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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

FIRST UNITARIAN CHURCH OF SALT LAKE  
CITY; UTAHNS FOR FAIRNESS; UTAH  
NATIONAL ORGANIZATION FOR WOMEN;  
AND CRAIG AXFORD

Plaintiffs,

v.

SALT LAKE CITY CORPORATION, a  
municipal corporation,

Defendant,

CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS,

Intervenor.

**PLAINTIFF'S REPLY TO  
DEFENDANT'S RESPONSE TO  
REQUEST FOR ENTRY OF  
JUDGMENT**

**Civil No. 2:99CV-0921ST**

In its opinion reversing this Court's decision in this matter and remanding for entry of judgment in favor of Plaintiffs, the Tenth Circuit Court of Appeals characterized the issue in this case as "whether the City has the authority to prohibit all expressive activities on a public easement it reserved across otherwise private property, except for the speech permitted by the private owner of the underlying estate." *First Unitarian Church v. Salt Lake City Corporation*, 308 F.3d 1114, 1120 (10 Cir. 2002). Addressing that issue, the Tenth Circuit unequivocally stated: "We hold here that the City, not the Church, has responsibility for regulating speech on the easement." *Id.* at 1132.

Demonstrating either a complete misunderstanding or a shocking disregard for the Tenth Circuit's ruling, Defendant's Response to Request for Entry of Judgment suggests that this Court not only ignore the Tenth Circuit's mandate but also allow the City to avoid its constitutional responsibility, arguing that no action by this Court is necessary because Intervenor "has voluntarily allowed First Amendment activity to occur on the Main Street Plaza. . . ." Notwithstanding the Tenth Circuit's clear holding, Defendant apparently continues to think it is up to the Church, not the City, to decide whether and on what terms to "allow" constitutionally protected activity on the Main Street Plaza. Defendant's response underscores the need for an immediate injunction in this matter.

With all due respect, Plaintiffs fail to take comfort in the fact that the Church "has voluntarily allowed" people to exercise the rights that Plaintiffs secured in this litigation, and they are greatly distressed that the City has, by its own admission, not yet taken any steps to fulfill its constitutional responsibility to regulate the Plaza. To the contrary, as it seeks to find a way to relieve the Church from the consequences of a

bargain it freely entered, the City apparently refuses to exercise any control on the Plaza, preferring instead to allow even illegal conduct to occur. *See* “Plaza noise not protected speech,” *The Salt Lake Tribune*, January 9, 2003, attached (indicating that the City intends, at some point in the indefinite future, to “write guidelines on how to enforce existing city codes on the plaza,” but so far is allowing conduct that arguably violates numerous City ordinances for fear it might be sued). The City and the Church both appear to be content to allow any and all conduct on the Plaza so that they can convince the public that holding the Church to its bargain and requiring the City to regulate speech on the Plaza in accordance with its constitutional responsibilities is somehow not feasible. But that is exactly what the Tenth Circuit’s mandate requires the City to do, and there is absolutely no basis for the City’s argument that it should not be legally compelled to do what it has so far declined to do notwithstanding the Tenth Circuit’s reprimand.

Plaintiffs respectfully insist that the City immediately be instructed once again, in the form of an injunction as requested by Plaintiffs and already ordered by the Tenth Circuit, to honor its constitutional responsibility to regulate First Amendment activity on the Plaza rather than simply standing idly by and relying on the Church’s “voluntary” decision to “allow” such activity. The Tenth Circuit’s mandate is clear. The relief to which Plaintiffs are entitled is clear. This Court does not have the option of ignoring the Tenth Circuit’s mandate and denying or delaying the relief to which Plaintiffs are immediately entitled. The City’s failure to understand, let alone fulfill, its constitutional responsibilities in the wake of the Tenth Circuit’s decision only underscores the necessity that Plaintiffs immediately be granted the relief to which they are entitled. If the City or the Church come to believe, based on subsequent developments that at this point are

purely hypothetical, that there are grounds for modifying or dissolving the injunction requiring the City to enforce constitutionally permissible time, place and manner regulations on the Plaza, they can pursue an appropriate motion in due course. But that in no way justifies denying or delaying full compliance with the Tenth Circuit's mandate or withholding the relief to which Plaintiffs are currently and immediately entitled.

Dated: January 10, 2003

Respectfully Submitted,

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By: \_\_\_\_\_  
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**Certificate of Service**

I hereby certify that on this 10<sup>th</sup> day of January, 2003, I caused to be mailed, via United States mail, postage prepaid, a true and correct copy of the foregoing

**PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO REQUEST FOR ENTRY OF JUDGMENT** to the following:

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