

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

FREEDOM FROM RELIGION  
FOUNDATION, INC. et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 1:17-00642

MERCER COUNTY BOARD OF  
EDUCATION et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

By Memorandum Opinion and Order dated March 31, 2020, the court granted defendants' Motion to Dismiss the Amended Complaint insofar as it sought injunctive relief. Defendants also sought dismissal of plaintiffs' claims for nominal damages. However, given plaintiffs' failure to address defendants' argument that plaintiffs' claims for nominal damages could not save this action from mootness, the court gave plaintiffs an opportunity to file a brief addressing this argument. Plaintiffs did so on April 8, 2020. (ECF No. 126).

The court has considered the parties' submissions on the issue, as well as the relevant case law. Having done so, the court concludes that plaintiffs' nominal damages claims survive dismissal. See Mellen v. Bunting, 327 F.3d 355, 365 (4th Cir. 2003) ("Although the Plaintiffs' claims for declaratory and injunctive relief are moot, their damage claim continues to

present a live controversy."); American Humanist Ass'n v. Greenville Cty. Sch. Dist., 653 F. App'x 224, 231 (4th Cir. June 21, 2016) ("The plaintiffs' claim for nominal damages based on a prior constitutional violation is not moot because the plaintiffs' injury was complete at the time the violation occurred."); see also Moss v. Spartanburg County School Dist. No. 7, 775 F. Supp.2d 858, 870 n.6 (D.S.C. 2011) (noting that although plaintiff's claim for declaratory relief was moot, her claim for nominal damages remained viable).\*

The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record.

IT IS SO ORDERED this 20th day of May, 2020.

ENTER:



David A. Faber  
Senior United States District Judge

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\* Defendants' argument that plaintiffs have failed to state a claim is denied. Defendants' arguments for dismissal based upon the statute of limitations and qualified immunity are denied at this juncture but, if appropriate, may be raised in a summary judgment motion.