

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

DAVID WATLINGTON and LINDSEY HOLLOWAY,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:17-cv-2-DPM
)	
)	
CITY OF MCCRORY and PAUL HATCH)	
in his Official Capacity as the Police Chief)	
of McCrory, Arkansas,)	
)	
Defendants.)	
)	

AMENDED COMPLAINT

Introduction

1. This case is about the City of McCrory banishing some of its poorest residents simply because they are poor. In September 2016, the McCrory City Council passed a Trailer-Banishment Ordinance forbidding any mobile home worth less than \$7,500 to remain within the city limits, levying fines of up to \$500 per day. Plaintiffs David Watlington and Lindsey Hollaway are an engaged couple living in McCrory below the federal poverty line in a trailer worth approximately \$1,500. They cannot afford a more expensive home, and although they would like to begin their married life in McCrory close to family and employment, the McCrory Police Chief ordered them to leave the county, banishing them under the terms of the Ordinance because their mobile home is valued at less than \$7,500.

2. From September 2016 through the beginning of January 2017, the City of McCrory banned trailers and mobile homes within the City unless the resident could establish by

a certified appraiser or a bill of sale a value of \$7,500 or more. If Mr. Watlington and Ms. Hollaway could have afforded to live in a mobile home valued at \$7,500 or more, they would have been permitted to remain in McCrory. Because the only criterion preventing Plaintiffs from living in the City of McCrory was the value of their home, McCrory was operating a wealth-based banishment scheme.

3. At the time of the events precipitating this lawsuit, Mr. Watlington was unemployed. He could not seek work because the local police records incorrectly show him as having a suspended license. He has been stopped on numerous occasions and has stopped driving because he cannot afford to pay the tickets and resulting court costs. Ms. Hollaway does shift work at the Worldwide Label facility in McCrory. In spite of their poverty, their home meets all reasonable health standards and complies with all other regulations. Plaintiffs were ordered to leave McCrory *only* because they cannot afford a more expensive home. McCrory's ordinance was, therefore, a wealth-based banishment scheme, imposing a "fate universally decried by civilized people." *Trop v. Dulles*, 356 U.S. 86, 102 (1958). Banishment is a drastic punishment — so much so that the Arkansas State Constitution forbids it at the state level. Art. I, § 21.

4. Plaintiffs challenge McCrory's Trailer-Banishment Ordinance because it was unconstitutional. Defendants' wealth-based banishment ordinance (1) violated substantive due process by infringing on Plaintiffs' fundamental right not to be forcibly expelled from their place of residence; (2) discriminated on the basis of wealth status without any rational connection to a legitimate government interest in violation of the Equal Protection Clause; (3) criminalized poverty and thus violated the Constitution's proscription against criminalization of status; (4) imposed excessive fines in violation of the Eighth Amendment for violators of the ordinance

whose only offense is being poor; and (5) violated procedural due process by imposing punishment without any process whatsoever.

5. Realizing that the \$7,500 value provision of the Ordinance was indefensible, McCrory's City Council amended it to remove the value-banishment provision within two days of Plaintiff's original Complaint, but not before spending months pressuring Mr. Watlington and Ms. Hollaway to leave town.

6. By and through their attorneys, Plaintiffs seek the vindication of their rights, injunctive relief preventing future enforcement of the Trailer-Banishment Ordinance to allow them quiet enjoyment of their property, monetary relief for the injuries they suffered, and a declaration that the Trailer-Banishment Ordinance is unconstitutional. Defendants cannot banish residents from the City simply because they are poor.

Nature of the Action

7. The City of McCrory enacted an ordinance prohibiting the placement of mobile homes within the City unless the owners showed — at their own cost — that the trailers have a value of at least \$7,500. *See* ECF 1-1, Trailer-Banishment Ordinance, Section 2.C.6. Owners could be fined between \$50 and \$500 per day for violation of the ban, and the Police Chief, Defendant Paul Hatch, ordered Plaintiffs to leave the City, effectively banishing them from the place they call home. Plaintiffs seek declaratory and injunctive relief and damages to compensate injuries suffered.

Jurisdiction and Venue

8. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, the Fourteenth Amendment, and the Eighth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

9. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

Parties

10. Plaintiff David Watlington is a 31-year-old resident of McCrory. He lives with his fiancé, Lindsey Hollaway, in McCrory in a mobile home valued at less than \$7,500. He has been ordered to leave McCrory by the Police Chief because of the value of his home.

11. Plaintiff Lindsey Hollaway is a 30-year-old resident of McCrory. She works 8-to 10-hour shifts at the Worldwide Label facility in McCrory, earning approximately \$13,000 per year. She relies on a 1992 Honda Accord for transportation. Ms. Hollaway lives with her fiancé, David Watlington, in McCrory in a mobile home valued at less than \$7,500. She has been ordered to leave McCrory by the Police Chief because of the value of her home.

12. Defendant City of McCrory is a local government entity organized under the laws of the State of Arkansas.

13. Defendant Paul Hatch, in his official capacity as Police Chief, is an official of Defendant City of McCrory in his role as enforcer of the Trailer-Banishment Ordinance.

14. Under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), Defendant City of McCrory and all City officials are liable for their unconstitutional policies and practices.

15. Under *Ex Parte Young*, 209 U.S. 123 (1908), the Police Chief in his official capacity can be enjoined from enforcing any unconstitutional local laws. Any ordinance requiring or permitting wealth-based banishment without due process of law is unconstitutional.

Factual Allegations

A. Defendants Sought to Banish from the City Those Who Are Too Poor to Live in Homes Worth \$7,500 or More

16. On September 12, 2016, the City Council of the City of McCrory passed Ordinance No. 306 (the “Trailer-Banishment Ordinance” or the “Ordinance”), that amended

“Ordinance 151A Regulating Trailers, Mobile Homes, Manufactured Housing, Trailer Parks, and Other Purposes.”

17. The Ordinance stipulated, “No trailer shall be put in the City of McCrory unless it has a value established by a certified appraiser or a bill of sale of not less than seven thousand five hundred (\$7,500.00). The owner is responsible for any cost to obtain these documents.”

18. The Ordinance provided that “[a] violation of [the] ordinance shall be punishable by a fine of not less than \$50.00 nor more than \$500.00 and each day a violation exists shall constitute a separate offense.”

19. The Ordinance contained no defense based on non-willfulness and no *mens rea* or intent requirement, meaning that simply being too poor to afford a more expensive home is sufficient for a violation.

20. Ms. Hollaway is living with Mr. Watlington at 502 Poplar Avenue in McCrory in the mobile home valued at less than \$7,500.

21. Mr. Watlington and Ms. Hollaway are an engaged couple. They have been living together for about two-and-a-half years.

22. Mr. Watlington bought the used mobile home in McCrory in October of 2015. Mr. Watlington made some improvements to the mobile home and began living in it in November of 2015 in Morton, Arkansas.

23. In 2016, Mr. Watlington and Ms. Hollaway moved their mobile home to its current lot in McCrory.

24. Mr. Watlington moved the trailer from Morton to McCrory, hooking it up next to his uncle’s residence at 502 Poplar Avenue. When his uncle left, he took over the lease, beginning on or about September 6, 2016.

25. The couple moved back to McCrory not only to be near Ms. Hollaway's place of work, but also to be closer to friends and family. Mr. Watlington's four children — ranging in age from five to thirteen — live in McCrory. His aunt and uncle, who raised him, live about 30 minutes away, while his father lives about 10 minutes away. Mr. Watlington also has extended family, including his grandparents, in nearby Wynne. Ms. Hollaway's parents and sisters live half-an-hour away while her grandparents are about an hour up the road in Barton.

26. The lot meets McCrory's requirement for a trailer site.

27. Mr. Watlington and Ms. Hollaway's home is worth approximately \$1,500.

28. Due to their limited income, Mr. Watlington and Ms. Hollaway cannot afford a more expensive home.

29. Mr. Watlington and Ms. Hollaway pay \$100 per month to the owner of the land where their mobile home is parked. They regularly pay their rent on time. Their landlord has no desire to lose them as tenants.

30. As long as Mr. Watlington and Ms. Hollaway keep paying rent, their landlord will continue to welcome them as tenants. The landlord has identified no health concerns related to Plaintiffs' tenancy.

31. At the time when Mr. Watlington and Ms. Hollaway moved into the mobile home in McCrory, there was no ordinance banning trailers valued at less than \$7,500.

32. When the McCrory City Council began discussing the ordinance to ban trailers under \$7,500, Defendant Paul Hatch specifically mentioned a trailer on Poplar Avenue, among others, to justify the need for the Ordinance. *Woodruff County Monitor* (Aug. 17, 2016), available at <http://www.wcmla.net/guide/woodruff-county-monitor-leader-advocate-08-17-2016-e-edition/1.php> (last visited June 16, 2017).

33. The Ordinance was passed as an “emergency” measure to circumvent public comment.

34. Shortly after the Ordinance was passed, Defendant Hatch told Mr. Watlington that he and Ms. Holloway would have to leave town because their trailer was not worth \$7,500.

35. On December 7, 2016, the Police Chief told Mr. Watlington that Plaintiffs had to leave the county “after the holidays” because their home was not compliant with a recently-passed ordinance.

36. At the time, Mr. Watlington was unemployed and not earning any income.

37. Ms. Holloway earns \$255 per week working at Worldwide Label through a staffing agency called Urban Staffing Solutions.

38. Mr. Watlington and Ms. Holloway have numerous family members who live in the area. Mr. Watlington’s four children (ages 5, 13, and 9-year-old twins) from a previous relationship live in McCrory and he would like to have a relationship with them. Mr. Watlington’s parents, Ms Holloway’s parents, multiple aunts and uncles, and each of their grandparents all live within a short drive from their home.

39. Because of their financial situation and Mr. Watlington’s inability to drive, they rely on family for support.

B. Defendants’ Wealth-Based Banishment Scheme Infringed upon Plaintiffs’ Fundamental Right Not to Be Forcibly Expelled from Their Home

40. The right not to be expelled from one’s home is a fundamental right, connected to a long line of established fundamental rights, all of which underscore a basic liberty interest in pursuit of living: the right to marriage, the right to procreation, the right to family planning decisions, the right to intimate relations, the right to familial association, the right to educate one’s children, and the right not to have one’s home taken without just compensation.

41. After due process of law and lawful conviction for a crime, some cities and counties restrict residents' movement as part of an ensuing pardon, parole, probation, or registration as a sex offender.

42. The right to remain in one's chosen city of residence loses its fundamental nature *only* in the context of particular criminal convictions.

43. In *McCrary*, the Trailer-Banishment Ordinance allowed the banishment of individuals whose only "crime" is being too poor to afford a mobile home worth \$7,500 or more.

C. Defendants' Wealth-Based Banishment Scheme Was Not Rationally Related to Any Legitimate Government Interest

44. No legitimate government interest was rationally served by the requirement that every mobile home in the City be worth at least \$7,500.

45. The Trailer-Banishment Ordinance lists four justifications for its passage: (1) relief of overcrowding, (2) promotion of orderly growth, (3) health, and (4) notification to builders.

46. Each of these purported justifications was pretext for animus and banishment based on wealth-status. The Equal Protection Clause forbids such wealth-based discrimination. *Berry v. City of Little Rock*, 904 F. Supp. 940, 948 (E.D. Ark. 1995), *aff'd*, 94 F.3d 648 (8th Cir. 1996) ("The states are prohibited by the Equal Protection Clause from discriminating between 'rich' and 'poor' as such in the formation and application of their laws").

47. The Ordinance provided no basis for the minimum required cost of a trailer home, instead stating that its justifications are based on "a need to regulate the placement of trailers." No justification was given for the wealth-based provision.

i. The \$7,500 Value Requirement Bore No Relationship to the Alleged Problem of "Overcrowding"

48. There is no evidence of an existing or anticipated problem of overcrowding in McCrory.

49. The 2013 population of McCrory was 1,679 people. The population has decreased since 2010, when it was 1,728. In fact, there has been an overall decline in the population of McCrory at least since 1990, when there were 1,887 residents in the city.

50. McCrory is located an hour-and-a-half away from the nearest major airport and is surrounded by other small towns with small populations.

51. McCrory is more than an hour-and-a-half from Little Rock, the state's capital.

52. Patterson, the town closest to McCrory, has a population of only 437 people.

53. McCrory is 2.394 square miles in land area. Its population density is approximately 722 people per square mile. Little Rock, the state's most populous city, has a population density of over 1,700 people per square mile, more than twice that of McCrory.

54. Even if overcrowding exists, the \$7,500 value requirement did not "prevent crowding" because this goal is already served by the "Space Size" provision regulating trailer parks: "Each trailer shall have a minimum lot size of 1,500 square feet, with a minimum width of 40 feet at the access line. Maximum density — 6 sites/acre of park."

55. Any additional overcrowding problems can and should be addressed through zoning measures, not wealth-based banishment.

ii. The \$7,500 Value Requirement Did Absolutely Nothing to "Encourage Orderly Growth"

56. The phrase "encourage orderly growth" has no discernable meaning within the context of the Ordinance.

57. It is illogical to claim that a restriction can encourage "growth" of any kind. If growth is to be encouraged, it must first be allowed.

58. A wealth-based banishment provision in particular cannot encourage growth, because it excludes rent-paying residents from living in the City.

59. Because the size of the city limits is fixed, encouraging growth would increase the population and thus increase the population density. This purported goal is inconsistent with McCrory's other purported goal of limiting crowding and thus decreasing density.

60. By forcing poor residents who live in mobile homes out of the city, Defendants are *discouraging* growth. "Encourage orderly growth" is a euphemism for "get rid of the poor."

iii. The \$7,500 Value Requirement Did Nothing to Advance Health

61. The \$7,500 value requirement does not prevent undesirable health conditions, because monetary value simply is not an adequate proxy for health.

62. Any number of expensive alterations to a mobile home could increase its monetary value without increasing its health rating.

63. A gold-plated shower would increase the value of a mobile home without making it healthier.

64. Marble countertops would increase the value of a mobile home without making it healthier.

65. A surround-sound stereo system would increase the value of a mobile home without making it healthier.

66. If Defendants had wanted to advance health in mobile homes, they would have chosen requirements actually related to health, such as prohibiting the build-up of sewage or mandating working smoke detectors.

67. Requiring that a mobile home be worth at least \$7,500 serves no health purpose.

iv. The Ordinance Bore No Relation to Notifying Builders

68. The Ordinance provides no notification to builders regarding any construction regulations or anything else relevant to their trade.

69. Builders do not need to be notified that the City's poorest residents are being banished from the City.

70. No additional building is required by banishing residents like Plaintiffs.

D. McCrory's Mobile Home Banishment Ordinance Unconstitutionally Criminalized a State of Being — The State of Being Poor

71. The banishment Ordinance punished people whose only crime is being too poor to afford a mobile home worth \$7,500 or more.

72. It is unconstitutional to criminalize a status, such as poverty.

73. Indigent residents like Plaintiffs could not avoid a violation of the statute. Through no intent, will, or desire, Plaintiffs only "crime" was living in a home worth less than \$7,500.

74. Plaintiffs are living well below the poverty line. Their limited income covers basic human needs like food, rent, transportation to work, and other necessities.

75. Because Plaintiffs cannot afford a more expensive home, they were punished solely for their poverty status.

76. Defendants may not impose fines or banishment on anyone for the mere status of being poor.

E. The Fines for Violating McCrory's Mobile Home Banishment Ordinance Were Excessive

77. Defendants' enforcement of the Ordinance through a fine of not less than \$50 nor more than \$500 each day is an excessive fine for the purported offense of being poor.

78. Under the fine structure, Plaintiffs could have been liable for \$7,500 in fines after

just 15 days in McCrory.

79. By stipulating that violations of the Ordinance are “punishable” by fines, the City of McCrory reveals the punitive nature of the Ordinance’s enforcement.

80. The Ordinance sets a huge range of \$50 to \$500 for the daily fine. It provides no guidance on how fines in individual cases will be determined within that range. This left violators extremely vulnerable to abuse of discretion by enforcers, who are not accountable to any sort of oversight or appeals process.

81. The Ordinance does not set a maximum for the total amount in fines that can be imposed upon violators of the Ordinance. Every day is a separate offense subject to a new fine. The only clear way for Plaintiffs to stop the fines was to leave the city.

82. Violators faced fines of \$350 to \$3,500 per week if they were unable or unwilling to leave the city. Even at the minimum daily fine amount of \$50, after only five months, the total amount in fines would reach the \$7,500 minimum trailer value required by the Ordinance.

83. The people targeted by this Ordinance, those living in mobile homes worth less than \$7,500, are necessarily some of McCrory’s poorest residents. Fining residents for living in homes of insufficient value amounts to an impermissible punishment for being poor.

84. Poverty is not a crime. Any fine for the status of being poor is impermissible, thus rendering a fine in any amount disproportionate to the crime under the Eighth Amendment.

85. The Ordinance’s punitive fee structure has a sole purpose: to force poor residents to leave the city. The mandated excessive fines violate the Eighth Amendment.

F. Defendants’ Wealth-Based Banishment Scheme Violated Procedural Due Process by Providing No Process at All

i. The Fines and Banishment Threatened by the Ordinance Against Residents Who Did Not Comply with the \$7500 Value Requirement Amounted to Punishments and Therefore Could Not Be Imposed Without Due Process of

Law

86. Where a statute employs a sanction as a punishment, it must afford procedural safeguards guaranteed by the Fifth and Sixth Amendments to the Constitution.

87. The text of the Ordinance makes its punitive intent clear. It declares violations of its provisions “punishable” by hefty fines.

88. The Ordinance does not explain who is responsible for enforcing its provisions, such as identifying violations or determining the amount of the mandated fine.

89. Here, Defendant Hatch, the McCrory Police Chief, enforced the ordinance against the Plaintiffs, demonstrating the criminal nature of the Ordinance.

90. Violators of the \$7500 value requirement faced one of two consequences: They could pay a fine of \$50 to \$500 for every day that they were in violation, or they could be forced out of the city. Both of these consequences involve affirmative disability and restraint.

91. Defendants attempted to prohibit Plaintiffs from living in the only home they can afford.

92. Mr. Watlington was restrained from living in the same city as his four children. He was restrained from living in the same county as his parents and other close relatives who can help him with transportation.

93. Ms. Hollaway was being restrained from living in the same city as her current place of employment.

94. Banishment is a form of punishment so extreme that the Arkansas Constitution prohibits it at the state level. Banishment as a regulatory measure is inconceivable; it is punitive by its very nature, and banishment has historically been regarded as punishment.

95. Fines — especially in the excessive range allowed by the Ordinance — are also

historically regarded as punishment.

96. The fine-based enforcement scheme of the Ordinance is meant to deter because it imposes a new fine for every day of noncompliance. This makes it virtually impossible for anyone to remain noncompliant for longer than a short period.

97. The severity of the fines serves both a retributive and deterrent purpose. The fines are so high that they punish indigent residents for remaining in McCrory and deter future indigent residents from moving into the City.

98. The Trailer-Banishment Ordinance threatened all poor mobile home residents regardless of their financial ability to increase the value of their homes, the hardship they may face in being forced to move, or any other relevant factors. This blanket, wealth-based application indicates retributive effect.

99. The sanctions imposed by the Ordinance were not rationally related to any government interests beyond retribution, deterrence, and discrimination.

100. Banishment is an impermissible, irrational, and excessive measure unrelated to the purported government interests, and the fine scheme is excessive in that it is both unlimited and vulnerable to abuse of discretion.

ii. The Banishment Ordinance Provides No Criminal Process at All

101. As a criminal provision that imposes punishment, the Ordinance's lack of any criminal process whatsoever is unconstitutional.

102. The Ordinance does not require indictment by a grand jury.

103. The Ordinance does not guarantee a right to counsel for those who face banishment or fines.

104. The Ordinance does not require a hearing before banishment or fines are imposed.

105. The Ordinance does not provide for appeal of an enforcer's decision to banish or fine a resident.

iii. Even If the Trailer-Banishment Ordinance's Sanctions Were Civil, It Would Still Lack Sufficient Process to Deprive Violators of a Protected Property Interest

106. Assessing fines or forcing banishment both implicate "property rights," and therefore due process of law is required before the City can force a citizen to leave because his or her home is of insufficient value.

107. A leasehold is a property right that would be destroyed if the tenant were forced to leave the city.

108. The Ordinance makes no provision for due process of law.

109. The Ordinance has no specified notice requirement.

110. The Ordinance has no mention of any opportunity to remediate by increasing the value of the mobile home.

111. The Ordinance has no mention of any right to appeal.

112. The City of McCrory cannot deny a person's right to choose to live within the city when that person's only offense is being poor. This amounts to banishment without any safety justification.

G. Plaintiffs Incurred Monetary and Emotional Damages as a Result of Defendants' Enforcement of the Trailer-Banishment Ordinance

113. As a direct result of Chief Hatch's enforcement of the Trailer-Banishment Ordinance, Plaintiffs were forced to expend a significant portion of their limited funds on a search for a new place to live.

114. Plaintiffs suffered emotional distress due to the fear and embarrassment of being forced out of their home.

115. After Defendant Hatch's warning to Mr. Watlington, Plaintiffs desperately attempted to find a new home in a sparsely-populated region, a difficult task that cost them at least several hundred dollars.

116. Plaintiffs drove a total of approximately 1,000 miles in their search for a new place to live, incurring costs for gas and repair of two tire blowouts while they were driving around the state searching for a new place to live.

117. After Defendant Hatch gave his ultimatum in December 2016, the search became more urgent and Ms. Hollaway lost two days' wages from missed work.

118. Since the passage of the Ordinance, Plaintiffs suffered approximately \$200 in lost wages, more than \$600 in transportation expenses searching for a new home, and costs in replacing two tires.

119. Additionally, Defendants' passage and enforcement of the Trailer Banishment Ordinance was part of a concerted campaign to force Mr. Watlington and Ms. Hollaway out of McCrory, which has included police intimidation, arrests, and prolonged jail time due to deliberate administrative delay.

120. During the time Plaintiffs have lived in and around McCrory, the police have ticketed or arrested Mr. Watlington for twenty-one infractions and misdemeanors. Many of these charges have been immediately dismissed, and Mr. Watlington has never been charged with a violent offense or a felony.

121. On information and belief, the Trailer Banishment Ordinance was not enforced against any other individuals in McCrory.

122. Given Plaintiffs' reasonable belief of targeted harassment, Defendants' enforcement of the Trailer Banishment Ordinance caused significant emotional distress in

Plaintiffs. Mr. Watlington has incurred medical expenses as a result of his emotional distress.

123. Due to the overwhelming fear of arbitrary arrests and banishment, Mr. Watlington experienced a breakdown and had to spend three hours with a counselor. The counselor prescribed Mr. Watlington medicine used to treat anxiety and referred him to a specialist who prescribed him blood pressure medication, as his blood pressure had gone up since his conflict with McCrory authorities began.

124. In addition to severe stress, Mr. Watlington also experienced extreme embarrassment as a result of the wealth-based banishment ordinance. Mr. Watlington moved to McCrory to work in the community and spend time with friends and family. After the passage of the ordinance, he felt he was “too poor” to live in his home town and, despite the fact that he had never committed a violent offense in his life, was somehow seen as the town menace. His inability to find work undermined his sense of self-worth, and he worried about how his legal troubles would affect his children’s perception of him. He was embarrassed to be so fearful of authorities.

Claims for Relief

Count One: Defendants Violated Plaintiffs’ Substantive Due Process Rights by Banishing Them Because They Live in a Mobile Home Valued at Less than \$7,500.

125. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

126. The Fourteenth Amendment’s Substantive Due Process Clause prohibits Defendants from banishing Plaintiffs from their home simply because it is worth less than \$7,500. Plaintiffs have a fundamental right to be free from government expulsion absent exceptional circumstances such as conditional parole, pardon, or regulatory sex-offender registration requirements. Defendants violated this right by enforcing an ordinance against the

Plaintiffs in order to banish them from the City.

Count Two: Defendants Violated Plaintiffs' Equal Protection Rights by Discriminating on the Basis of Wealth Status Without Any Rational Connection to a Legitimate Government Interest.

127. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

128. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination that is not rationally related to a legitimate government interest. There is no legitimate government interest that is rationally served by the requirement that every mobile home in the City be worth at least \$7,500. The Trailer-Banishment Ordinance lists four justifications for its passage: (1) relief of overcrowding, (2) promotion of orderly growth, (3) health, and (4) notification to builders. Each of these purported justifications is pretext for animus and banishment based on wealth-status. The Ordinance says nothing about justifying the minimum required cost of a trailer home, instead stating that its justifications are based on “a need to regulate the placement of trailers.” No justification is given for the wealth-based provision, nor can one reasonably be given.

Count Three: Defendants Violated the Constitution's Proscription Against Criminalization of Status by Criminalizing Poverty.

129. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

130. The United States Constitution prohibits the criminalization of a status, such as poverty. The Trailer-Banishment Ordinance unconstitutionally penalized people simply for being poor.

Count Four: Defendant City of McCrory's Ordinance Violated the Eighth Amendment's Prohibition Against Excessive Fines on Its Face.

131. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

132. The Eighth Amendment prohibits the City of McCrory from imposing excessive fines on residents that are disproportionate to the alleged misconduct. McCrory's ordinance provided for fines of up to \$500 per day for living in a trailer with an insufficient appraised value, thereby imposing an excessive punishment simply for being poor.

Count Five: Defendants Violated Plaintiffs' Procedural Due Process Rights Because They Attempted to Banish Them from McCrory Without Any Procedural Safeguards at All.

133. Plaintiffs incorporate by reference each and all of the previous allegations in this complaint.

134. The Fourteenth Amendment's procedural due process clause requires that no person be restrained or deprived without proper procedural safeguards, which include in the criminal context the protections of the Fifth, Sixth, and Eighth Amendment of the Bill of Rights. In a civil framework, the government must provide, at a minimum, notice and hearing before taking adverse action. Defendants violated Plaintiffs' procedural due process rights by trying to force them to move from McCrory with no process whatsoever, including lack of formal notice, a hearing, a meaningful opportunity to be heard and present a defense, or appeals process.

Request for Relief

WHEREFORE, Plaintiffs request that this Court issue the following relief:

- a. A declaratory judgment that the Defendants violated Plaintiffs' constitutional rights by attempting to banish them from the City of McCrory solely because their mobile home is worth less than \$7,500.
- b. An order declaring that McCrory's Trailer-Banishment Ordinance was facially unconstitutional because it enacts a wealth-based banishment scheme.
- c. An order and judgment preliminarily and permanently enjoining Defendants from enforcing their unconstitutional wealth-based banishment scheme against

Plaintiffs, including all efforts to force Plaintiffs to leave McCrory.

- d. An order and judgment preliminarily and permanently enjoining Defendants from banishing or imposing fines upon any person due to his or her residence in a mobile home valued at less than \$7,500.
- e. A judgment compensating Plaintiffs for the damages that they suffered as a result of Defendants' unconstitutional and unlawful conduct.
- f. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and any other relief this Court deems proper.

Respectfully submitted,



Phil Telfeyan
Attorney, Equal Justice Under Law
601 Pennsylvania Avenue NW
South Building — Suite 900
Washington, D.C. 20004
(202) 505-2058
ptelfeyan@equaljusticeunderlaw.org

John D. Coulter (AR Bar Number 98148)
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
(501) 396-5400
john@mcmathlaw.com

*Attorneys for Plaintiffs David Watlington and
Lindsey Hollaway*

CERTIFICATE OF SERVICE

I certify that on June 16, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all attorneys-of-record in this case.

*/s/ Phil Telfeyan
Attorney for Plaintiffs*