

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

THE METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY et al.,)

Plaintiffs,)

vs.)

TENNESSEE DEPARTMENT OF)
EDUCATION et al.,)

Defendants,)

and)

NATU BAH et al.,)

Intervenor-Defendants.)

Case No. 20-0143-II
Chancellor Anne C. Martin, Chief Judge
Judge Tammy M. Harrington
Judge Valerie L. Smith

CONSOLIDATED

ROXANNE McEWEN et al.,)

Plaintiffs,)

vs.)

BILL LEE, in his official capacity as)
Governor of the State of Tennessee et al.,)

Defendants,)

and)

NATU BAH et al.,)

Intervenor-Defendants.)

Case No. 20-0242-II
Chancellor Anne C. Martin, Chief Judge
Judge Tammy M. Harrington
Judge Valerie L. Smith

**GREATER PRAISE INTERVENOR-DEFENDANTS' MOTION IN THE
ALTERNATIVE TO FILE A SUR-REPLY**

**MOTION IN THE ALTERNATIVE
TO FILE A SURREPLY**

On Wednesday, August 3, the Greater Praise Intervenors moved to strike pages 9 – 13 of the McEwen Plaintiffs’ reply brief and Exhibit C to the Wood Declaration which accompanies it because they believe it embodies new arguments and evidence in a reply brief and inadmissible hearsay. In the 24 hours since then, the Greater Praise Intervenors have dug into as much of the historical record as they could in the extremely short time available, and file this motion in the alternative to file the attached proposed reply brief.

It is within the trial court’s discretion whether to permit a surreply. *Lacy v. Meharry Gen. Hosp.*, No. M2021-00632-COA-R3-CV, 2022 Tenn. App. LEXIS 294, at *12 (Ct. App. July 28, 2022). In this instance, the Court should grant the motion to strike, because the McEwen Brief raises new arguments and evidence and inadmissible hearsay. However, if the Court decides to permit the McEwen brief, then it is only fair to permit the Defendants an opportunity to respond to the new arguments about original intent that they have raised with similar materials in a surreply. *Brown v. Genworth Life & Annuity Ins. Co.*, No. 3:18-cv-506, 2020 U.S. Dist. LEXIS 226645, *9 (E.D.Tenn. May 12, 2020). Though the attached proposed surreply was produced in one day, the evidence it provides shows that the McEwen Plaintiffs’ view of history in their reply brief is deeply flawed. The Court should consider this contrary evidence, and ensure it is included for any record on

appeal if the Court finds the McEwen Plaintiffs did not forfeit this argument by raising it in a reply brief. *United States v. Haynes*, No. 09-1200, 2010 U.S. App. LEXIS 27758, *13-14 (6th Cir. Dec. 7, 2010).

Respectfully Submitted,

s/ Brian K. Kelsey

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Dated: August 4, 2022

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be sent to the attorneys listed below via Davidson County Chancery Court E-filing R. 4.01 and TN S.Ct. R. 46A and via the electronic mail addresses below, by agreement of the parties, on this 4th day of August, 2022.

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