant towards the plaintiff," and change the parties' relationship. *Id.* at 801 (cleaned up); *Farrar v. Hobby*, 506 U.S. 103, 113 (1992). So it is a "flawed premise" to think of nominal damages as "purely symbolic." *Uzuegbunam*, 141 S. Ct. at 800–01. Rather, the "value" of nominal damages "can be of great significance to the litigant and to society." *Amato v. City of Saratoga Springs*, 170 F.3d 311, 317 (2d Cir. 1999). All of that is true in this case too.

But Louisville posits that awarding nominal damages here "'vindicates no interest and trivializes the important business of the federal courts.'" Metro Reply Br. in Supp. of Mot. to Remand to Dist. Ct. 6–7, Case No. 22–5884, ECF No. 70 (quoting *Morrison*, 521 F.3d at 611). Not so. "By making the deprivation of

[constitutional] rights actionable for nominal damages" without requiring compensable harm, the law "recognizes the importance to organized society that those rights be scrupulously observed." *Carey v. Piphus*, 435 U.S. 247, 266 (1978). Louisville did not "scrupulously observe[]" Nelson's rights because it threatened to punish her for publishing speech protected by the First Amendment. Nominal damages redress that injury as to Nelson. And plenty of guardrails ensure that parties do not overrun federal courts with requests for nominal damages.

For example, a plaintiff must still "establish the other elements of standing," *Uzuegbunam*, 141 S. Ct. at 802, including a "credible" threat of harm, *SBA List*, 573 U.S. at 160. Along those lines, a plaintiff must show her chilled speech is objectively reasonable. *See Carney v. Adams*, 592 U.S. 53, 60 (2020). A plaintiff has no standing when her chilled speech is *only* subjective or based on a "generalized grievance." *Id.* (denying standing when plaintiff only showed subjective chill). *Cf.* MSJ Order, Doc. 130, PageID.5360 (noting plaintiffs must show "subjective chill" plus "other indicators of imminent enforcement").

What's more, practical realities prevent a nominal-damages run. Litigation is expensive and burdensome for plaintiffs. It makes little sense for them to file willy-nilly suits requesting nominal damages. History confirms this practical barrier. Courts have redressed constitutional injuries occasioned by censorship through nominal damages for years without straining the judiciary. *Supra* § I.B (collecting cases). And immunity may bar some nominal damages requests anyway, further de-incentivizing marginal cases. *See Thompson v. Whitmer*, No. 21-2602, 2022 WL 168395, *1–5 (6th Cir. Jan. 19, 2022) (denying claims for nominal damages for completed constitutional injury based on state defendant's sovereign immunity).

These considerations appropriately limit the availability of nominal damages. But none of these limitations apply here. Nelson chilled her speech for ten months in response to an objectively reasonable threat of prosecution. Louisville admitted

Nelson's activities violate the law. And Louisville is a municipality without sovereign immunity from damages. *See N. Ins. Co. of New York v. Chatham Cnty.*, 547 U.S. 189, 193 (2006). Awarding Nelson nominal damages will not open the floodgates to litigation. The award will instead advance the goal of the remedy by holding Louisville accountable for violating her First Amendment freedoms.

CONCLUSION

For five years, Louisville has consistently claimed that its law prohibits Nelson from posting two statements on her studio's website that explain her religious reasons for only photographing and blogging about weddings consistent with her faith. Nelson reasonably reacted to this threat by chilling her speech until this Court enjoined Louisville from enforcing the law against her. But the self-censorship came at a cost: Nelson didn't display her desired statements for ten months. Nominal damages redress that lost chance to speak. Nelson requests that this Court award her one dollar to remedy that violation.

Respectfully submitted this 11th day of November, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2024, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

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