

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES HOUSE OF REPRESENTATIVES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:14-cv-01967-RMC
)	
SYLVIA MATHEWS BURWELL, in her official)	
capacity as Secretary of Health and Human Services, <i>et al.</i> ,)	
)	
Defendants.)	
)	

DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION TO STRIKE

The defendants have filed a short, three-page response to the plaintiff’s notice of new authority. The plaintiff has moved to strike this response, or, in the alternative, for leave to file a reply. The defendants respectfully oppose the plaintiff’s motion to strike. The defendants would consent to the plaintiff’s request for leave to file a reply in support of its notice, provided that such a reply is limited to three pages, that is, the length of the defendants’ filing.

1. On June 30, 2015, the plaintiff filed a notice of new authority, which discussed the decision that the Supreme Court had announced one day earlier in *Arizona State Legislature v. Arizona Independent Redistricting Commission* (“AIRC”), 135 S. Ct. 2652 (2015). (ECF 32.) The plaintiff’s filing included three pages of argument discussing why, in the plaintiff’s view, *AIRC* supported its claim to standing.

2. On July 17, 2015, the defendants filed a response to the plaintiff’s filing, which demonstrated that the plaintiff’s reliance on *AIRC* was in error. (ECF 36.) The defendants’ response was limited to three pages in length.

3. The plaintiff now moves to strike the defendants' response, asserting either that the response is unauthorized or that it is untimely. Both assertions are incorrect.

4. It is well established under local practice that a party may respond to an opposing party's filing of a notice of supplemental authority. *See Am. Forest Res. Council v. Ashe*, 946 F. Supp. 2d 1, 37 n.2 (D.D.C. 2013) (denying motion to strike document which "includes AFRC's response to FWS's notice of supplemental authority, which AFRC was entitled to file"), *aff'd*, 601 Fed. Appx. 1 (D.C. Cir. 2015); *Am. Chiropractic Ass'n v. Shalala*, 108 F. Supp. 2d 1, 9 n.7 (D.D.C. 2000) (denying motion to strike because "plaintiff's response falls within the scope of the [newly-issued] decision"), *rev'd in part*, 431 F.3d 812 (D.C. Cir. 2005).

5. The defendants' response was filed within 14 days of service of the plaintiffs' filing, and thus was timely. *See Fed. R. Civ. P. 6(d); Local Civil Rule 7(b)*.

6. The plaintiff also moves in the alternative for leave to file a reply in support of its notice of new authority. The plaintiff has already exercised its opportunity to present argument in its initial filing, and thus a reply would not be warranted. Nonetheless, as a matter of professional courtesy, the defendants would consent to the plaintiff's request for leave to file a reply, provided that such a reply is limited to three pages, that is, the length of the defendants' filing. The plaintiff has not offered any explanation as to why it believes a five-page reply would be necessary to address the defendants' three-page response.

WHEREFORE, the defendants respectfully oppose the plaintiff's motion to strike, and also respectfully state their consent to the plaintiff's alternative request for leave to file a reply in support of its notice of new authority, provided that such a reply is limited to three pages.

Dated: July 29, 2015

Respectfully submitted,

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