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Description of the Nature of the Action

Plaintiffs Valerie Plame Wilson and Simon & Schuster, Inc., publisher of Ms. Wilson's memoir entitled FAIR GAME: MY LIFE AS A SPY, MY BETRAYAL BY THE WHITE HOUSE, sought declaratory and injunctive relief in the District Court under the First Amendment of the United States Constitution to prevent an unlawful prior restraint by the executive branch defendants in violation of the First Amendment of the United States Constitution.

The dispute arose from the executive branch decision to prohibit plaintiffs from republishing information voluntarily disclosed in unclassified form to Valerie Wilson by CIA in February 2006 and released to assist her in connection with obtaining a government annuity through Congressional legislation when she was forced to retire prematurely in January 2006. Although Congress subsequently printed the February 2006 letter from CIA to Valerie Wilson in the Congressional Record as part of the legislative process and it is now available worldwide on the Internet, the executive branch opposed publication of the same information in Valerie Wilson's memoir for "national security" reasons. The executive branch defendants asserted, and the District Court agreed, that a letter on CIA letterhead prepared by its Chief of Retirement and Insurance Services for the purpose of assisting her efforts to obtain government benefits was not an "official" disclosure by CIA. The executive branch defendants also asserted that despite the fact that the February 10, 2006 letter entered the public domain through the legislative process as a result of direct acknowledgments by an authoritative government source – CIA's Chief of Retirement and Insurance Services – and despite the fact that it was reasonably foreseeable that CIA's direct acknowledgment in unclassified form of Ms.

Wilson's federal service dates would be utilized by Congress and thereby enter the public domain, Ms. Wilson's federal dates were not thereby "made public 'through' an official disclosure." The District Court agreed with the executive branch defendants and held that the February 10, 2006 letter to Ms. Wilson from CIA setting forth in unclassified form her dates of federal service for retirement planning purposes and possible future enactment of Congressional legislation to provide financial relief to Ms. Wilson was "not a public disclosure" by CIA and was "not an official disclosure" by CIA.

The specific information that the executive branch sought to censor – the dates of Valerie Wilson's service with CIA – directly related both to the seriousness of the "outing" of a senior covert CIA officer by high level officials in the Bush Administration and to the justification for the prosecution of I. Lewis Libby, former Chief of Staff to Vice President Richard Cheney, for interfering with the leak investigation. That criminal investigation by the Department of Justice had been initiated by CIA to determine whether illegal conduct jeopardizing national security had occurred when the identity of Valerie Plame Wilson – a covert CIA operations officer in the Directorate of Operations who served as chief of a Counterproliferation Division component with responsibility for weapons proliferation issues related to Iraq and who traveled overseas under cover during wartime after September 11, 2001 – was leaked to reporter Judy Miller and columnist Robert Novak for apparently improper political purposes. According to a publicly available court document filed by Special Counsel Patrick J. Fitzgerald in *United States of America v. I. Lewis Libby*, at the time of the initial unauthorized disclosure in the media of Ms. Wilson's employment relationship with CIA on July 14, 2003, Ms. Wilson was a covert CIA employee for whom the CIA was taking affirmative measures to

conceal her intelligence relationship to the United States. She traveled at least seven times to more than ten countries. When traveling overseas, Ms. Wilson always traveled under a cover identity – sometimes in true name and sometimes in alias – but always using cover – whether official or non-official cover (NOC) – with no ostensible relationship to the CIA.

Evidence introduced at the criminal trial of I. Lewis Libby indicated that prior to the “outing” of Ms. Wilson in July 2003, Vice President Richard Cheney knew that she was a CIA officer and had informed Mr. Libby of that fact. On July 2, 2007, President Bush commuted the 30 month prison sentence of I. Lewis Libby.

On August 1, 2007, the District Court upheld the executive branch defendants’ prior restraint, granting the government’s motion for summary judgment and denying Valerie Wilson’s and Simon & Schuster’s motion for declaratory and injunctive relief. The District Court held, *inter alia*, that “information concerning Wilson’s pre-2002 employment for the CIA (if any) is properly classified, has never been declassified, and was not otherwise officially acknowledged by the CIA.” The District Court stated that “[t]o be sure, *the public may draw whatever conclusions it might* from the fact that the information at issue was sent on CIA letterhead by the Chief of Retirement and Insurance Services. However, nothing in the law or its policy requires the CIA to officially acknowledge *what those in the public may think they know.*” (italics added).

To date, White House has declined to rule out the future possibility of a full pardon for I. Lewis Libby, and continues to seek and enforce a prior restraint of the information at issue about Valerie Wilson’s dates of employment with CIA previously published in the Congressional Record.