

DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2762 Telephone: (970) 498-6100	DATE FILED: October 12, 2020 9:26 PM FILING ID: 7AF6D06FF61E9 CASE NUMBER: 2020CV30580
Plaintiff: THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, v. Defendants: BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO; STREETMEDIAGROUP, LLC	▲ COURT USE ONLY ▲
Attorneys for Defendant, StreetMediaGroup, LLC: Todd G. Messenger, Reg. No. 38783 Andrew J. Helm, Reg. No. 47548 FAIRFIELD AND WOODS, P.C. 1801 California Street, Suite 2600 Denver, CO 80202 Telephone: (303) 830-2400 Facsimile: (303) 830-1033 E-Mail: tmessenger@fwlaw.com; ahelm@fwlaw.com	Case Number: 2020CV030580 Division: 4B
DEFENDANT STREETMEDIAGROUP, LLC'S RESPONSE TO MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTION TO DISMISS	

Defendant StreetMediaGroup, LLC (“StreetMedia”), through its undersigned counsel, Fairfield and Woods, P.C., and pursuant to C.R.C.P. 12(b)(1), hereby submits this Response to Plaintiff City of Fort Collins, Colorado’s (“Fort Collins”) Partially Unopposed Motion for Extension of Time to Respond to Motion to Dismiss and states as follows:

1. StreetMedia is sensitive to the press of business described by counsel for Fort Collins. As such, and as described in Fort Collins’ Motion, StreetMedia does not oppose an extension of seven days in which to respond to the Motion to Dismiss, as this should be more than sufficient time for Fort Collins’ counsel to rearrange necessary workloads or enlist the help of one of the two other attorneys that entered their appearances in this matter.

2. StreetMedia respectfully submits that an extension of ten days would lengthen the original time for response to StreetMedia’s motion under C.R.C.P. 121 § 1-15 by approximately 50 percent. While such an extension of time may be granted (and agreed to among the parties without issue as a professional courtesy) in a typical case, this case is not typical.

3. The central questions raised in the Motion to Dismiss are neither complicated nor novel: does Fort Collins have standing to bring its Complaint, and, if so, was that Complaint timely? Colorado appellate courts have thoroughly considered the issues of standing and timeliness for a C.R.C.P. 106 action. Indeed, these threshold jurisdictional inquiries are part of the legal due diligence that is expected of Colorado attorneys before they file a complaint.

4. Fort Collins’ Complaint also challenges the free speech rights of StreetMedia, a private party. *See Mahaney v. Englewood*, 226 P.3d 1214, 1219 (Colo. App. 2009) (“Signs constitute speech protected by the First Amendment.”). By its nature, this case has a chilling effect on StreetMedia’s free speech rights. Consequently, timely briefing on the Motion to Dismiss is important to the prompt judicial review that the context requires. *See id.*, *Freedman v. Maryland*, 380 U.S. 51, 59 (with regard to restraints on free speech, “the procedure must also assure a prompt final judicial decision . . .”).

5. StreetMedia respectfully submits that where the government attacks private free speech rights, the courts should frown upon requests for extension of time that are for the convenience of the government and at the expense of the party whose free speech rights are at issue. *See Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 560 (1975) (“a prompt final judicial determination must be assured.”); *cf. Sign Here Petitions, LLC v. Chavez*, 403 P.3d 457, 460 (Az. Ct. App. 2017) (“the . . . court must act as a gatekeeper protecting the right to free speech from meritless litigation to avoid a chilling effect on free expression.”)

6. The effect of a seven-day extension is that the Motion to Dismiss will be fully briefed and in front of this Court for determination no later than October 27, 2020. The ten-day extension requested by Fort Collins would set that date at October 30, 2020, with the final reply brief realistically not reaching the Court until the following Monday, November 2, 2020.

7. With the current briefing schedule set by this Court, Fort Collins' opening brief is due November 27, 2020.

8. As such, even with a seven-day extension, the Court will have just one month to review the briefing and issue a decision on the pending Motion to Dismiss before the defending parties must begin the preparation of their responsive briefs.

9. The drafting of responsive briefs in a Rule 106 case takes considerable time and financial resources that StreetMedia should not be called upon to expend if (as StreetMedia has alleged in its motion, with citations to controlling authority) Fort Collins is not a proper party or its Rule 106 Complaint was untimely.

10. Prompt briefing that allows for a prompt decision on the Motion to Dismiss is therefore critical to avoid this prejudice.

WHEREFORE, StreetMediaGroup, LLC respectfully requests that this Court deny Fort Collins' request for an additional ten days in which to respond to the Motion to Dismiss, instead grant an extension of seven days or less, and issue any other relief the Court deems just and proper.

DATED this 12th day of October, 2020.

FAIRFIELD AND WOODS, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2020, I filed the foregoing with the Clerk of the Court using Colorado Courts E-Filing. I further certify that a copy of the foregoing was sent via Colorado Courts E-Filing to the following:

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