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

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| CHRISTOPHER DOYLE, LPC, LCPC, | * | |
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| Plaintiff, | * | |
| | * | |
| v. | * | Civil Action No. 1:19-CV-00190-DKC |
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| LAWRENCE J. HOGAN, JR, *et al.* , | * | |
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| Defendants. | * | |
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**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SURREPLY**

The defendants, Lawrence J. Hogan, Jr., Governor, and Brian E. Frosh, Attorney General, oppose the Motion for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss filed by the plaintiff, Christopher Doyle, LPC, LCPC.[1] Pursuant to Local Rule 105.2(a), a party is not permitted to file a surreply unless otherwise ordered by the court. Although the filing of a surreply "is within the Court's discretion . . . they are generally disfavored." *EEOC v. Freeman*, 961 F. Supp. 2d 783, 801 (D. Md. 2013). A surreply generally is not permitted "where the reply is merely responsive to an issue raised in the opposition." *Courtney-Pope v. Bd. of Educ. of Carroll Cty.*, 304 F. Supp. 3d 480, 485 (D. Md. 2018) (citing *Khoury v. Meserve*, 268 F.Supp.2d 600, 605–06 (D. Md. 2003)). The court may permit a surreply "when the moving party would be unable to contest matters presented to the court for the first time in the opposing party's reply." *Khoury*, 268 F. Supp. 2d at 605.

[1] Mr. Doyle failed to follow the proper procedure for seeking leave to file a surreply in this District, which requires the motion for leave to be filed as the main document and the proposed surreply to be filed as an attachment, rather than all in one document. *See* https://www.mdd.uscourts.gov/content/responses-and-replies. The Governor and the Attorney General, in this Opposition, address only the Motion for Leave to file Surreply, not the surreply itself.

Mr. Doyle argues that this Court should grant him leave to file a surreply for two reasons. First, Mr. Doyle argues that the Governor and the Attorney General inappropriately used his deposition testimony to further support their argument that Mr. Doyle lacks standing for this suit. Here, the Governor and the Attorney General, in their reply, raise "no novel issue prompting the Court to permit a surreply." *Clear Channel Outdoor, Inc. v. Mayor & City Council of Baltimore*, 22 F. Supp. 3d 519, 529 (D. Md. 2014). In their Motion to Dismiss, the Governor and the Attorney General argued that Mr. Doyle lacks standing because he did not allege that he performs conversion therapy in Maryland. At his deposition, which took place before he filed his opposition to the Motion to Dismiss, Mr. Doyle made statements supporting the argument. Mr. Doyle was aware, at the time of his deposition, that the Governor and the Attorney General were arguing that he lacked standing for this reason; he was also aware, at the time he opposed the Motion to Dismiss, of the statements he made in his deposition. In fact, Mr. Doyle proffered his "sworn and unrebutted deposition testimony" regarding his standing in Footnote 1 of his Memorandum opposing the Motion to Dismiss. Mr. Doyle had the opportunity to contest this matter in his opposition. A surreply is not warranted on this issue.

Second, Mr. Doyle argues that the Governor and the Attorney General substantively argued that he failed to state a claim under the Free Speech clause of the First Amendment "for the first time" in their reply memorandum. That is patently untrue. The Governor and the Attorney General, in their Motion to Dismiss, incorporated by reference the entirety of their memorandum opposing Mr. Doyle's request for a preliminary injunction. Mr. Doyle had the opportunity to address any of those arguments, or to argue that a different standard applied for a motion to dismiss, in his memorandum opposing the motion to dismiss; in fact, Mr. Doyle did so, dedicating over three pages of his opposition to the Governor's and the Attorney General's arguments that he

failed to state a claim under the Free Speech clause. The reply memorandum did not make any "new" arguments on the issue, so a surreply is not warranted.

Finally, if this Court grants Mr. Doyle's motion for leave to file a surreply, the Governor and the Attorney General ask the Court for leave to file a brief response. As noted above, it is within this Court's discretion to grant or deny a motion to file a surreply. They are generally disfavored, however, and the Local Rules contemplate the filing of three memoranda in regards to any one motion – the movant's opening memorandum, the non-movant's opposition, and the movant's reply – which allow the moving party to have both the first and last word. The Governor and the Attorney General should be allowed to have the last word on their Motion to Dismiss.

**Conclusion**

For all the foregoing reasons, this Court should deny the Motion for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss filed by Mr. Doyle, or, if the motion is granted, should grant the Governor and the Attorney General leave to file a response to Mr. Doyle's Surreply.

Respectfully Submitted:

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