

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

CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil No.17-0432 (JEB)
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
)	

**PLAINTIFF’S MOTION FOR LEAVE TO A SUR-REPLY
AND SUPPORTING MEMORANDUM**

Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) hereby moves for leave to file a sur-reply in the above-captioned action, which is attached to this motion as Exhibit A. As grounds for this motion, plaintiff states as follows.

This case, which was filed on May 10, 2017, challenges the failure of the Office of Legal Counsel (“OLC”), a component of defendant U.S. Department of Justice (“DOJ”), to comply with its reading room obligations pursuant to 5 U.S.C. § 552(a). On May 3, 2017, DOJ filed a motion to dismiss, and on July 26, 2017, DOJ filed a reply in support of that motion. DOJ’s reply for the first time referenced the “more than 1,300 published OLC opinions,” and faulted CREW for “not even attempt[ing] to identify with specificity the features of those OLC opinions it contends OLC is obligated to publish.”¹

CREW hereby seeks leave specifically to address key features of many of the OLC opinions DOJ has published, and how they support CREW’s claims here. All the opinions discussed in CREW’s supplemental memorandum are matters of public record and readily

¹ Reply Memorandum in Support of Defendant’s Motion to Dismiss (Dkt. 14), at 8.

available to DOJ. Accordingly, DOJ will not suffer any prejudice from this filing. Moreover, the importance of the issues this case presents merits the fullest possible record for this Court's consideration. With its supplemental memorandum, CREW seeks to round out that record and address a gap DOJ itself has identified.

Granting CREW leave to file this sur-reply is within this Court's sound discretion. *Ying Qing Lu v. Lezell*, 45 F. Supp. 3d 86, 91 (D.D.C. 2014). District courts freely grant such motions "when a party is unable to contest matters presented to the court for the first time in the last scheduled pleading." *Id.*, quoting *Ben-Kotel v. Howard Univ.*, 391 F.3d 532, 536 (D.C. Cir. 2003). Here, DOJ did not raise the issue of its previously published opinions, their impact here, and CREW's failure to address those opinions until its reply brief. This left CREW no prior opportunity to address them. Under these circumstances, the Court should exercise its discretion and grant CREW leave to file this sur-reply, which is limited to the single issue of how those prior published opinions bear on the issue of OLC's reading room obligations.

Finally, CREW has no objection should DOJ wish to respond to this sur-reply, including with other examples of publicly available OLC opinions it believes support its arguments.

Pursuant to LCvR 7(m), counsel for CREW consulted with counsel for DOJ, who advised that DOJ opposes this motion.

CONCLUSION

Wherefore, for the foregoing reasons CREW respectfully requests that this motion be granted and that the Court accept for filing the attached sur-reply.

Respectfully submitted,

/s/ Anne L. Weismann
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