

(ECF No. 32) (“House Notice”), was a motion to which those rules apply (and of course it was not).

Instead, defendants justify their Unauthorized Filing solely on the ground that it was permissible under “local practice.” It was not.

1. This argument is predicated on defendants’ contention that the House Notice contains “three pages of argument discussing why . . . [*Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652 (2015)] supported [the House’s] claim to standing.” Opp’n at 1. While the House disputes defendants’ contention that its Notice was argumentative, as opposed to factual and explanatory, the proper remedy if defendants’ believed otherwise would have been an objection or motion to strike. Defendants cannot excuse their own non-compliance with this Court’s June 16 Minute Order and the Local Rules by pointing fingers and saying “the House did it first.”

2. The cases defendants cite do not support their contention that local practice affirmatively establishes a right to file – in response to an ordinary notice of supplemental authority – a memorandum that contains additional substantive legal argument without leave of court.¹

3. On the other hand, courts readily strike unauthorized substantive pleadings that are filed under the guise of a “response” to a notice of supplemental authority. For example, in similar circumstances, Judge Kollar-Kotelly struck a “Response to . . . Notices of Supplemental Authority” because the response “amount[ed] in essence to a surreply” which “continue[d] arguing matters already addressed” in briefing. *Randolph v. ING Life Ins. & Annuity Co.*, 486 F.

¹ At best, the cases defendants cite permitted the filing of responses to notices of supplemental authority under circumstances, peculiar to those cases, not present here.

Supp. 2d 1, 9 n.5 (D.D.C. 2007); *see also Jerez v. Republic of Cuba*, 777 F. Supp. 2d 6, 10 & n.2 (D.D.C. 2011) (same). The same thing is true here, and the same result should obtain here.

CONCLUSION

For all the reasons given above and earlier, the House's Motion to Strike should be granted or, in the alternative, the House should be given an opportunity to reply to defendants'

Unauthorized Filing.

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

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CERTIFICATE OF SERVICE

I certify that on August 5, 2015, I served one copy of the foregoing United States House of Representatives' Reply in Support of its Motion to Strike via CM/ECF on all registered parties.

/s/ Sarah Clouse

Sarah Clouse