

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

THE BUCKEYE INSTITUTE)	CASE NO: 20-CV-4301
)	
)	
Plaintiffs,)	
)	JUDGE WILLIAM WOODS
vs.)	
)	
KILGORE, Columbus City Auditor; et al.)	
)	
)	PLAINTIFFS' MOTION FOR
Defendants.)	FOR LEAVE TO FILE
)	<u>SUR-REPLY INSTANTER</u>

Plaintiffs respectfully move for leave to file a sur-reply to Defendant City Auditor Kilgore's ("the City's") Reply in support of her Motion to Dismiss. Plaintiffs proposed Sur-Reply is attached as Exhibit A to this Motion for filing instanter. While Plaintiffs are cognizant that sur-replies are typically disfavored, the City's Reply raises new arguments that go beyond rebuttal of the arguments made in the Plaintiffs' Brief in Opposition. Courts have held that in such cases, a sur-reply is not only appropriate, but necessary. *See, Vallejo v. Haynes*, 10th Dist. No. 17AP-372, 2018-Ohio-4623, 124 N.E.3d 322, ¶ 18 ("Allowing new arguments in a reply brief denies respondents the meaningful opportunity to respond. As we have stated, '[r]eply briefs are usually limited to matters in rebuttal, and a party may not raise new issues for the first time.'")(internal citations omitted).

The need for a sur-reply is heightened here because the new arguments raised by the City are contradicted by the plain language of the statutes on which the City relies. For all the foregoing reasons, Plaintiffs should be granted leave to file a sur-reply to address the City's new arguments.

Respectfully submitted,

/s/ Jay R. Carson

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CERTIFICATE OF SERVICE

The foregoing was served on all counsel of record via the Court's electronic filing system, this 23rd day of September 2020 and on Julie Pfeiffer, Ohio Attorney General's Office, 30 East Broad St., 14th Floor, Columbus, Ohio 43215, by regular U.S. Mail, postage prepaid.

/s/ Jay R. Carson

Counsel for Plaintiffs