

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

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AMERICAN FREEDOM LAW		)	
CENTER, <u>et al.</u> ,		)	
		)	
Plaintiffs,		)	
		)	
v.		)	Civil Action No. 14-1143 (RBW)
		)	
BARACK OBAMA, in his official		)	
Capacity as President of the United		)	
States, <u>et al.</u> ,		)	
		)	
Defendants.		)	
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**ORDER**

Plaintiffs American Freedom Law Center and Robert Muise bring this civil action against the Departments of Health and Human Services, Treasury, and Labor, as well as a number of government officials in their official capacities, for violations of the Constitution and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), regarding the defendants’ implementation of certain provisions of the Patient Protection and Affordable Care Act (“the Act”), Pub. L. No. 111-148, 124 Stat. 119 (2010). Complaint ¶¶ 52-74. Specifically, the plaintiffs challenge the federal government’s “transitional policy” and “hardship exemption,” which permit individuals temporarily to maintain health insurance coverage through plans not compliant with the general requirements of the Act. Id. ¶ 34. The plaintiffs have moved for a preliminary injunction “to enjoin the executive actions of the [defendants] that unlawfully revise the clear statutory terms of the [Act].” Plaintiffs’ Notice of Motion and Motion for Preliminary Injunction, ECF No. 9, at 1. The defendants oppose the motion for the preliminary injunction, Defendants’ Memorandum of Points and Authorities in Opposition to Plaintiffs’ Motion for

Preliminary Injunction, ECF No. 11, at 3, and have moved to dismiss this matter in its entirety for lack of jurisdiction on standing grounds, Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss, ECF No. 10, at 1.

The Court conducted a hearing on November 5, 2014, to address the parties' pending motions. Subsequent to this hearing, but prior to the Court's resolution of the motions, the plaintiffs filed a Motion for Leave to File a Sur-Reply, or in the Alternative, Supplemental Memorandum in Support of Standing, ECF No. 16. The plaintiffs contend that they "have uncovered a mandatory filing by Blue Cross Blue Shield of Michigan" that is materially relevant to the issue of standing. *Id.* at 1. Specifically, the plaintiffs represent that the filing demonstrates that "their particular risk pool was affected by the transitional policy so as to result in an increase in [the] [p]laintiffs' premiums," and thus proves that they "have met their burden to establish standing." Memorandum of Points & Authorities in Further Support of Plaintiffs' Standing, ECF No. 16, at 3-4. The defendants oppose the plaintiffs' motion to supplement their opposition because the "[p]laintiffs have not satisfied this Court's clear requirements for filing a surreply." Defendants' Opposition to Plaintiffs' Motion for Leave to File a Sur-Reply, or in the Alternative, Supplemental Memorandum in Support of Standing, ECF No. 17, at 1.

"The Local Rules of this Court contemplate that there ordinarily will be at most three memoranda associated with any given motion: (i) the movant's opening memorandum; (ii) the non-movant's opposition; and (iii) the movant's reply." Crummey v. Soc. Sec. Admin., 794 F. Supp. 2d 46, 62 (D.D.C. 2011) (emphasis added) (citing LCvR 7). The decision to grant or deny leave is "committed to the sound discretion of the Court," Lu v. Lezell, \_\_ F. Supp. 2d \_\_, \_\_, 2014 WL 2199314, at \*2 (D.D.C. May 27, 2014), but surreplies are usually disfavored, Kifafi v. Hilton Hotels Retirement Plan, 736 F. Supp. 2d 64, 69 (D.D.C. 2010). In general, surreplies

“may be filed only by leave of [the] Court, and only to address new matters raised in a reply to which a party would otherwise be unable to respond.” Lightfoot v. District of Columbia, No. 04-1280, 2006 WL 54430, at \*1 n.2 (D.D.C. Jan. 10, 2006) (Walton, J.) (quoting United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc., 238 F. Supp. 2d 270, 274-75 (D.D.C. 2002)). Nevertheless, where a party’s “surreply raises factual allegations of substantial import,” the consideration of which would be in the “interest of justice,” the Court may exercise its discretion in permitting supplemental briefing. Tnaib v. Document Techs., LLC, 450 F. Supp. 2d 87, 89 n.3 (D.D.C. 2006).

As the Court has an “affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority,” Am. Inst. of Certified Pub. Accountants v. IRS, No. 14-1190, 2014 WL 5585334, at \*3 (D.D.C. 2014) (citing Grand Lodge of Fraternal Order of the Police v. Ashcroft, 185 F. Supp. 2d 9, 13 (D.D.C. 2001)), and in light of the plaintiffs’ representations as to the significance of the supplemental information with respect to the threshold issue of standing in this matter, the Court concludes that it is in the interest of justice to consider the plaintiffs’ supplemental information. Accordingly, it is hereby

**ORDERED** that the plaintiffs’ motion is **GRANTED**, and the Clerk shall accept the brief attached to the plaintiffs’ motion for docketing as a surreply to the defendants’ motion to dismiss. It is further

**ORDERED** that the defendants shall file their response to the plaintiffs’ surreply on or before January 30, 2015. The defendants’ response shall not exceed 25 pages. No reply to the defendants’ response is authorized.

**SO ORDERED** this 9th day of January, 2015.

REGGIE B. WALTON  
United States District Judge