

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

**DAVID WATLINGTON and LINDSEY
HOLLOWAY, on behalf of themselves and
others similarly situated**

PLAINTIFFS

v.

No. 2:17-cv-2-DPM

**CITY OF McCRORY, ARKANSAS and
PAUL HATCH, in his Official Capacity as
the Police Chief of McCrory, Arkansas**

DEFENDANTS

ORDER

1. The City of McCrory and Chief Hatch move again to dismiss Watlington and Hollaway's case. They say the case is moot—the complained-of city ordinance no longer exists. And they say the complaint fails to state a claim—the ordinance was never enforced against Watlington and Hollaway, so it didn't deprive them of any constitutional right.

2. Although Watlington and Hollaway's request for injunctive relief is moot, they also seek some damages. *No 25 at 15–16, 20*. This claim saves their case from mootness. *E.g., Forbes v. Arkansas Educational Television Communication Network Foundation*, 982 F.2d 289, 290 (8th Cir. 1992) (*per curiam*); *No 22 at 2–3*.

3. The Court already concluded that Chief Hatch's warning was the beginning of enforcement. *No 22 at 2*. Watlington and Hollaway say he told them they'd have to move after the holidays because of a recently enacted ordinance. *No 25 at ¶¶ 34-35*. And now they allege particularized facts about damages caused by this enforcement of an allegedly unconstitutional ordinance. That's enough.

Watlington and Hollaway didn't file a verified complaint or attach affidavits as directed, *No 22 at 3*, but they did allege they lost \$200 in wages and more than \$600 in transportation expenses looking for a new home. *No 25 at ¶¶ 113, 115-18*. Watlington and Hollaway have sufficiently stated a claim for approximately \$800 in damages caused by Hatch's beginning to enforce the ordinance against them. That claim, and only that claim, is what the rest of the case is about.

Motion, *No 26*, denied.

So Ordered.

D.P. Marshall Jr.
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United States District Judge

3 August 2017