IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TIMOTHY H. EDGAR, *et al*., *Plaintiffs*, v. DANIEL COATS, in his official capacity as Director of National Intelligence, *et al*., *Defendants*.	Civil Action No. 8:19-cv-00985 (GJH)

MOTION OF CENTER FOR ETHICS AND THE RULE OF LAW FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS

Pursuant to this Court's Standing Order 2018-08, proposed *amicus curiae* Center for Ethics and the Rule of Law ("CERL") respectfully seeks leave to file the attached *amicus* brief in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.

Because there is no Federal Rule of Civil Procedure applying to motions for leave to appear as *amicus curiae* in federal district court, the decision to grant or deny such a motion is "left to the discretion of the trial judge." *Finkle v. Howard Cty*., 12 F. Supp. 3d 780, 789 (D. Md. 2014) (citing *Bryant v. Better Business Bureau of Greater Maryland*, 923 F. Supp. 720, 728 (D. Md. 1996)); *see also Am. Humanist Ass'n v. Md.-National Capital Park & Planning Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014). "There is no rule … that *amici* must be totally disinterested," and, therefore, provided an "*amicus* does not intrude on the rights of the parties, it can have a range of roles." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982); *Rawlins v. Hanan*, 868 F. Supp. 1356, 1358 (M.D. Ala. 1994). *Amici* may take on an "active role… beyond [merely] providing information," such as providing "helpful analysis of the law" or otherwise offering the

Court assessment that is "timely and useful." *Id.* at 1359; *Bryant v. Better Bus. Bureau*, 923 F. Supp. 720, 728 (D. Md. 1996).

The Center for Ethics and Rule of Law is a non-partisan institute at the University of Pennsylvania Law School "dedicated to preserving and promoting ethics and the rule of law in national security, democratic governance, and warfare."[1] CERL has an Executive Board and consults with an Advisory Council composed of academics from numerous disciplines and former national security professionals. Plaintiff Mark Fallon is a member of CERL's Advisory Council.[2] CERL unites scholars, policymakers, and practitioners to answer urgent national security questions, especially where "the rule of law is threatened or violated."[3] In its seven years of operation, CERL has hosted numerous conferences, public symposia, lectures, and book talks at the intersection of national security and ethics, as well as published policy briefing papers and four academic volumes as part of its Oxford University Press series *Ethics, National Security and the Rule of Law*.[4] CERL has four additional volume proposals accepted for publication as part of the Oxford University Press series, and its publications are frequently presented to government officials and policymakers. In addition, CERL does briefings for military audiences and regularly works with the Army JAG Corps. Not only does CERL "demonstrate a special interest in the outcome of [this] suit," but CERL also has expertise and experience in educating

[1] *About Us*, Center for Ethics and the Rule of Law (last visited July 23, 2019), https://www.law.upenn.edu/institutes/cerl/about-us.php.
[2] *People*, Center for Ethics and the Rule of Law (last visited July 23, 2019), https://www.law.upenn.edu/institutes/cerl/people.php. Plaintiff Mark Fallon was not involved in drafting this amicus brief.
[3] *Id.*
[4] *See, e.g.*, *Events*, Center for Ethics and the Rule of Law (last visited July 23, 2019), https://www.law.upenn.edu/institutes/cerl/events.php; *Publications*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/publications.php; *Protecting Democracy: Modernizing the Foreign Agents Registration Act*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/conferences/fara/.

the public and enhancing national and international discourse through its conferences and publications. *See Am. Humanist Ass'n*, 303 F.R.D. at 269.

Organizations like CERL have been permitted to appear as *amici* in similar lawsuits before this Court. In *Bryant v. Better Business Bureau*, for instance, the National Association for the Deaf ("NAD") and the National Center for Law and Deafness ("NCLD") were granted leave to file *amici* briefs in support of plaintiff's disability discrimination claims. 923 F. Supp. at 727. Reasoning that because the constituencies NAD and NCLD represented had a "vested interest in how the provisions of the ADA are construed and applied," their aid as *amici* was "useful in resolving the issues presented by the parties." *Id.* at 728; *see also Audubon Naturalist Soc'y of the Cent. Atl. States, Inc. v. United States DOT*, 524 F. Supp. 2d 642, 713 (D. Md. 2007) (permitting *amici* to "assert … points in addition to what Plaintiffs have already challenged," including concerns defendants violated "procedures mandated by … environmental statutes"); *Am. Humanist Ass'n v. Md.-National Capital Park & Planning Comm'n*, 147 F. Supp. 3d 373, 389 (D. Md. 2015) (indicating *amicus* are especially useful where issues have not been "comprehensively and fully briefed by all parties" or proposed amicus memoranda would "provide helpful legal analysis beyond the … job done by the parties' counsel"); *see generally King v. Christie*, 981 F. Supp. 2d 296, 310 (D.N.J. 2013) (accepting as *amicus curiae* "a helpful, alternative viewpoint from the vantage of some persons who have undergone [conversion therapy] or are potential patients of treatment … will aid the court in resolving plaintiffs' claims fully and fairly").

CERL's proposed *amicus* brief will not "prejudice [the Parties] or delay the proceedings," but instead provide "useful" information for the court in deciding whether to grant Defendants' Motion to Dismiss. *Am. Humanist Ass'n*, 303 F.R.D. at 269-70. CERL's brief would provide the

Court with important background information about the chilling effect of Defendants' prepublication regimes on academics, national security professionals and the general public. Moreover, these prepublication regimes, we argue, hamper leading national security experts from entering into important national security roles in our government. Both of these concerns are contrary the Defendants' contentions that their prepublication review practices do not have negative consequences. *See* Defs.' Mem. in Supp. of Mot. to Dismiss at 26-27.

Finally, in accordance with Standing Order 2018-07, para. 2(d) and (e), counsel for proposed *amicus* CERL certifies that no counsel for a party authored the attached *amicus* brief, in whole or in part, and no person or organization other than *amicus curiae* and their counsel made any monetary contribution to fund the preparation or submission of the attached brief. Furthermore, in accord with Local Rule 103.3, *amicus curiae* Center for Ethics and the Rule of Law has filed a corporate disclosure statement separately.

For the foregoing reasons, we respectfully request the Court's permission to file an *amicus* brief in this matter.

July 23, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the attached brief is no longer than 15 pages and otherwise complies with Local Rules 102.2 (format of court documents), 105.1(a) (electronic filing), 105.4 (table of contents, when required), and 105.5 (appendix, when required).

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MEMORANDUM OF *AMICUS CURIAE* CENTER FOR ETHICS AND THE RULE OF LAW IN SUPPORT OF PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Jonathan Landay, *Pentagon suppressing book on interrogations: former investigator*, Reuters, https://www.reuters.com/article/us-usa-torture/pentagon-suppressing-book-on-interrogations-former-investigator-idUSKBN1AJ2NG 8

Kevin Casey, Note, *Till Death Do Us Part: Prepublication Review in the Intelligence Community*, 115 Colum. L.R. 417 (2015) 8, 9

Nada Bakos and John Nixon, *The CIA is delaying our books' publication, and that hurts our democracy*, https://www.washingtonpost.com/opinions/the-cia-is-delaying-our-books-publication-and-that-hurts-our-democracy/2016/12/22/068f115c-ba8c-11e6-94ac-3d324840106c_story.html?utm_term=.fa1e7b24d426. ..... 3, 5

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae the Center for Ethics and the Rule of Law ("CERL") supports Plaintiffs' Opposition to Defendants' Motion to Dismiss. The Center for Ethics and the Rule of Law at the University of Pennsylvania Law School seeks to promote ethics and the rule of law in national security practice by encouraging knowledgeable discussion by expert academics, policymakers, and practitioners on pressing national security concerns. CERL encourages such discussion by hosting conferences, public symposia, and lectures, and, importantly, publishing collected volumes on specialized topics in national security, original essays, and policy papers.[1] CERL therefore has a compelling interest in ensuring our public discourse includes robust participation by former CIA, NSA, DOD, and ODNI employees. CERL has found that the defendant agencies' prepublication review practices, as currently administered, inhibit that debate.

SUMMARY OF ARGUMENT

CERL argues defendants' prepublication review regimes chill necessary national security dialogue, both in academia and among practitioners. Further, CERL argues that the current state of prepublication review prevents our nation's best and brightest from serving in the defendant agencies. Both arguments are supported by numerous accounts from former members of the national security community, empirical data provided by the agencies themselves and previous court findings. As such, the *amicus* CERL urges the Court to deny defendants' motion to dismiss so that the Court may carefully examine the impact of the defendants' respective prepublication regimes. As national security professionals, CERL recognizes the need to prevent disclosure of classified information and a carefully constructed prepublication review process can be justified in pursuit of those ends.

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[1] *See Publications*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/publications.php.

ARGUMENT

I. The Current State of Prepublication Review Chills Critical National Security Discourse.

Since its inception in 2012, CERL has devoted itself to preserving and promoting ethics and the rule of law in contemporary national security, warfare, and democratic governance.[2] CERL brings together scholars, practitioners, and policymakers to answer difficult ethical and legal questions arising in national security.[3] Military and intelligence personnel, private sector professionals, journalists, and experts in the disciplines of law, ethics, philosophy, political science, international relations, and the sciences converge at CERL symposia to engage in robust interdisciplinary discussion and analysis of the most challenging contemporary issues.[4] In order to facilitate this discourse, CERL conducts ethics and policy briefings; drafts and disseminates policy papers; publishes volumes with Oxford University Press in a series on *Ethics, National Security and the Rule of Law*; presents book talks with high-profile authors; and engages with national and international media.[5] CERL's interdisciplinary programming continues to expand, increasing in reach and prominence as its publications addresses cutting-edge topics before a widening audience.[6]

While each defendant agency has its own system of prepublication review, the general result of the system has been the same—confusion and a chilling of discourse from former national security employees. This chilling effect is evidenced by the numerous incidents reflecting the mismanagement of the process. Such incidents range from CIA veterans being

[2] *See* Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/.
[3] *Id.*
[4] *See, e.g.*, *Democracy in the Crosshairs: Cyber Interference, Dark Money, and Foreign Influence*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/conferences/democracyincrosshairs/.
[5] *See About Us*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/about-us.php.
[6] *Id.*

forced to alter fictional works concerning vampires,[7] to former CIA Director Leon Panetta becoming frustrated with the process to the point of considering publishing without clearance.[8]

CERL, too, has experienced the burden of the prepublication review system. CERL publishes peer-reviewed academic volumes in the Oxford University Press series *Ethics, National Security and the Rule of Law*.[9] In order to produce these volumes CERL invites authors to submit papers for the volumes and convenes conferences of the authors to exchange feedback and criticism of their respective papers. In late September of 2018, CERL hosted a conference entitled *Interrogation and Torture: Integrating Efficacy with Law and Morality* for this very purpose.[10] Plaintiff Mark Fallon was selected to write for this volume due to his extensive experience in national security and, more specifically, at Guantanamo Bay.[11] Because of the prepublication process, however, Mr. Fallon was unable to submit his paper for comment and review by his peers or discuss the topic at any length. While ultimately Mr. Fallon's materials could be included in the volume, they were only cleared after substantial delay and multiple redactions.

Further, Katherine Newell, an expert in detention and interrogation issues at the Military Commissions Defense Organization, and Georgetown professor David Luban also authored a paper for the same conference but were only able to share a one paragraph abstract with the other

[7] Nada Bakos and John Nixon, *The CIA is delaying our books' publication, and that hurts our democracy*, WASH. POST (Dec. 22, 2016), https://www.washingtonpost.com/opinions/the-cia-is-delaying-our-books-publication-and-that-hurts-our-democracy/2016/12/22/068f115c-ba8c-11e6-94ac-3d324840106c_story.html?utm_term=.fa1e7b24d426.

[8] *See* Greg Miller, *Panetta Clashed with CIA over Memoir, Tested Agency Review Process,* Wash. Post (Oct. 14, 2014), http://www.washingtonpost.com/world/national-security/panetta-clashed-with-cia-over-memoir-tested-agency-review-process/2014/10/21/6e6a733a-5926-11e4-b812-38518ae74c67_story.html.

[9] *See Publications*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/publications.php.

[10] *Interrogation and Torture: Integrating Efficacy with Law and Morality*, Center for Ethics and the Rule of Law (last visited July 8, 2019), https://www.law.upenn.edu/institutes/cerl/conferences/interrogationtorturemorality/.

[11] Plaintiff Mark Fallon is a member of CERL's Advisory Council.

authors prior to the conference because the paper was still subject to prepublication review. Prepublication review also forced them to self-censor their participation at the conference.

Though the majority of these three conference participants' sections contained information that could be found through open sources, they were restricted in what they could discuss at an academic, closed-door conference, and were effectively sidelined from some major discussions of utility to other participants. The impact of prepublication on their participation in the conference created a direct and tangible harm to academic discourse about important national security issues. By hampering the authors' ability to circulate and discuss their papers, the free exchange of open ideas and discourse has been undermined. Further, as nearly every CERL volume and conference follows this format of experts and past practitioners gathering to discuss and write on national security issues, prepublication review will continue to impact future authors' participation in the timely discourse of relevant national security issues at CERL conferences.

CERL's experience is a microcosm of the current problem. As of 2017, over 4 million individuals are currently able to access classified information.[12] An increasing subset of these 4 million is actively submitting materials for review. By the government's own admission, the quantity of information that needs to be cleared has increased exponentially since 1970. Indeed, the CIA *alone* reviewed over 150,000 pages in 2014, accounting for approximately a 150% increase in page review since the CIA's prepublication review system was first established.[13] This problem of overwhelming volume is acknowledged by the government's own internal documents, where it is an open secret that prepublication struggles "with achieving timeliness,

[12] Off. of the Dir. of Nat. Intl., Fiscal Year 2017 Annual Report on Security Clearance Determinations.
[13] PUB. REV. BOARD, "WHY IS MY REVIEW TAKING SO LONG?" PRB By the Numbers (May 22, 2015).

and to some extent thoroughness/quality."[14] As such, even when there is no indication of an ulterior motive, the CIA concedes that the current state of prepublication review typically results in over a yearlong review for "book length manuscripts."[15] Given the time-sensitive nature of manuscripts in the national security sector, and the importance to authors and to society of ensuring that authors can enter public discourse in a timely fashion, requiring an author to wait an entire year prior to publication for clearance of materials that are already available in open source collections is damaging to the quality of public debate and discussion on critical issues in national security. It will also discourage academics, who depend for their livelihoods on the ability to publish, from entering service if they will be required to work with classified materials.

Based on the sheer volume of materials to be reviewed and cleared in prepublication review, the foregoing is a problem of significant dimensions. The ability for those subject to prepublication review to comment and reflect on U.S. national security, in an objective yet responsible way is crucial to U.S. national security. Former intelligence community members acknowledge this point, with former NSA and CIA Director Michael Hayden, for instance, going so far as to say:

> It's important for the American intelligence community to get the accurate word out on what it is they do. And there is no better way to do that than to allow professionals to speak in their own words. . . . It owes that to the American people and to the officers who want a fair chance to tell their story.[16]

Such long review times stifle this vital interest which can restrict academic research and memoirs that are critical of an agency.[17] A striking example of this is retold in former Director Hayden's 2016 book *Playing to the Edge: American Intelligence in the Age of Terror*. Director

[14] CIA Insp. Gen., Protecting Secrets CIA's Prepublication Review Process (2017).
[15] *Id.*
[16] *See supra* note 7.
[17] *See, e.g.*, Glenn L. Carle, *The Interrogator: An Education*, 291 (2011); Benjamin Wittes, *Is CIA Pre-Publication Review Biased?*, Lawfare (Jun. 1, 2012), https://www.lawfareblog.com/cia-pre-publication-review-biased.

Hayden describes how after writing an opinion piece regarding drone strikes in April 2015, the CIA's publication review board told him "that no articles about drones would be cleared regardless of content."[18] Former Director Hayden found the CIA's response to be a clear "misuse of the review process" and candidly described it as "just plain stupid."[19] He is not alone is his criticism. Following 9/11, prominent former FBI agent Ali Soufan claimed that the CIA's prepublication redactions to his counterterrorism memoirs were politically motivated. Prepublication review, Mr. Soufan said, "has more to do with trying to protect a narrative . . . than protecting classified information."[20]

These examples create a stark contrast with the underlying facts found in *Snepp v. United States*, 444 U.S. 507 (1980). Unlike in *Snepp*, the aforementioned materials have gone through the proper prepublication process, allowing the government time to review. *Compare Snepp*, 444 at 511-12. Yet the government still chooses to redact non-classified material, or issue preemptive blanket restrictions in a manner that seemingly serves improper or irrelevant interests rather than legitimate national security ones.

Courts have long recognized this two-pronged concern that the current prepublication review system both plays into agency favoritism and stifles unfriendly speech. While courts have found that prepublication review cannot censor facts that contain unclassified, wrongly-classified, or publicly sourced information, government agencies still take a "blinkered approach to the serious First Amendment questions . . . [and] take an erroneous legal position on classification, wasting substantial time and resources of the parties and the Court." *Shaffer v. Def. Intelligence Agency*, 102 F. Supp. 3d 1, 12 (D.D.C. 2015). This "blinkered approach" has been evident

[18] MICHAEL V. HAYDEN, PLAYING TO THE EDGE" AMERICAN INTELLIGENCE IN THE AGE OF TERROR 425(Penguin Books, 2016).
[19] *Id.* at 426.
[20] *See* Benjamin Good, *We Need to Know More About How the Government Censors Its Employees*, Lawfare (Mar. 10, 2016), https://www.justsecurity.org/29873/government-censors-employees/.

throughout prepublication litigation, with courts previously finding that "the CIA's past enforcement record bears a considerable correlation with the agency's perception of the extent to which the material is favorable to the agency." *Agee v. CIA*, 500 F. Supp. 506, 509 (D.D.C. 1980).

Only through open dialogue, potentially forced through court review, will historically clandestine organizations avoid the pitfalls of groupthink that occurs without critical outside evaluation. Prepublication's shortcomings, as evidenced by past administrative actions, bear the hallmark of an issue that is capable of repetition, yet evading review.[21] *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498 (1911). Because of its persistent failures, the prepublication review apparatus, if it is not corrected, will continue to chill crucial national security discourse among academics, current policymakers, and the general public.

II. Prepublication Review Discourages National Security Experts From Entering Government Service.

To comprehensively provide for the national security, the intelligence community needs experts with both intellectual acuity and experience. Such experts spend much of their careers in research-heavy sectors, such as Universities and thinktanks. Yet, these professionals are required to publish, which is essential to their income, promotions, tenure, and other honors and tangible benefits of academic life. Because it threatens the livelihood of national security experts who do not spend their entire career within an intelligence agency, prepublication review drains our government's pool of intellectual resources and likely deters leading scholars and policy experts from public service.

[21] *See Kevin Casey, Note, Till Death Do Us Part: Prepublication Review in the Intelligence Community, 115 Colum. L.R. 417, 450 (2015)* (stating that the "practice of delay appears particularly nefarious in light of another practice: As soon as a frustrated author brings suit under the Administrative Procedures Act the agency quickly issues a decision, rendering the claim moot.").

When problematic prepublication policies are perpetuated, those dedicated to promoting national security are deterred from serving our government. This is primarily due to significant delays beyond the stated 30-day review process in prepublication review systems. Former Army Reserve officer Anthony Shaffer, for example, submitted his manuscript draft of *Operation Dark Heart* to the Army Reserve in June 2009, but it was approved over seven months later. *Shaffer v. Def. Intelligence Agency*, 901 F. Supp. 113, 115 (D.D.C. 2012). This was primarily because the manuscript was passed around among the Defense Intelligence Agency (DIA), Central Intelligence Agency (CIA), National Security Agency (NSA), and Department of Defense (DOD). However, the DIA and DOD later withdrew initial approval and requested redactions on approximately 250 of the 320 pages of the book. *Id.* The DOD paid Mr. Shaffer's publisher, St. Martin's Press, thousands of dollars to destroy the first edition. Although initial publication was halted, a new version of the book was finally published months later with the new redactions. *Id.*[22]

The delay in publication is not only cumbersome, it is frequently biased and arbitrary. Flatiron Books, for instance, signed a deal for James Comey's highly anticipated memoir *A Higher Loyalty* in August of 2017.[23] Although Comey's book was initially scheduled for release on May 1, 2018, its release was then moved up to April 17, 2018 due to "intense [FBI] scrutiny."[24] Former CIA Director Leon Panetta's experience, too, provides evidence for partial treatment. After writing a memoir he described as "unfailingly complimentary," Panetta's book

[22] *See also* Jonathan Landay, *Pentagon suppressing book on interrogations: former investigator*, Reuters (Aug. 3, 2017, 3:01 PM), https://www.reuters.com/article/us-usa-torture/pentagon-suppressing-book-on-interrogations-former-investigator-idUSKBN1AJ2NG (detailing how a seven month prepublication review delay for plaintiff Mark Fallon's Guantanamo-related book *Unjustifiable Means* caused him to miss his submission deadline and cancel a book tour).

[23] *See Publisher moves up release of James Comey memoir to April 17*, Ass. Press (Feb. 7, 2018), https://apnews.com/bab4442efded4ba1a6549e2a674c6f83.

[24] *Id.*; *see also* Ramya Krishnan, *Comey's Book and Prepublication Review*, Just Security (Apr. 16, 2018), https://www.justsecurity.org/54960/comeys-book-prepublication-review/ (situating Comey's experience within the broader prepublication review discussion).

was held up in the prepublication review process for over six months.[25] He then went to the current CIA Director, John Brennan, threatening to proceed without clearance. The CIA's final approval came well after copies for review were distributed.[26] Further, "Fast-track" review—arbitrarily reserved for some at the expense of others—is odious to the First and Fifth Amendments. *See, e.g.*, *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (finding government must set forth an "offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement").[27]

Such testimonies send a warning to future employees: your personal freedom to speak, write, and publish after serving as a federal intelligence employee is in jeopardy. Although the intelligence community may hope to recruit those with significant experience and expertise, prepublication review burdens have, unsurprisingly, resulted in "more than one person who has declined to accept a security clearance and . . . employment possibilities."[28] The burden of prepublication review ultimately slams the door in the faces of individuals with years of studying, critically analyzing, and writing about national security issues who might otherwise seek

[25] *See* Kevin Casey, Note, *Till Death Do Us Part: Prepublication Review in the Intelligence Community*, 115 Colum. L.R. 417, 446 (2015).
[26] *Id.*
[27] *See also* Casey, *supra* note 20, at 446 (describing how "informal appeals to higher-level officials outside of the [Prepublication Review Board] … reeks of precisely the sort of favorable treatment that gives credence to accusations that the prepublication-review system is biased and discriminatory in its enforcement"); Alex Emmons, *Widespread Censorship of Former Government Employees Violates the First Amendment, Lawsuit Says*, The Intercept (Apr. 2, 2019, 12:38 PM), https://theintercept.com/2019/04/02/prepublication-review-government/ (documenting how Hillary Clinton's memoir received fast-track prepublication review taking only seven weeks).
[28] Steven Aftergood, *Fixing Pre-Publication Review: What Should Be Done*?, Just Security (Jan. 15, 2016), https://www.justsecurity.org/28827/fixing-pre-publication-review-done/; *see also* Jack Goldsmith & Oona Hathaway, *The Scope of the Prepublication Review Problem, And What to Do About It*, Lawfare (Dec. 30, 2015, 10:00 AM), https://www.lawfareblog.com/scope-prepublication-review-problem-and-what-do-about-it (explaining how the "cumbersome, time-consuming, and seemingly arbitrary prepublication review process leads many people to simply avoid [prepublication review] altogether").

government employment within the intelligence agencies, thereby harming the United States' security capacities.

CONCLUSION

The injury suffered by the five plaintiffs before the Court represent a systemic and far reaching issue, touching upon every corner of the national security community. In its current form, prepublication review chills academic discourse and creates an impediment for those wishing to serve their county. For the forgoing reasons, defendants' motion to dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) should be denied.

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Respectfully submitted,

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