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

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| WIKIMEDIA FOUNDATION,<br><br>Plaintiff,<br><br>v.<br><br>NATIONAL SECURITY AGENCY, *et al.*,<br><br>Defendants. | Civil Action No.<br><br>1:15-cv-00662-TSE |

**DEFENDANTS' RESPONSE TO**
**PLAINTIFF'S MOTION FOR A STATUS CONFERENCE**

Defendants respectfully submit this response to Plaintiff Wikimedia's Motion for a Status Conference, ECF No. 103. As set forth below, Defendants agree that a status conference would be appropriate and so advised Plaintiff prior to the filing of its motion. In addition, although Plaintiff omits the request from its proposed order, *see* ECF No. 103-1, Plaintiff also asks that, prior to the requested status conference, the Court determine whether the Defendants' forthcoming factual challenge to Plaintiff's standing should proceed in a motion under Federal Rule of Civil Procedure 12(b)(1) or Federal Rule of Civil Procedure 56. Pl.'s Mot. at 1. Again, Defendants do not disagree with that approach, and respectfully propose that the Court set a briefing schedule for the parties to address their respective views regarding the best way to move this litigation forward.

Prior to filing its Motion for a Status Conference, Plaintiff contacted Defendants regarding its anticipated motion. Defendants indicated that they would not oppose a motion for a status conference, and offered to move jointly with Plaintiff. Plaintiff declined to file a joint submission with Defendants, and, having ascertained whether Defendants were planning to seek dismissal under Rule 12(b)(1), filed its Motion for a Status Conference soon thereafter.

Defendants agree with Plaintiff that it would serve judicial economy to address in briefing, as a threshold matter, how this litigation should proceed. In addition to the issue raised in Plaintiff's Motion regarding whether Defendants' anticipated dispositive motion would properly be brought under Rule 12(b)(1) or Rule 56, Defendants further propose that such briefing include whether proceedings should be bifurcated to address the Defendants' challenge to Plaintiffs' standing first, prior to reaching the merits of Plaintiffs' claims, even if Defendants' dispositive motion were brought under Rule 56. Defendants respectfully submit that such an approach would permit the Court to avoid needlessly reaching constitutional questions, *see Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988).

Accordingly, the Defendants join in Plaintiff's request for a status conference, and further respectfully request that the Court receive briefing regarding how this matter should proceed. To that end, Defendants ask that the Court order the parties to submit jointly a proposed schedule for such briefing to the Court by August 8, 2017, and set a status conference for a date convenient to the Court after the conclusion of such briefing.

Date: July 31, 2017

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