

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MORRIS D. DAVIS,  


Plaintiff,

v.

JAMES H. BILLINGTON, in his official  
capacity as the Librarian of Congress,  
Library of Congress  
101 Independence Avenue, S.E.  
Washington, D.C. 20540-1400

and DANIEL P. MULHOLLAN, in his  
individual capacity,  
Library of Congress  
101 Independence Avenue, S.E.  
Washington, D.C. 20540-1400

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

**NATURE OF THE ACTION**

1. This case involves the constitutionality of Defendants' decision to terminate Plaintiff Colonel Morris D. Davis from his position as Assistant Director at the Congressional Research Service because of an op-ed and a letter to the editor that he wrote, respectively, in the *Wall Street Journal* and the *Washington Post* concerning the Obama Administration's recent decision to prosecute some Guantánamo detainees in federal court and some in military commissions.

2. Between September 2005 and October 2007, Colonel Davis, a twenty-five-year veteran of the United States Air Force, served as the Chief Prosecutor for the Department of Defense's Office of Military Commissions. In that role, he was responsible for the prosecution of suspected terrorists held at Guantánamo Bay. He resigned from that position in October 2007 because of his belief that the military commissions system had become fundamentally flawed. He subsequently became a vocal and highly public critic of the system, speaking, writing and testifying to Congress about his personal views and first-hand experiences.

3. In December 2008, Davis was hired by the Library of Congress (the "Library") to be the Assistant Director of the Foreign Affairs, Defense and Trade ("FDT") Division of the Congressional Research Service ("CRS"). In that role, Davis did not have any official responsibilities or duties over issues relating to the military commissions, and he continued to express his opinions publicly on those issues with the approval and knowledge of CRS. Official responsibility for issues relating to the military commissions fell to a separate division within CRS, the American Law Division ("ALD").

4. In November 2009, United States Attorney General Eric Holder announced that some of the detainees held at Guantánamo would be tried in federal court in the United States while others would be prosecuted in military commissions. Relying on his expertise and experience in the military commissions system, Col. Davis wrote an op-ed and a letter to the editor (the "opinion pieces") expressing his reaction to the Attorney General's announcement. In the opinion pieces, Col. Davis did not purport to be expressing the views of CRS. The opinion pieces represented Col. Davis's personal views, informed by his unique experience and expertise, on a matter of immense public interest and concern.

5. On November 10, 2009, CRS Director Daniel P. Mulhollan told Col. Davis that he was very pleased with Col. Davis's job performance. The opinion pieces were published the next day. Immediately after the opinion pieces were published, Mr. Mulhollan admonished Col. Davis and formally disciplined him for writing them. One week later, Mr. Mulhollan notified Col. Davis that he would be terminated from his position at CRS.

6. Col. Davis now brings this Complaint for violation of his First and Fifth Amendment rights, seeking declaratory and injunctive relief, including reinstatement to his Assistant Director position, and damages. The public has an interest in a robust and fully informed debate about the military commissions and the treatment of prisoners held at Guantánamo Bay. Accordingly, Col. Davis brings these claims not only to vindicate his own constitutional rights but also the public's First Amendment right to receive his speech and hear his views.

### **JURISDICTION AND VENUE**

7. This case arises under the Constitution of the United States and presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331. This Court also has jurisdiction under 28 U.S.C. § 1361.

8. The Court has authority to issue declaratory and injunctive relief under 28 U.S.C. § 2201 *et seq.*, Rules 57 and 65 of the Federal Rules of Civil Procedure, and its inherent equitable powers.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (e) because the Library of Congress is within this judicial district, the events or omissions giving rise to Col. Davis's claims for relief occurred in this judicial district, the unlawful acts are alleged to have

been committed in this judicial district, and the records relevant to such acts are maintained and administered in this judicial district.

10. Neither the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U.S.C.), nor any other statute or regulation affords Col. Davis an administrative remedy.

11. The Court has the authority to award attorneys' fees and expenses under 28 U.S.C. § 2412.

### **PARTIES**

12. Plaintiff Morris Davis is a twenty-five-year veteran of the United States Air Force and the former Chief Prosecutor for the Department of Defense's Office of Military Commissions. He retired from military service in October 2007 with the rank of Colonel. He was subsequently hired as an Assistant Director of the Foreign Affairs, Defense and Trade Division of CRS in December 2008, and served in that capacity until his removal on December 21, 2009, at which point he was reassigned to a temporary thirty-day position with CRS pending termination on January 20, 2010. He currently resides in Gainesville, Virginia.

13. Defendant Dr. James H. Billington is the Librarian of Congress and heads the Library of Congress. Dr. Billington is responsible for the Library's personnel policies and practices and retains ultimate authority to hire or terminate employees. Dr. Billington is sued in his official capacity.

14. Defendant Daniel P. Mulhollan is the Director of CRS, which is the public policy research arm of the United States Congress and a service unit of the Library of Congress. Mr. Mulhollan is responsible for CRS's policies and practices with regard to outside speaking and writing by CRS employees, and it was Mr. Mulhollan who admonished and terminated Col.

Davis because of his constitutionally protected speech. Mr. Mulhollan is sued in his individual capacity.

## **FACTUAL ALLEGATIONS**

### **Col. Davis's Professional Experience and Qualifications**

15. Col. Davis served in a variety of important leadership and staff positions over the course of his twenty-five years of military service. Following his graduation from law school in 1983, Col. Davis was commissioned as an officer in the Judge Advocate General's Corps of the United States Air Force, eventually becoming Chief of Military Justice at Patrick Air Force Base in Cocoa Beach, Florida. He later served as a Staff Judge Advocate at various levels of command; an Appellate Government Counsel; the Deputy Commandant and Interim Commandant at the Air Force Judge Advocate General's School at Maxwell Air Force Base in Montgomery, Alabama; the Director of Air Force Legal Information Services at Maxwell Air Force Base; and the Director of United States Air Force Judiciary at Bolling Air Force Base in Washington, D.C.

16. Col. Davis was promoted to the rank of Colonel in April 2001. Over the years, he has received numerous awards and honors, including: the Legion of Merit; the Meritorious Service Medal (6 awards); the Air Force Commendation Medal (2 awards); the Air Force Achievement Medal (2 awards); the Air Force Outstanding Unit Award (2 awards); the Air Force Organizational Excellence Award (2 awards); the National Defense Service Medal (with service star); the Southwest Asia Service Medal; the Global War on Terrorism Expeditionary Medal; the Global War on Terrorism Service Medal; the Air Force Longevity Service Medal (6 awards); the Air Force Training Ribbon; and recognition as the 1990 Headquarters Air Force Outstanding Judge Advocate of the Year.

17. Col. Davis holds Masters Degrees in Law from both the George Washington University School of Law and the U.S. Army Judge Advocate General School.

18. Col. Davis's successful career, including his extensive experience and expertise, led to his selection as the Chief Prosecutor for the Department of Defense's Office of Military Commissions in September 2005. In that position, Col. Davis was entrusted by the Department of Defense with primary responsibility for overseeing the military commissions created to prosecute suspected terrorists being held at Guantánamo, a position that carried enormous responsibility and that was the subject of intense public scrutiny. Col. Davis received praise for his performance, and even critics of the military commissions acknowledged that Col. Davis had performed admirably.

Col. Davis's Public Speaking and Writing Prior to His Hiring at CRS

19. Col. Davis resigned from his position as Chief Prosecutor for the military commissions in October 2007 because he came to believe that the military commissions system had become fundamentally flawed.

20. After his resignation, Col. Davis became a vocal critic of the system, speaking, writing, and testifying before Congress about what he saw as the system's flaws.

21. His published pieces include op-eds in the *New York Times*, the *L.A. Times*, and the *Toronto Star*, and a law review article in a journal housed at Northwestern.

22. Col. Davis's public speaking included presentations at, among other places, Yale Law School, the Thomas M. Cooley Law School, the Fordham University School of Law, George Mason University School of Law, Duke University School of Law, American University School of Law, Syracuse University School of Law, the annual meeting of the American Society

of International Law, the Pennsylvania Bar Association's Law Policy Forum, and to a variety of military audiences.

23. Col. Davis testified to Congress on July 30, 2008 about his experience as Chief Prosecutor and his personal views concerning the military commissions system. He also testified at a hearing on those subjects at the Organization of American States' Inter-American Commission on Human Rights in October 2008.

24. In his writings, public speeches, and testimony, Col. Davis generally supported the use of military commissions to try suspected terrorists held at Guantánamo, but he criticized the military commissions system as it then existed. For example, he argued that the system's lack of procedural protections rendered it suspect in the eyes of the world, and that interference by political appointees was compromising the integrity of the system.

#### Col. Davis's Hiring by the Congressional Research Service

25. Col. Davis applied for the position of Assistant Director of the Foreign Affairs, Defense and Trade ("FDT") Division at CRS in September 2008. His application referenced his publications and presentations on military commissions and Guantánamo, and it included a writing sample focused on the same topic. During his interview by Mr. Mulhollan and others, Col. Davis discussed his experience as Chief Prosecutor and his decision to resign and to publicly criticize the military commission system. Neither Mr. Mulhollan nor any other Library or CRS employee told him during the interview that the job with CRS would require him to cease speaking and writing about the military commissions, or that his continued speaking and writing about the military commissions would compromise the mission of CRS.

26. Col. Davis was offered the position of Assistant Director in December 2008. He accepted it the same day, turning down another offer of employment with the federal government.

27. The Library, CRS, and Mr. Mulhollan were aware of Col. Davis's background and his prior public writing and speaking about Guantánamo and the military commissions when they hired him to serve as an Assistant Director. They did not tell him that continuing to engage in public speaking or writing in the future would imperil his ability to serve as a CRS employee and/or harm CRS or the Library. Nor did anyone tell him that his employment was conditioned on his willingness to forego engaging in any further outside speaking or writing about these or other issues of personal interest and public concern.

28. Had Col. Davis been so informed, it is likely that he would not have accepted the position.

#### Col. Davis's Work for the Congressional Research Service

29. Col. Davis began working for CRS on December 22, 2008. As the Assistant Director for the FDT Division, Col. Davis was responsible for supervising and managing approximately 95 employees. Col. Davis's primary responsibilities were to lead, plan, direct, and evaluate the research and analytical activities in the policy areas assigned to his division, which included matters relating to foreign affairs, the Defense Department, and international trade and finance, but not issues related to military commissions. Col. Davis had no authority to establish policy, and he had little opportunity for significant contact with the public. Like other Assistant Directors, Col. Davis was not expected to and did not author written reports or analyses on behalf of CRS. His name has not appeared on any reports distributed to Congress. Nor have any congressional inquiries or requests for information been directed to him.



30. The FDT Division has seven research sections: Foreign Policy Management and Global Issues; International Trade and Finance; Defense Policy and Arms Control; Defense Budget, Manpower, and Management; Asia; Europe and the Americas; and Middle East and Africa. The FDT Division's mandate does not encompass the military commissions system or the prosecution of individuals held at Guantánamo. Accordingly, Col. Davis's work for CRS is not related to the military commissions system about which he has frequently spoken in his private capacity.

31. Within CRS, sole responsibility for topics relating to the military commissions system and the prosecution of the individuals held at Guantánamo belongs to the American Law Division ("ALD"). The legislative attorneys in ALD author reports on those issues and respond to requests for information relating to their reports. All inquiries on those issues are and have been assigned to ALD. Since 2001, CRS has conducted several seminars and workshops for congressional staff on issues relating to the military commissions, all of which were conducted by legislative attorneys from ALD.

32. Members of Congress and their staffs know that ALD is the division responsible for military-commission-related issues. Among other things, the reports on these issues contain the contact information of the legislative attorneys in ALD, and the CRS subject-matter directory shows that ALD is the entity with subject-matter expertise on the military commissions.

33. With the knowledge and, in some cases, express approval of CRS, Col. Davis continued to speak publicly about military commissions issues after commencing his employment with CRS. For example, in February 2009, Col. Davis gave an extemporaneous dinner speech at a Human Rights Watch dinner that reflected his oft-stated criticism of the Bush administration's policies relating to military commissions. The CRS Deputy Director had given

him approval to attend the dinner, and he reported to her what happened the next day. He was not told by anyone that this speech had threatened CRS or the Library's work, or that it had compromised his objectivity or non-partisanship.

34. In early August 2009, Col. Davis asked Mr. Mulhollan and the CRS Office of Communication for permission to be interviewed on tape by producers of a BBC documentary about Guantánamo. Mr. Mulhollan and the CRS Office of Communications gave Col. Davis permission to participate in the interview, and he did so, expressing his personal opinions about the military commissions.

35. On September 11, 2009, Col. Davis participated in a conference at Case Western Reserve University Law School concerning the military commissions system and submitted a law review article expressing his views in connection with the conference. Mr. Mulhollan approved his participation, with the only condition being that Col. Davis had to participate on his personal time by using a vacation day, because the subject of the conference—Guantánamo and the military commissions system—had nothing to do with his CRS job responsibilities or duties. Col. Davis was informed by a CRS attorney that he could speak at the conference and write his law review article without providing an express disclaimer indicating that the opinions he was expressing were his own and not necessarily shared by CRS or the Library.

36. Col. Davis's presentation and law review article at Case Western were consistent with his previously expressed public views and with the opinions he later published in the opinion pieces. In fact, during a question-and-answer session, Col. Davis made the exact same point that he later made in the opinion pieces—that there should only be one judicial system for all of the detainees.

37. The Case Western conference and Col. Davis's comments there were published on the Internet via a webcast. CRS routinely monitors all public speaking, writing, and media appearances of its employees. Neither Mr. Mulhollan nor anyone else from CRS or the Library ever informed Col. Davis that his presentation at the conference or his law review article had compromised the work of CRS or undermined Col. Davis's effectiveness as a CRS employee.

38. On November 5, 2009, Col. Davis received the Charles Whittaker Award from the Lawyers Association of Kansas City for speaking out against torture and the politicization of the military commissions. Col. Davis received express approval from Mr. Mulhollan to attend this event and accept the award. He spoke at the event about his experience as the former Chief Prosecutor and his views concerning Guantánamo and the military commissions system. His presentation was consistent with his previously expressed public views, and with the views that he later published in the opinion pieces, and media coverage of the event observed that Col. Davis was critical of both the Bush and the Obama administrations' policies relating to the military commissions. Neither Mr. Mulhollan nor anyone else from CRS or the Library ever informed Col. Davis that his appearance or presentation at the ceremony had compromised the work of CRS or undermined Col. Davis's effectiveness as a CRS employee.

39. Col. Davis also publicly expressed his views about the military commissions and the treatment of detainees on other occasions.

40. Col. Davis was not disciplined in any manner before publication of the opinion pieces on November 11, 2009 for writing or speaking publicly about Guantánamo or the military commissions.

41. In fact, during his tenure at CRS, Col. Davis was told on numerous occasions by Mr. Mulhollan and others that he was doing a very good job, that he was well-liked and

respected by his CRS colleagues, and that he was a good fit for CRS. Before he published the opinion pieces, no one at CRS or the Library questioned or criticized Col. Davis's job performance or indicated that he was doing anything other than highly satisfactory work. During their regular meetings, Mr. Mulhollan stated repeatedly that he was more than satisfied with Col. Davis's performance, and Mr. Mulhollan also stated that Col. Davis should rest assured that he was satisfactorily completing his mandatory one-year probationary period.

42. On November 10, 2009, the day before the opinion pieces were published, Mr. Mulhollan reaffirmed his previous views concerning Col. Davis's work performance, telling Col. Davis that he was very pleased with his job performance, and that others at CRS had stated that they respected and appreciated Col. Davis and thought that he was doing a very good job.

*The Wall Street Journal Op-Ed, the Washington Post Letter to the Editor, and Mr. Mulhollan and the Library's Decision to Terminate Col. Davis*

43. On November 11, 2009, the *Wall Street Journal* published an op-ed written by Col. Davis about the Obama Administration's decision to try some of the individuals being held at Guantánamo in federal court and others in military commissions.

44. On the same day, the *Washington Post* published a letter to the editor from Col. Davis on the subject of using federal courts to try some of the individuals being held at Guantánamo.

45. The opinion pieces relate to subjects of immense public concern—Guantánamo and the military commissions process, and the decision to try certain detainees in federal court in the United States. These subjects will continue to be matters of public concern for the foreseeable future, as President Obama and Attorney General Holder will undoubtedly announce additional decisions with respect to the military-commission or federal-court trial of other Guantánamo detainees, and critics and supporters of these decisions will voice their opinions.

46. The views expressed by Col. Davis in the opinion pieces were similar to those he had already expressed publicly both before and after the commencement of his employment with CRS. The language used by Col. Davis in the opinion pieces was also similar to the language he had used in his prior publications and presentations. The principal argument of the opinion pieces was that there should only be one judicial system for all of the Guantánamo detainees who will face criminal prosecution, rather than two separate systems, because having two separate systems would inevitably lead many to believe that one system (the federal courts) was fair while the other (the military commissions) was not.

47. Neither of the opinion pieces singled out or criticized Congress, any Member of Congress, any political party, or positions associated with one party but not another. They criticized the decisions and positions of officials from both major parties. The opinion pieces are well-reasoned and supported and make substantive arguments about a matter of immense public concern.

48. The opinion pieces were written by Col. Davis in his personal capacity, on his home computer, during non-work hours over the weekend of November 7-8, 2009. Col. Davis submitted the pieces over the Internet from his home computer.

49. Col. Davis did not receive any payment for writing the opinion pieces. Nor did any organization or individual ask him to write them. Col. Davis chose to write them because of his personal experience with the military commissions system and his deeply felt views about the system, which he believes the public is entitled to know.

50. The opinion pieces do not denigrate or criticize CRS, the Library, or any of their employees or policies in any manner. Indeed, neither of the opinion pieces mentions CRS, the Library, or Col. Davis's work for CRS and the Library, as CRS and the Library had nothing to

do with the personal views or experiences Col. Davis acquired as the former Chief Prosecutor. The opinion pieces rely exclusively on Col. Davis's professional experience prior to his working for CRS, and they reflect his personal views regarding Guantánamo and the military commissions process.

51. Neither of the opinion pieces indicates, or even suggests, that Col. Davis was writing in anything but his personal capacity. Both bylines and pieces make clear that the author was an individual writing solely in his individual capacity based on his experience as the former Chief Prosecutor at Guantánamo. Col. Davis reasonably believed, based on CRS's prior approval of his and others' speech without express disclaimers and on conversations with newspaper editors, that his articles and bylines were sufficient to make any reader understand that the pieces were written by him in his individual capacity.

52. On November 10, 2009, Col. Davis was informed by the *Wall Street Journal* and the *Washington Post* that his opinion pieces would be published the next day.

53. Shortly thereafter that same day, Col. Davis notified Mr. Mulhollan that the opinion pieces were going to be published the next day. Mr. Mulhollan requested that Col. Davis forward the pieces to him. Col. Davis did so.

54. After he reviewed the opinion pieces, Mr. Mulhollan sent several emails to Col. Davis questioning Col. Davis's judgment and ability to continue serving as an Assistant Director.

55. On November 12, the day after the opinion pieces appeared in the papers, Mr. Mulhollan called Col. Davis into a meeting. Richard Ehlke, the acting Deputy Director of CRS was present as well. During this meeting, Mr. Mulhollan told Col. Davis that he could not believe that Col. Davis had written these pieces and that Col. Davis's actions had caused him to doubt Col. Davis's judgment and suitability to serve as an Assistant Director. When Col. Davis

declined to acknowledge that he was wrong to publish the articles and that First Amendment protections did not apply, Mr. Mulhollan informed Col. Davis that he would not be converted to permanent status from his probationary status despite his previous statements that Col. Davis would be so converted, and that, instead, Col. Davis's mandatory one-year probationary period would be extended for 90 additional days.

56. The next day, Mr. Mulhollan called Col. Davis into another meeting. Mr. Ehlke was present for this meeting as well. When Col. Davis again refused to acknowledge that it was impermissible for him to have written the opinion pieces and that the First Amendment right of free speech did not apply, Mr. Mulhollan provided him with a pre-written letter of admonishment. As Col. Davis stood to leave the room, Mr. Mulhollan told Col. Davis that he was a likeable person and that he had done a good job, but that Mr. Mulhollan could not accept his bad judgment.

57. The letter of admonishment focuses entirely on Col. Davis's writing of the opinion pieces.

58. One week later, on November 20, Mr. Mulhollan informed Col. Davis by telephone that he would be removed from his position as of December 21, 2009, and that he would thereafter be given a thirty-day temporary position as Mr. Mulhollan's Special Advisor, during which time Col. Davis could look for a different job. Mr. Mulhollan had his assistant deliver a written notice of termination to Col. Davis immediately after that call.

59. Like the letter of admonishment, the notice of termination focuses on Col. Davis's decision to publish the opinion pieces. But for the opinion pieces, Defendants would not have terminated Col. Davis from his position as an Assistant Director of CRS and he would have become a permanent employee.

60. On November 24, 2009, Mr. Mulhollan sent an email to every CRS employee informing them that Col. Davis was being removed from his position as the Assistant Director of the FDT Division as of December 21, 2009, and that he would be replaced.

61. Col. Davis is presently serving in a temporary position for thirty days as Mr. Mulhollan's Special Advisor. Unless extended, that position will expire on January 20, 2010.

62. Because of his former position as the Chief Prosecutor for the military commissions, Col. Davis is regularly asked to comment on Guantánamo and the military commissions system. Col. Davis believes he has a unique perspective to add to this debate, and he would like to convey his insights and opinions to the public. Since he was informed that he was being terminated by CRS, however, Col. Davis has declined numerous opportunities to speak publicly about military commissions issues out of fear that he could be subject to further retaliation by the Library and Mr. Mulhollan.

63. The decision to terminate Col. Davis for his speech has intimidated and chilled other CRS employees from speaking and writing in public. CRS employees are confused, uncertain, and fearful about what outside speaking and writing is permissible.

64. As a result of the Library's and Mr. Mulhollan's actions, Col. Davis has suffered, and/or will suffer, both economic and non-economic losses, emotional distress, and other compensable damages.

The Library of Congress's Regulation on Outside Speaking and Writing and  
CRS's Policy and Practice Regarding Outside Speaking and Writing

65. The Library of Congress has a specific regulation that addresses outside speaking and writing by its employees. That regulation, LCR 2023-3, "encourage[s]" Library employees to engage in outside speaking and writing, and does not restrict employees from speaking or writing about issues that are not within their areas of specialty at CRS. LCR 2023-3, § 3(A).



66. LCR 2023-3 also makes clear that personal writings and prepared or extemporaneous speeches, including those on “controversial” matters, are not subject to prior review. LCR 2023-3, § 3(A), (B). The regulation does not contain any requirement that Library employees notify their supervisors in advance about their intention to engage in outside speaking or writing.

67. The regulation states that, when speaking or writing about “controversial matters,” Library employees are expected to disassociate themselves explicitly from the Library and from their official positions. It also states that, where an employee’s writing relates to library science, the administration or policies of the Library, matters relating to an employee’s official duties or responsibilities, or matters specifically addressing Members of Congress, the employee is expected to, among other things, “assure, when appropriate, that staff members’ opinions clearly differentiate from Library policy.” LCR 2023-3, § 3(B).

68. In 2004, Mr. Mulhollan issued a “Director’s Statement on Outside Activities.” That statement has been edited and reformatted into a document that is now labeled as a policy. Like the Library regulation it purports to clarify, the CRS policy on outside speaking and writing, which was created, implemented, and is now enforced by Mr. Mulhollan, does not expressly prohibit employees from engaging in any outside speaking or writing.

69. The CRS policy does not require employees to obtain prior approval before engaging in outside speaking or writing. Unlike the Library regulation, however, the CRS policy “strongly encourages” employees to submit draft writings to the CRS Review Office for prior review, although the policy also states that prior review is not a “formal requirement.”

70. Purporting to interpret the Library regulation, the CRS policy provides that employees “must make it clear that the views expressed [in outside speaking or writings] are theirs and do not represent the views” of CRS.

71. The CRS policy also provides that employees are responsible for “using sound judgment in deciding when engagement in an outside activity may place the reputation of CRS at risk.” “Sound judgment” is not defined or discussed.

72. This CRS policy was originally issued on January 23, 2004 as a “Director’s Statement” from Mr. Mulhollan to all CRS employees. The Director’s Statement engendered confusion and anxiety among CRS employees concerning the permissibility of outside speaking and writing, and the ultimate effect of the Director’s Statement was to discourage CRS employees from engaging in outside speech and writing, particularly on issues of broad public concern.

73. After the issuance of the Director’s Statement, the union for CRS employees, the Congressional Research Employees Association (“CREA”), issued a memorandum to its members explaining that the Director’s Statement did not deprive them of their First Amendment rights, and criticizing some of the more confusing and problematic language contained in the Director’s Statement.

74. Since the issuance of the Director’s Statement and CRS’s policy, CRS employees have been confused as to which outside writing and speaking is permissible, and CRS’s policy continues to discourage CRS employees from engaging in speech protected by the First Amendment. That confusion, uncertainty, and intimidation continues to this day.

75. Mr. Mulhollan is directly and personally involved in determining what speech or writing is permissible and what consequences will follow if, in his estimation, the guidelines have not been followed.

76. Neither the Library's regulations nor CRS's policy establishes a standard for determining which outside speaking and writing is permissible and which is not. The regulations and policy afford the Library and CRS unfettered discretion to determine which speech to punish.

77. Because of the nature of their jobs and their expertise, Library and CRS employees regularly write and speak and express their opinions in public on policy matters of public concern, including on controversial and high-profile issues. This outside writing and speaking has been occurring for decades and has not compromised the mission of the Library or CRS.

### **First Cause of Action**

#### **(First Amendment—unconstitutional termination)**

78. Defendants' actions in terminating Col. Davis for engaging in constitutionally protected speech violated the First Amendment.

79. As a result of Defendants' actions, Col. Davis has suffered, and will continue to suffer, both economic and non-economic losses, emotional distress, and other compensable damages.

80. Defendant Mulhollan's actions were intentionally done with malice or with reckless indifference to Col. Davis's rights under law.

## **Second Cause of Action**

### **(First Amendment—unconstitutional policy)**

81. To the extent that Defendants' regulations or policies prohibit publication of the opinion pieces because of the controversial or highly contentious subject matter of the speech, those regulations and/or policies are unconstitutional on their face and as applied to Col. Davis, under the First Amendment.

82. To the extent that Defendants' regulations or policies require prior approval of speech for certain employees such as Col. Davis, they are unconstitutional on their face and as applied to Col. Davis, under the First Amendment, because they operate as a prior restraint that gives unfettered discretion to Defendants to suppress the speech of their employees.

## **Third Cause of Action**

### **(First and Fifth Amendment—Due Process)**

83. Defendants' regulations and/or policies on outside speaking and writing are unconstitutionally vague on their face and as applied to Col. Davis, under the First and Fifth Amendments.

84. As a result of Defendants' actions, Col. Davis has suffered, and will continue to suffer, both economic and non-economic losses, emotional distress, and other compensable damages.

85. Defendant Mulhollan's actions were intentionally done with malice or with reckless indifference to Col. Davis's rights under law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Col. Davis respectfully requests that the Court enter judgment in his favor and against Defendants, and award the following relief:

- a. Declaratory relief, including, but not limited to, a declaration that Defendants' actions and/or the Library's and CRS's policies on outside speaking violate the First Amendment and the Fifth Amendment of the United States Constitution;
- b. Appropriate injunctive relief, including, but not limited to, reinstatement, and an order restraining Defendants from engaging in further unconstitutional conduct of the types of which Col. Davis complains herein, including further enforcement of CRS's unconstitutional policy and practice regarding outside speaking and writing;
- c. Back pay, in amounts to be determined at trial, along with credit for job seniority for any time after the Library ceases to pay Col. Davis's present salary;
- d. Front pay, in the event reinstatement is not granted;
- e. Compensatory and consequential damages against Defendant Mulhollan;
- f. Punitive damages against Defendant Mulhollan;
- g. Pre-judgment and post-judgment interest at the highest lawful rate;
- h. Attorneys' fees and expenses; and
- i. Any such further relief as justice allows.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

January 8, 2010