

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01308-RBJ-KLM

FREE THE NIPPLE – FORT COLLINS,
BRITTIANY HOAGLAND,
SAMANTHA SIX,

Plaintiffs,

v.

CITY OF FORT COLLINS, COLORADO,

Defendant.

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE
LIMIT FOR REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendant City of Fort Collins, Colorado (“the City”), by its attorneys, Andrew D. Ringel, Esq., Gillian Dale, Esq., and Christina S. Gunn, Esq., of Hall & Evans, LLC, and Carrie Mineart Daggett, Esq., and John R. Duval, Esq., of the Fort Collins City Attorney’s Office, hereby submits this Unopposed Motion for Leave to Exceed Page Limit for Reply in Support of Motion to Dismiss, as follows:

1. Certificate of Conferral: Pursuant to D.C.COLO.LCivR 7.1(A), the undersigned counsel contacted counsel of record for Plaintiffs, Andrew McNulty, and is authorized to state that Plaintiffs do not oppose this Motion.

2. This Court’s Practice Standards limit replies to five pages, absent an exception for good cause shown. [Practice Standards, p. 2]. While counsel for the City understands and appreciates this Court’s preference for short briefs, the number and complexity of the issues

raised in the Motion to Dismiss warrant a more thorough explanation than can be accomplished within this Court's page limits for reply briefs.

3. Plaintiffs filed their Response to Defendant's Motion to Dismiss (the "Response") on September 1, 2016. [ECF 31]. The Response is 15 pages long, but also incorporates the arguments and authorities from the Motion for Preliminary Injunction, [ECF 2], which is 18 pages long, and the Reply to Defendant's Response to Plaintiff's Motion for Preliminary Injunction, [ECF 30], which is 8 pages long. [ECF 31 at p.1 n.1]. As a result, the Reply must in essence address a 41-page brief.

4. The Complaint brings three claims for relief, two federal constitutional claims and one state constitutional claim, and the Motion to Dismiss raises arguments for dismissal of each of these claims. The Response addresses the City's arguments and raises additional arguments in opposition to dismissal. The Response alone cites to 34 cases in the substantive discussion (not counting the standard of review section), and while not all of them must be individually addressed, several require discussion of the facts to demonstrate they are not applicable.

5. The Reply will address arguments regarding whether the issues raised are appropriately addressed on a Motion to Dismiss; whether the appropriate standard of review is the strict scrutiny applicable to content based regulations or the *O'Brien* test applicable to expressive conduct; whether Plaintiffs' proposed conduct is protected speech in that it conveys a particularized message the viewer would be likely to understand; whether the ordinance furthers an important or substantial governmental interest (requiring individual attention to each of five interests proclaimed to support the ban); whether the ordinance is unrelated to the suppression of free expression; whether the incidental restriction on First Amendment freedoms is no greater

than necessary to further the governmental interest at stake; whether the ordinance's gender classification serves important government objectives and is substantially related to achievement of those objectives; and whether the ordinance violates Colorado's Equal Rights Amendment.

6. The City is incorporating its prior argument and authority whenever possible, but in addition to addressing the multitude of arguments raised by Plaintiffs within each of these topics, the Reply must also present additional case authority the City believes is more closely analogous than Plaintiffs' authority. The City believes the length of the Reply is necessary and appropriate to provide an adequate understanding and record for this Court's consideration of all of the issues raised by the parties.

7. In light of the foregoing, the City requests leave to file a Reply in Support of Motion to Dismiss of no more than 19 pages. The undersigned counsel apologizes for not filing this Motion in advance of the Reply, but because the Reply was not finalized until its due date it was unclear how many additional pages would need to be requested.

WHEREFORE, Defendant the City of Fort Collins, Colorado respectfully requests this Court issue an Order granting it leave to exceed the page limit for its Reply in Support of Motion to Dismiss, and file a brief of no more than 19 pages.

Respectfully submitted this 3rd day of October, 2016.

/s/ Gillian Dale

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 3rd day of October, 2016, I electronically filed the foregoing **DEFENDANT'S UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMIT FOR REPLY IN SUPPORT OF MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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**ORDER GRANTING DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO
EXCEED PAGE LIMIT FOR REPLY IN SUPPORT OF MOTION TO DISMISS**

This matter comes before the Court on the Unopposed Motion for Leave to Exceed Page Limit for Reply in Support of Motion to Dismiss filed by Defendant City of Fort Collins, Colorado (“the City”). Having reviewed the Motion, and being fully advised in the premises, the Court hereby **GRANTS** the Motion. The City may file a reply brief of no more than 19 pages.

Dated this _____ day of October, 2016.

United States District Judge