

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

MICHELLE FREENOR, STEVEN  
FREENOR, DAN LEGER, JEAN  
SODERLIND, and GHOST TALK,  
GHOST WALK LLC,

*Plaintiffs,*

v.

MAYOR AND ALDERMEN OF  
THE CITY OF SAVANNAH,

*Defendant.*

Civil Action No. 4:14-cv-00247-WTM-GRS

**PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56, Plaintiffs Michelle Freenor and Dan Leger hereby move for entry of summary judgment awarding \$10 each in compensatory damages for the violation of their First Amendment rights. In support of this motion, Plaintiffs state as follows:

1. On July 30, 2015, Plaintiffs filed a Motion for Summary Judgment in this case, requesting injunctive and declaratory relief, as well as an award of \$1 in nominal damages for the violation of Plaintiffs' First Amendment rights. *See* Doc. 30. This first Motion for Summary Judgment has not been ruled on by the Court and therefore remains pending.

2. In the time that Plaintiffs' first Motion for Summary Judgment has been pending, two developments have arguably affected this Court's jurisdiction. First, on October 15, 2015, the City amended its ordinances to eliminate the challenged requirement that tour guides obtain a license before leading tours. *See* Doc. 46 at 1. Second, on August 23, 2017, the Eleventh Circuit

decided *Flanigan's Enterprises, Inc. v. City of Sandy Springs*, 868 F.3d 1248 (11th Cir. 2017) (en banc), holding that a claim for nominal damages alone is not sufficient to save a constitutional case from mootness.

3. In order to avoid any question of mootness, Plaintiffs sought leave to amend their Complaint to add a prayer for \$10 in compensatory damages. *See* Doc. 59. The Court granted that motion on September 20, 2017. *See* Doc. 63. Plaintiffs filed their Amended Complaint later that same day. *See* Doc. 64. The City filed its Answer to Plaintiffs' Amended Complaint on October 4, 2017. *See* Doc. 65.

4. Plaintiffs' Amended Complaint differs from Plaintiffs' initial Complaint only in one respect: Plaintiffs now seek \$10 in compensatory damages on behalf of Michelle Freenor and Dan Leger, in order to compensate those Plaintiffs for fees that they were required to pay in order to obtain their tour guide licenses. *See* Doc. 64 at 22 ¶ G.

5. Because Plaintiffs' first Motion for Summary Judgment sought only nominal damages, in addition to injunctive and declaratory relief, Plaintiffs are filing this Second Motion for Summary Judgment to conform the summary judgment briefing with the prayer for relief in their Amended Complaint. Plaintiffs therefore incorporate in full the Memorandum that accompanied their first Motion for Summary Judgment—as well as the accompanying Declarations, Exhibits, and Statement of Undisputed Material Facts—and seek summary judgment for all the reasons set forth in that Memorandum. *See* Docs. 30, 31, 35. In addition, Plaintiffs now also request \$10 in compensatory damages.

6. There is no dispute that Michelle Freenor and Dan Leger actually incurred \$10 in compensatory damages. In Plaintiffs' Statement of Undisputed Material Facts, accompanying their first Motion for Summary Judgment, Plaintiffs stated that “Michelle Freenor and Dan Leger

are required to renew their licenses on an annual basis,” which “entails paying a \$10 fee licensing to the City.” Doc. 31 at 15 ¶ 64; *see also* Doc. 30-1 at 1-2 ¶ 4 (Declaration of Dan Leger); Doc. 30-2 at 1-2 ¶ 4 (Declaration of Michelle Freenor). In its response, the City stated that these facts “are not disputed.” Doc. 41-1 at 16 ¶ 64.

7. This Court should therefore enter summary judgment for Plaintiffs, awarding both Michelle Freenor and Dan Leger \$10 in damages as compensation for the fees that they paid for their most recent annual license renewal. After all, if the government cannot constitutionally license tour guides’ speech, then the fees that the government imposed to obtain such a license must be returned.

8. This Motion for Summary Judgment is intended to supplement—not supplant—Plaintiffs’ first Motion for Summary Judgment. Plaintiffs’ separate First Amendment challenge to the City’s tax on tour guides is not moot, as the City continues to impose that tax today. *See* Doc. 52 at 2. In addition, Plaintiffs’ claim for nominal damages *in addition* to compensatory damages is not moot. *See Flanigan’s Enterprises*, 868 F.3d at 1270 n.23 (“We hold only that a prayer for nominal damages does not, *by itself*, save from mootness an otherwise moot case.” (emphasis added)). Plaintiffs continue to seek all the relief requested in their first Motion for Summary Judgment—to the extent that relief is not moot—in addition to the compensatory damages sought by this additional Motion for Summary Judgment.

### CONCLUSION

For the foregoing reasons, and for all the reasons stated in Plaintiffs’ Memorandum in support of their first Motion for Summary Judgment, this Court should grant summary judgment for Plaintiffs.

Dated this 5th day of October, 2017.

Respectfully submitted,

**s/ Anne W. Lewis**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of October, 2017, a true and correct copy of the foregoing motion was electronically filed using the court's CM/ECF system which will automatically send email notification of such filing to the following counsel of record:

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