IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

| ROY COCKRUM, SCOTT COMER, and ERIC SCHOENBERG, |)) |
|---|-------------------------------------|
| Plaintiffs, |) |
| V. |) Civil Action No. 1:17-cv-1370-ESH |
| DONALD J. TRUMP FOR PRESIDENT, INC., and ROGER STONE, |))) |
| Defendants. |))) |

PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY

Plaintiffs respectfully request permission to file a short (eight-page) surreply brief in opposition to Defendants' motions to dismiss. The proposed brief is attached as Exhibit A. Pursuant to Rule 7(m), the undersigned counsel conferred with counsel for Defendants, who represented that Defendants oppose this request.

Whether or not to allow a surreply to be filed in any particular case is left to the court's discretion. *See, e.g., Banner Health v. Sebelius*, 905 F. Supp. 2d 174, 187 (D.D.C. 2012). Although surreplies are generally disfavored, in exercising that discretion, courts often consider "whether the movant's reply in fact raises arguments or issues for the first time, whether the nonmovant's proposed surreply would be helpful to the resolution of the pending motion, and whether the movant would be unduly prejudiced were leave to be granted." *Id*.

Plaintiffs' proposed surreply brief satisfies this standard. It does not address all—or even a majority—of the arguments raised in Defendants' reply briefs. Plaintiffs seek leave to file a surreply for the limited purpose of addressing a handful of arguments that are raised or emphasized for the first time in Defendants' reply briefs, that Plaintiffs believe will aid the Court

in resolving the motions to dismiss, or both. In particular, the proposed surreply briefly addresses four discrete arguments made in Defendants' reply briefs. Nor does the filing of a surreply unduly prejudice Defendants. Defendants have filed four briefs in support of their motions to dismiss that total approximately 132 pages, while Plaintiffs have filed a single brief of 70 pages and seek leave to file only eight additional pages.² As such, Plaintiffs ask that the Court grant their request to file a surreply.

Date: January 19, 2018

/s/ Benjamin L. Berwick

BENJAMIN L. BERWICK (D.D.C. Bar No. MA0004) United to Protect Democracy 10 Ware St. Cambridge, MA 02138 (909) 326-2911 Ben.Berwick@protectdemocracy.org

IAN BASSIN (NY Attorney Reg. No. 4683439) United to Protect Democracy 222 Broadway New York, NY 10038 (202) 856-9191 Ian.Bassin@protectdemocracy.org

JUSTIN FLORENCE (D.C. Bar No. 988953) Justin.Florence@protectdemocracy.org ANNE TINDALL (D.C. Bar. No. 494607) Anne.Tindall@protectdemocracy.org United to Protect Democracy 2020 Pennsylvania Ave. NW, #163 Washington, DC 20006 (202) 856-9191

NANCY GERTNER (MA Bar No. 190140) Fick & Marx 100 Franklin Street, 7th floor Boston, MA 02110

¹ While Plaintiffs would be content to address these issues at oral argument, the Court has not yet scheduled argument and may choose to resolve the pending motions without one.

² These totals do not include the additional four briefs totaling approximately 45 pages that Defendants have filed in connection with their Anti-SLAPP motions, compared to a single 11page brief filed by Plaintiffs.

(857) 321-8360 ngertner@fickmarx.com

RICHARD PRIMUS (D.C. Bar No. 472223) The University of Michigan Law School* 625 S. State Street Ann Arbor, MI 48109 (734) 647-5543 PrimusLaw1859@gmail.com

STEVEN A. HIRSCH (CA Bar No. 171825) Keker, Van Nest & Peters LLP 633 Battery Street San Francisco, CA 94111-1809 (415) 391-5400 shirsch@keker.com

Counsel for Plaintiffs

^{*} For identification purposes.