

MEMORANDUM OF POINTS AND AUTHORITIES

1. On June 1, 2015, this Court entered a Minute Order which provided in pertinent part as follows:

The parties are directed to . . . submit a stipulated record of the request(s), consideration, and funding decisions for Section 1401 and 1402 of the [ACA] in the FY 2014 Appropriations Bills If the parties wish to submit supplemental briefs with respect to the factual record and timeline, they should submit a joint proposed briefing schedule in conjunction with their submission of the record.

Minute Order (June 1, 2015).

2. The parties responded on June 15, 2015. *See* Joint Submission in Response to This Court's June 1, 2015 Minute Order (June 15, 2015) (ECF No. 30) ("Joint Submission"). In the Joint Submission, both parties articulated their views on supplemental briefing. *See id.* at 10-11 (defendants asked for 23 pages of supplemental briefing; House suggested 20 pages of supplemental briefing).

3. On June 16, 2015, the Court entered a second Minute Order which provided that

[N]o later than July 1, 2015, Defendants shall submit a supplemental memorandum of no more than 12 pages and Plaintiff shall also submit a supplemental memorandum of no more than 12 pages. Defendants may submit a supplemental reply, if any, of no more than 8 pages, no later than July 17, 2015, and Plaintiff may also submit a supplemental reply, if any, no later than July 17, 2015.

Minute Order (June 16, 2015). Thus, in pertinent part, this Minute Order rejected defendants' request for 23 pages of supplemental briefing.

4. On June 29, 2015, the Supreme Court issued its opinion in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. 13-1314, 2015 WL 2473452 (U.S. June 29, 2015). That opinion is relevant to the standing issue now before this Court because the

Supreme Court in *Arizona State Legislature* determined that the State Legislature had Article III standing. *See id.* at *8-10.

5. As a result, the House notified this Court the following day of the Supreme Court's decision in *Arizona State Legislature*. *See* Pl.'s Notice of New Authority (Jun. 30, 2015) (ECF No. 32). The Notice of New Authority, in keeping the practice of the courts in this district, was limited: it described the facts, explained the decision's relevance, and attached a copy of the opinion. *See, e.g.,* Mem. Op. & Order, *Sanders v. District of Columbia*, No. 06-cv-1411, at 1 (Nov. 6, 2014) (ECF No. 126) (“[I]n practice . . . this Court has allowed notices of supplemental authority to be filed without leave of court, provided that such notices are limited.”). Defendants did not object to the Notice of New Authority, nor did they respond to it in any timely manner.¹

6. Thereafter, the House discussed *Arizona State Legislature* in both of its supplemental filings. *See* [House's] Suppl. Mem. Concerning Defs.' Mot. to Dismiss, at 1, 10-11 (July 1, 2015) (ECF No. 33); [House's] Resp. to Defs.' Suppl. Mem., at 1 (ECF No. 37) (July 17, 2015).

7. Defendants also discussed *Arizona State Legislature* in both of their supplemental filings. *See* Defs.' Suppl. Mem. in Supp. of their Mot. to Dismiss the Compl., at 12 (July 1, 2015) (ECF No. 34); Defs.' Suppl. Reply Mem. in Supp. of their Mot. to Dismiss the Compl., at 6-8 (July 17, 2015) (ECF No. 35).

8. However, in blatant disregard of the briefing rules set out in the Court's June 16 Minute Order, defendants on July 17 also filed Defendants' Unauthorized Filing which contains *additional* substantive legal argument. Defendants did not seek leave of Court to file Defendants' Unauthorized Filing – their *third* supplemental filing and their *fifth* substantive pleading in support of their motion to dismiss.

¹ The House, earlier in this case, filed another notice of supplemental authority, also without objection. *See* Pl.'s Notice of Suppl. Authority (May 6, 2015) (ECF No. 29).

9. Defendants' Unauthorized Filing, which purports to be a response to the Notice of New Authority the House filed on June 30, was filed 17 days later, which is longer even than the Local Rules permit for the filing of an opposition to a motion. *Cf.* Local Rule 7(b).

10. Everything contained in Defendants' Unauthorized Filing could, and should, have been included in the two supplemental pleadings which were authorized by the Court's June 16 Minute Order.

11. Defendants' Unauthorized Filing is exactly three pages in length, which means that it effectively recaptures the three additional pages defendants requested, *see* Joint Submission at 10-11, but which the Court denied to them, *see* June 16 Minute Order.

12. Under these circumstances, the Court should strike Defendants' Unauthorized Filing. *See, e.g., Baptist Memorial Hosp. v. Sebelius*, 765 F. Supp. 2d 20, 31 (D.D.C. 2011) (striking unauthorized surreply); *U.S. ex. rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 238 F. Supp. 2d 270, 276-77 (D.D.C. 2002) ("A surreply may be filed only by leave of Court, *and only to address new matters raised in a reply, to which a party would otherwise be unable to respond.*" (emphasis added)); *Williams v. Court Servs. & Offender Supervision Agency for D.C.*, ___ F. Supp. 3d ___, 2015 WL 3876602, at *10 (Jun. 15, 2015) (striking unauthorized surreply). It is important that the Department of Justice be reminded that it, like all other litigants before this Court, must play by the rules, and is not entitled to make up its own rules.

13. In the event the Court determines not to strike Defendants' Unauthorized Filing, the House respectfully requests that it be permitted to respond by filing a reply, not to exceed five pages in length, no later than five business days after entry of the Court's order.

CONCLUSION

For the reasons stated above, the House respectfully requests that the Court (i) strike Defendants' Unauthorized Filing or, in the alternative, (ii) permit the House to file a reply.

Respectfully submitted,

/s/ Jonathan Turley

JONATHAN TURLEY

D.C. Bar No. 417674

2000 H Street, N.W.

Washington, D.C. 20052

(202) 285-8163

jturley@law.gwu.edu

KERRY W. KIRCHER, General Counsel

D.C. Bar No. 386816

WILLIAM PITTARD, Deputy General Counsel

D.C. Bar No. 482949

TODD B. TATELMAN, Senior Assistant Counsel

ELENI M. ROUMEL, Assistant Counsel

ISAAC B. ROSENBERG, Assistant Counsel

D.C. Bar No. 998900

KIMBERLY HAMM, Assistant Counsel

D.C. Bar No. 1020989

OFFICE OF GENERAL COUNSEL

U.S. HOUSE OF REPRESENTATIVES

219 Cannon House Office Building

Washington, D.C. 20515

(202) 225-9700

Counsel for Plaintiff U.S. House of Representatives

July 20, 2015

CERTIFICATE OF SERVICE

I certify that on July 20, 2015, I served one copy of the foregoing United States House of Representatives' Motion to Strike or, in the Alternative, for Leave to File a Reply to Defendants' Response to Plaintiff's Notice of New Authority via CM/ECF on all registered parties.

/s/ Sarah Clouse
Sarah Clouse

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

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UNITED STATES HOUSE OF REPRESENTATIVES,)	
)	
	Plaintiff,)	
)	
	v.)	Case No. 14-cv-01967-RMC
)	
SYLVIA MATHEWS BURWELL,)	
in her official capacity as Secretary of the United States)	
Department of Health and Human Services, et al.,)	
)	
	Defendants.)	
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[ALTERNATIVE PROPOSED] ORDER

UPON CONSIDERATION OF the United States House of Representatives’ Motion to Strike or, in the Alternative, for Leave to File a Reply to Defendants’ Response to Plaintiff’s Notice of New Authority (“Alternative Motion”), the opposition, if any, and the entire record here, it is by the Court this ___ day of July 2015, ORDERED

That the Alternative Motion is GRANTED. IT IS FURTHER ORDERED

That Plaintiff United House of Representatives may file a reply to Defendants’ Response to Plaintiff’s Notice of New Authority (July 17, 2015) (ECF No. 36), not to exceed five pages in length, no later than five business days from the date of entry of this Order.

HONORABLE ROSEMARY M. COLLYER
United States District Judge