

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, SOUTHERN REGION**

SOUTHERN UTAH DRAG STARS;

MITSKI AVALÖX,

Plaintiffs,

v.

CITY OF ST. GEORGE;

COUNCILMEMBER JIMMIE HUGHES, in his official
capacity;

COUNCILMEMBER DANNIELLE LARKIN in her
official capacity;

COUNCILMEMBER NATALIE LARSEN in her
official capacity;

COUNCILMEMBER GREGG MCARTHUR in his
official capacity;

COUNCILMEMBER MICHELLE TANNER in her
official capacity;

MAYOR MICHELE RANDALL in her official
capacity;

CITY MANAGER JOHN WILLIS in his official
capacity,

Defendants.

Case No. 4:23-cv-00044-DN-PK

**NOTICE OF SUPPLEMENTAL
AUTHORITY PURSUANT TO LOCAL
RULE 7-1(c)**

Pursuant to Rule 7-1(c) of the Local Civil Rules of the United States District Court for the District of Utah, Plaintiffs Southern Utah Drag Stars and Mitski Avalōx (together, “Plaintiffs”) submit this Notice of Supplemental Authority in connection with the Motion for Partial Summary Judgment currently pending in this matter.¹

On March 19, 2024, the Supreme Court issued a unanimous decision in *Federal Bureau of Investigation v. Fikre*,² holding that claims for declaratory and injunctive relief were not moot where the government claimed to have ceased the challenged conduct, but retained the authority to renew it. The opinion in *Fikre* is highly relevant to the partial summary judgment motion currently pending before this Court, in which Defendants assert that Plaintiffs’ claims for non-monetary relief are moot in their entirety “because Plaintiffs held their event on June 30, 2023,” because “Plaintiffs have not [yet] filed any additional permit applications,” and because Defendants have repealed the ordinance they invoked to deny Plaintiffs’ special event permit.³

In *Fikre*, the plaintiff alleged that he had been placed on the No Fly List “for constitutionally impermissible reasons” and “sought a declaratory judgment confirming that the government had violated his rights, as well as an injunction prohibiting it from keeping him on the No Fly List.”⁴ The federal government then removed the plaintiff from the No Fly List and “argued that its administrative action rendered his lawsuit moot.”⁵ The government also provided a declaration representing that the plaintiff “will not be placed on the No Fly List in the future based on the currently available information.”⁶

¹ ECF No. 83.

² 144 S. Ct. 771 (Mar. 19, 2024).

³ ECF No. 83 (Defs.’ Motion for Partial Summary Judgment) at 7-11; *see also* ECF No. 91 (Pls.’ Opposition to Defs.’ Motion) at 16-26; ECF No. 94 (Defs.’ Reply in Support of Motion) at 10-17.

⁴ *Fikre*, 144 S. Ct. at 776.

⁵ *Id.*

⁶ *Id.*

The Supreme Court unanimously held that it was “‘impossible to conclude’ the government has so far ‘borne [its] burden’ of proving that this dispute is moot.”⁷ The Court made that determination because “none of [the factual allegations submitted by the government] speaks to whether the government might relist [the plaintiff] *if he does the same or similar things in the future*—say, attend a particular mosque or refuse renewed overtures to serve as an informant.”⁸ Similarly, it did not matter that the government had not renewed its challenged actions during the long pendency of the case, or what the plaintiff may have been doing in the interim.⁹

In all cases, it is the defendant’s ‘burden to establish’ that it cannot reasonably be expected to resume *its* challenged conduct—whether the suit happens to be new or long lingering, and whether the challenged conduct might recur immediately or later at some more propitious moment. Nothing the government offers here satisfies that formidable standard.¹⁰

Fikre’s analysis thus illuminates legal principles at issue in the pending motion, and requires that Defendants’ mootness claim be rejected.

⁷ *Id.* at 779 (quoting *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224 (2000) (per curiam)).

⁸ *Id.* at 778 (emphasis added).

⁹ *Id.*

¹⁰ *Id.* (citation omitted) (quoting *West Virginia v. EPA*, 597 U.S. 679, 719 (2022)).

Dated: April 9, 2024

Respectfully submitted,

By: /s/ Jeremy Creelan

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. The electronic case filing system sent a “Notice of E-Filing” to all e-filing counsel of record in this case.

/s/ Jeremy Creelan