

No. 25-991

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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Jane Doe,  
*Plaintiff-Appellant,*

v.

Sean Combs, Daddy's House Recordings, Inc., CE OPCO, LLC d/b/a  
Combs Global f/k/a Combs Enterprises, LLC, Bad Boy Entertainment  
Holdings, Inc., Bad Boy Productions Holdings, Inc., Bad Boy Books  
Holdings, Inc., Bad Boy Entertainment, LLC, and Bad Boy  
Productions LLC,  
*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

The Honorable Jennifer Louise Rochon  
Case No. 1:24-CV-09852-JLR

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**BRIEF OF PROPOSED *AMICUS CURIAE*  
PROF. EUGENE VOLOKH  
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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\* Counsel would like to thank Mary Rose Fetter, a Stanford Law School student who worked on the brief.

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Eugene Volokh is the Thomas M. Siebel Senior Fellow at the Hoover Institution and the Gary T. Schwartz Distinguished Professor of Law at UCLA School of Law. He is the author of *The Law of Pseudonymous Litigation*, 73 *Hastings L.J.* 1353 (2022); *If Pseudonyms, Then What Kind?*, 107 *Judicature* 77 (2023); *Protecting People from Their Own Religious Communities: Jane Doe in Church and State*, 38 *J.L. & Religion* 354 (2023); *One-Sided Pseudonymity*, 23 *Geo. J.L. & Pub. Pol’y* 41 (forthcoming 2025); and over 100 other law review articles and a casebook on First Amendment law. His work on pseudonymous litigation has been cited by courts in *Doe v. Sidar*, 93 F.4th 241, 250 (4th Cir. 2024), *Doe v. Settle*, 24 F.4th 932, 939 n.5 (4th Cir. 2022), *Doe v. MIT*, 46 F.4th 61, 69-70 (1st Cir. 2022), and other cases.

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<sup>1</sup> No party or party’s counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting the brief. No person has contributed money that was intended to fund preparing or submitting the brief, except that the Hoover Institution at Stanford University paid the expenses involved in filing this brief.

## SUMMARY OF ARGUMENT<sup>2</sup>

“[P]seudonymity generally, and one-sided pseudonymity particularly, is not without its risks.” *Doe v. Sidar*, 93 F.4th 241, 250 (4th Cir. 2024) (Wilkinson, J., concurring). Permitting a plaintiff to proceed pseudonymously while naming an accused defendant is generally unfair to the defendant:

Allowing one party to proceed anonymously increases the potential for abusive suits that use the threat of reputational damage to exact revenge or to extract settlements from innocent parties. Having one party incognito but not the other can tilt the scales of justice in the direction of guilt by anonymous accusation, a prospect which would be just as abhorrent to civil litigation as it is to our criminal justice system.

. . . Pseudonymity may enhance the incentives for well-founded complaints to be filed, but it may also serve as a cover for actions that tarnish the innocent.

*Id.* (citations omitted).

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<sup>2</sup> Because *Doe v. Combs*, No. 25-986, *Doe v. Combs*, No. 25-991, and *Doe v. Combs*, No. 25-1021, raise essentially the same issue related to pseudonymity, proposed *amicus* is filing essentially the same brief in all three. The only differences are immaterial, such as in the captions.

This brief elaborates on Judge Wilkinson's reasoning to explain why there should be an especially strong presumption against one-sided pseudonymity in cases (such as cases alleging sexual assault, fraud, and the like) where an accusation can by itself cause severe reputational harm.

First, being identified as a litigant can seriously harm a defendant even if a court eventually finds that the accusations were unfounded. This harm can be as great as the harm that a plaintiff seeks to avoid by suing pseudonymously.

Second, and extending beyond sexual assault and other highly stigmatizing claims, allowing a plaintiff to proceed pseudonymously increases the potential for unfounded or overstated suits. Pseudonymity may reduce the plaintiff's sense of accountability, making it easier to pursue speculative or exaggerated allegations without reputational cost.

Third, one-sided pseudonymity can be unfair to the named party during the litigation process; as courts have recognized, one-sided pseudonymity can

- make it less likely that witnesses will come forward with information about the plaintiff or about the incident over which the plaintiff is suing;
- make it harder for publicly accused individuals to publicly defend themselves against public allegations, for example by challenging the plaintiff's credibility;
- skew settlement dynamics, asymmetrically pressuring defendants into settling early or allowing the pseudonymous party to hold out for a larger settlement while facing fewer costs; and
- potentially cause jury prejudice, subtly framing one party as endangered and thus deserving of protection.

In each respect, the imbalance created by one-sided pseudonymity tends to undermine the fairness of judicial proceedings.

To be sure, one possible solution to the problem—mutual pseudonymity—interferes with the public's right of access to court proceedings even more than one-sided pseudonymity does. Courts might therefore conclude that the better solution is no pseudonymity in such cases, or per-

haps they might conclude that the better solution is two-sided pseudonymity. But on balance, they should generally not allow one-sided pseudonymity.

Finally, though there may be situations where one-sided pseudonymity is justified, such as those involving institutional defendants like large corporations or governments or individual defendants who had already been found guilty, this case does not present such an exception.

## ARGUMENT

### **I. Being identified as a litigant can be equally harmful to a defendant as to a plaintiff.**

Pseudonymity during litigation is often justified as protecting a plaintiff's privacy and reputation. But a defendant's privacy and reputation are often likewise at stake: "those accused of crimes can suffer reputational damage even when a court later finds that the accusations were unfounded." *Doe v. Sidar*, 93 F.4th, at 250 (Wilkinson, J., concurring) (alleged sexual assault case). "Plaintiff's allegations and public comments embarrass Defendant and place him under the same stigma that concerns Plaintiff." *Anonymous v. Simon*, No. 13-CV-2927 (RWS), 2014 WL

819122, at \*2 (S.D.N.Y. Mar. 3, 2014) (alleged sexually transmitted disease case).

To be sure, plaintiffs in sexual assault cases may be “particularly vulnerable to the possible harms of disclosure.” *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008) (sexual assault case). Regrettably, being identified as an alleged sexual assault victim does indeed still stigmatize the plaintiff in some measure in some people’s eyes (though one hopes this is less so today than it was in past decades). But, as the decision below recognizes, Pl.’s App’x A-053, defendants in sexual assault cases—and other cases involving allegations of very serious misconduct—are also harmed by disclosure.

Of course, when defendants are indeed sexual assault perpetrators, then they deserve to be stigmatized. But while the case is being litigated, they are generally merely accused. Courts, “at this stage, must not . . . make any assumptions about whether her allegations [of sexual assault] are true or false.” *Doe v. Combs*, No. 24-CV-8054 (MKV), 2024 WL 4635309, at \*5 (S.D.N.Y. Oct. 30, 2024), *reconsideration denied*, 2024 WL 4753565 (S.D.N.Y. Nov. 12, 2024). Defendants are not presumed guilty;

indeed, the burden of proof even in a civil case remains on the accuser. Some defendants in sexual assault cases may well be innocent.

## **II. Being identified as a litigant can deter the meritorious defense of a case just as it does the meritorious bringing of a case.**

Pseudonymity is also sometimes justified on the theory that requiring plaintiffs to be publicly identified can deter plaintiffs from suing, and thus undermine the public policy that the particular civil causes of action are aimed to serve (for instance, the policy of compensating for, punishing, and deterring assaults). *See* Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 *Hastings L.J.* 1353, 1383 (2022). Plaintiffs faced with the prospect of being publicly identified might choose not to litigate or may drop meritorious suits: People who were sexually assaulted, for instance, might be reluctant to continue with their lawsuits once pseudonymity is denied. Likewise for people who have been libeled, or who have been pretextually fired by their employers.

But lack of pseudonymity for defendants can similarly deter defendants from presenting meritorious defenses. Defendants—especially ones accused of an extremely serious offense such as sexual assault—might

likewise feel pressed to settle to prevent the filing of a complaint that would publicly identify them as defendants, even if they have sound legal or factual defenses. Someone who is being accused of rape might be reluctant to defend himself in court, even if he is innocent, if he knows that the very filing of the lawsuit would publicly label him as an accused rapist. One-sided pseudonymity thus unfairly privileges the access-to-justice concerns of the plaintiff over those of the defendant.

### **III. Allowing one party to proceed pseudonymously increases the potential for unfounded suits.**

One-sided pseudonymity can give plaintiffs a tactical advantage by allowing them to level accusations from behind a veil of anonymity, while defendants are exposed to public scrutiny. This asymmetric anonymity makes it easier for plaintiffs to assert false or exaggerated claims—or to frame the facts in a way that favors their narrative—without facing the reputational risks that might otherwise discourage such conduct.

Plaintiffs who remain pseudonymous may feel freer to pursue aggressive or tenuous legal theories without facing public accountability. Pseudonymity can also encourage a selective or dramatized portrayal of

events—particularly regarding relatively subjective harms like emotional distress—because the plaintiff is shielded from reputational consequences that might otherwise deter embellishment.

“Anonymity may well confer a kind of immunity which permits a plaintiff to hurl rhetorical weapons that could cause a unique kind of harm not faced in ordinary litigation.” *United States v. Microsoft*, 56 F.3d 1448, 1457 (D.C. Cir. 1995). “[A]nonymity provides a shield behind which defamatory charges may be launched without shame or liability.” *Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005) (alleged revenge porn case).

“Allowing one party to proceed anonymously increases the potential for abusive suits . . . .” *Doe v. Sidar*, 93 F.4th, at 250 (Wilkinson, J., concurring). “Pseudonymity may enhance the incentives for well-founded complaints to be filed, but it may also serve as a cover for actions that tarnish the innocent.” *Id.* Pseudonymous parties may feel less inhibited “from fabricating or embellishing an account.” *Doe v. Delta Airlines, Inc.*, 310 F.R.D. 222, 225 (S.D.N.Y. 2015), *aff’d*, 672 F. App’x 48 (2d Cir. 2016). “Having one party incognito but not the other can tilt the scales of justice in the direction of guilt by anonymous accusation.” *Doe v. Sidar*, 93 F.4th,

at 250 (Wilkinson, J., concurring). Conversely, the risk of sweeping or exaggerated claims is diminished if parties are named, as “[d]isclosure also deters plaintiffs from fabricating or embellishing their claims.” *Doe v. Intel Corp.*, 786 F. Supp. 3d 576, 585 (S.D.N.Y. 2024) (citing *Doe v. Delta Airlines, Inc.*, 310 F.R.D. at 225), *appeal voluntarily dismissed*, No. 24-3330, 2025 WL 919026 (2d Cir. Feb. 24, 2025).

#### **IV. One-sided pseudonymity risks unfairness to the named party during the litigation process.**

##### **A. Generally**

Courts must consider, among other factors, “whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously.” *See Sealed Plaintiff*, 537 F.3d at 190. And courts recognize that such prejudice is often exacerbated by one-sided pseudonymity: Because “the mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm,” “[b]asic fairness dictates that those among the defendants’ accusers who wish to participate in this suit as individual party plaintiffs must do so under their real names.” *S. Methodist Univ. Ass’n of Women L. Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979). “If plaintiff were

permitted to prosecute this case anonymously, [defendant] would be placed at a serious disadvantage, for he would be required to defend himself publicly while plaintiff could make her accusations from behind a cloak of anonymity.” *Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D.N.Y. 1996) (alleged sexual assault case) (also quoting *S. Methodist Univ. Ass’n of Women L. Students*, 599 F.2d, at 713).

### **B. One-sided effects on the availability of witnesses**

More specifically, “[p]laintiff’s anonymity would make it more difficult to obtain witnesses and witness testimony.” *Doe v. McLellan*, No. 20-CV-5997 (GRB) (AYS), 2020 WL 7321377, at \*3 (E.D.N.Y. Dec. 10, 2020) (alleged sexual assault case). As Justice Brennan observed, “[p]ublic trials come to the attention of key witnesses unknown to the parties,” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 596-97 (1980) (Brennan, J., concurring). But that process breaks down when a party’s name is concealed. Without knowing who is involved, potential witnesses may not realize that their knowledge is relevant to the case, and as a result, they may never come forward and become available.

“Confidentially disclosing the plaintiff’s name to the defendants’ counsel, as plaintiff’s counsel suggests, would not eliminate the potential prejudice.” *Doe v. Combs*, No. 24-CV-08810 (LAK), 2025 WL 268515, at \*4 (S.D.N.Y. Jan. 22, 2025) (alleged sexual assault case). As Justice Brennan noted, some of the useful witnesses would be “unknown to the parties” and thus not easily identifiable through ordinary discovery. “[T]his asymmetry in fact-gathering would not be avoided by the fact that [plaintiff] already has provided [defendant] with his name.” *Rapp v. Fowler*, 537 F. Supp. 3d 521, 531 (S.D.N.Y. 2021) (alleged sexual assault case) .

And this asymmetric loss of witnesses poses a special risk in “[h]ighly publicized cases,” which “can cause unknown witnesses to surface.” *Id.* “By keeping [plaintiff’s] identity confidential, ‘information about only one side may thus come to light.’ This not only would prejudice [defendant], but would hinder ‘the judicial interest in accurate fact-finding and fair adjudication.’” *Id.* (quoting *Doe v. Del Rio*, 241 F.R.D. 154, 159 (S.D.N.Y. 2006), and *Doe v. Weinstein*, 484 F. Supp. 3d 90, 98 (S.D.N.Y. 2020)).

As one court explained in a case concerning the same Defendant accused in this suit:

Plaintiff's own complaint demonstrates how this imbalance could play out. Doe references previously-filed public lawsuits against Combs and Pierre, including one against Combs by Cassie. In describing Cassie's suit, the Complaint asserts that almost immediately after her allegations became public, witnesses with relevant knowledge about Combs came forward to corroborate her claims. Permitting Plaintiff to remain anonymous undermines Defendants' ability to discover relevant information about Plaintiff. This is especially true, as Plaintiff herself acknowledges, in a case like this that happened decades ago where evidence and witnesses may be difficult to find.

*Doe v. Combs*, No. 23-CV-10628 (JGLC), 2024 WL 863705, at \*4 (S.D.N.Y. Feb. 29, 2024). When one side is pseudonymous and the other is not, that side will thus get an edge in the litigation process.

This effect is even more significant where defendant must “defend an action based on events” from decades ago. *Doe v. Combs*, No. 1:24-CV-09852 (JLR), 2025 WL 934380, at \*5 (S.D.N.Y. Mar. 27, 2025). “The potential prejudice to Defendants is particularly stark here because Plaintiff is bringing a lawsuit about an incident that allegedly occurred approximately twenty years ago, which may be difficult to defend even with information about Plaintiff's identity.” *Id.* (quoting *Doe v. Combs*, 2024 WL 4635309, at \*5).

### **C. Deterring public self-defense**

One-sided pseudonymity also denies defendants a full opportunity to defend themselves in the public sphere, where their reputations may suffer irreparable harm. “[I]t would go against ‘basic fairness’ to allow Plaintiff to hide behind her anonymity and require Defendants to defend themselves against the allegations publicly, when their personal and professional reputations are at stake.” *Pierre v. County of Broome*, No. 3:05-CV-332, 2006 WL 8453057, at \*2 (N.D.N.Y. Mar. 13, 2006) (citing *Doe v. Shakur*, 164 F.R.D. 359, at 361).

A public filing can attract media coverage, internet commentary, and attention from employers, clients, and peers. Reputational damage often begins long before the claims are adjudicated. Ordinarily, defendants can mitigate this harm by publicly contesting the plaintiff’s credibility and offering their version of events. “A plaintiff who levies serious allegations ‘puts [her] credibility in issue.’” *Doe v. Combs*, 2024 WL 863705, at \*4 (quoting *Doe v. Leonelli*, No. 22-CV-3732 (CM), 2022 WL 2003635, at \*5 (S.D.N.Y. June 6, 2022)). In many cases, a fair public response may therefore involve raising concerns about the plaintiff’s credibility based on

matters the plaintiff seeks to keep private—such as a history of mental illness or substance abuse or fraud or false accusations. Those facts, while sensitive, may be central to evaluating the truthfulness of serious allegations.

But pseudonymity restricts this avenue of public self-defense. As one court explained:

The defendants . . . have a powerful interest in being able to respond publicly to defend their reputations [against plaintiffs' allegations] . . . in . . . situations where the claims in the lawsuit may be of interest to those with whom the defendants have business or other dealings.

Part of that defense will ordinarily include direct challenges to the plaintiff's credibility, which may well be affected by the facts plaintiff prefers to keep secret here: his history of mental health problems and his history of substance abuse. Those may be sensitive subjects, but they are at the heart of plaintiff's credibility in making the serious accusations he has made here. He cannot use his privacy interests as a shelter from which he can safely hurl these accusations without subjecting himself to public scrutiny, even if that public scrutiny includes scorn and criticism.

*Doe v. Ind. Black Expo., Inc.*, 923 F. Supp. 137, 142 (S.D. Ind. 1996) (paragraph break added); see also *Doe v. Butler Univ.*, No. 1:16-CV-1266 (TWP) (DML), 2018 WL 11691505, at \*3 (S.D. Ind. Jan. 8, 2018).

#### **D. Skewed effects on pre-trial settlement and settlement values**

Allowing plaintiffs (but not defendants) to proceed pseudonymously can also be unfair to defendants because it asymmetrically affects the incentives to settle. The stigma attached to severe public accusations, especially ones involving sexual misconduct, can be so severe that defendants may feel compelled to settle quickly, regardless of the truth. The reputational cost of merely being accused may outweigh the value of prevailing at trial.

Parties settle in part because of the personal and professional costs of litigation. When only the defendant bears those costs while a pseudonymous plaintiff does not, the process becomes unfairly one-sided. One-sided pseudonymity may thus enable a plaintiff to “extract settlements from innocent parties.” *Doe v. Sidar*, 93 F.4th at 250 (Wilkinson, J., concurring).

Relatedly, allowing one side to be pseudonymous can also change the monetary settlement value of the case. “While a publicly accused defendant might be eager to settle in order to get its name out of the public eye, a pseudonymous plaintiff might hold out for a larger settlement because

they face no such reputational risk.” *Doe v. Fedcap Rehab. Servs., Inc.*, No. 17-CV-8220 (JPO), 2018 WL 2021588, at \*2 (S.D.N.Y. Apr. 27, 2018). “Allowing Plaintiff to proceed anonymously would put Defendants at a genuine disadvantage [and cause significant prejudice], particularly when it comes to settlement leverage.” *Id.*, at \*3; *see also Doe v. Zinsou*, No. 19 Civ. 7025 (ER), 2019 WL 3564582, at \*7 (S.D.N.Y. Aug. 6, 2019) (denying pseudonymity, citing courts’ concern that a “plaintiff may hold out for a larger settlement when the plaintiff knows that the defendant faces reputational risk not reciprocated by the plaintiff”); *Doe v. McLellan*, 2020 WL 7321377, at \*3 (E.D.N.Y. Dec. 10, 2020) (denying pseudonymity in sexual assault case, in part on the grounds finding that “defendant would have less leverage in settlement negotiation” if plaintiff were pseudonymous).

Consider a concrete scenario. Say Alan wants to sue Bob, claiming that Bob had raped him. The publicity stemming from the lawsuit may be harmful to Alan, because it identifies him as a rape victim. But the publicity would also likely be harmful to Bob, because it identifies him as an alleged rapist.

Because of this, if Alan approaches Bob before the lawsuit is filed, and threatens to file a lawsuit styled *Alan v. Bob*, that case might settle for (say) \$1 million. But if Alan can sue pseudonymously, as *Doe v. Bob*, Alan might hold out for (say) \$2 million, because Alan no longer needs to worry about the harm to his privacy, but Bob still needs to worry about the harm to his reputation.

### **E. Jury prejudice in favor of the pseudonymous party**

Letting a party testify pseudonymously might also prejudice the jury, by “risk[ing] . . . giving [the party’s] claim greater stature or dignity,” *Lawson v. Rubin*, No. 17-CV-6404 (BMC) (SMG), 2019 WL 5291205, at \*3 (E.D.N.Y. Oct. 18, 2019) (alleged sexual assault case); *Doe v. Delta Airlines*, 310 F.R.D., at 225, including by conveying to the jury “the unsupported contention that the [defendant] will seek to retaliate against [the plaintiff]” and thus implicitly “tarnish[ing]” the defendant, *Tolton v. Day*, No. 19-945 (RDM), 2019 WL 4305789, at \*4 (D.D.C. Sept. 11, 2019).

“Defendant might well be prejudiced in defending against a complaint by being perceived as a wrongdoer by the very fact of anonymity alone.” *A.B.C. v. XYZ Corp.*, 282 N.J. Super. 494, 504 (App. Div. 1995). Jurors

seeing a pseudonymous plaintiff may conclude that the plaintiff “merited extra-sollicitous treatment,” which “might skew the jury’s assessment of Doe’s credibility and her claims.” *Doe v. Delta Airlines*, 310 F.R.D., at 225.

**V. This unfairness may cut in favor of either mutual pseudonymity or absence of pseudonymity**

Concerns such as those given above have often led to courts insisting that plaintiffs proceed under their real names. At the same time, those concerns might counsel in favor of mutual pseudonymity, in those situations where the plaintiff has not identified the defendant at the outset and where there’s basis for plaintiff pseudonymity. “[I]f the plaintiff is allowed to proceed anonymously . . . it would serve the interests of justice for the defendant to be able to do so as well, so that the parties are on equal footing as they litigate their respective claims and defenses.” *Doe v. Doe*, No. 20-CV-5329 (KAM) (CLP), 2020 WL 6900002, at \*4 (E.D.N.Y. Nov. 24, 2020) (granting mutual pseudonymity in alleged sexual assault case); *see also Roe v. Doe*, Civil Action No. 18-666 (CKK), 2019 WL 1778053, at \*3 (D.D.C. Apr. 23, 2019) (likewise); *Doe v. Smith*, No. 1:19-CV1121 (GLS/DJS), 2019 WL 6337305, at \*2-3, \*3 n.1 (N.D.N.Y. Nov. 27, 2019) (likewise). “If we are to have a policy of protecting the names of

individual litigants from public disclosure, there is a very substantial interest in doing so on a basis of equality.” *Doe v. City of New York*, 201 F.R.D. 100, 102 (S.D.N.Y. 2001).

This preference for mutual pseudonymity over one-sided pseudonymity suggests that, had Plaintiff sued Defendant as Richard Roe at the outset, Plaintiff could have properly remained pseudonymous, though Plaintiff’s choice to name Defendant now leaves that avenue unavailable.

To be sure, such mutual pseudonymity, while providing more protection to the parties’ privacy and reputations, also undermines public access to information about the lawsuit even more than one-sided pseudonymity does. *See Volokh, The Law of Pseudonymous Litigation*, 73 *Hastings L.J.* at 1383. Nonetheless, on balance, the concerns about unfairness outlined above should cut against allowing one-sided pseudonymity, whether the court’s preferred alternative is to allow pseudonymity to both sides or to deny it to both sides.

**VI. While district courts should retain discretion to grant one-sided pseudonymity in appropriate circumstances, this case does not warrant such an exception.**

For the reasons given above, there should generally be a presumption against allowing one party to proceed pseudonymously in cases where the plaintiff makes highly stigmatizing allegations against the defendant. But one-sided pseudonymity may be more appropriate in circumstances where the reputational harms or risks of unfairness discussed above are less pronounced.

For instance, in some cases the defendant may be an institutional entity that is accused only of relatively minor misconduct, and is thus facing only modest reputational harms—consider, for instance, a university being sued for negligently investigating a sexual assault claim, rather than an individual being sued for actually committing sexual misconduct. In other cases, an anonymous plaintiff may be bringing a facial challenge to a government policy, so there is little need to identify further witnesses, worry about skewed settlement effects, or worry about unfair reputational harms. *See, e.g., Doe v. Skyline Automobiles Inc.*, 375 F. Supp. 3d

401, 406 (S.D.N.Y. 2019) (“Suits against the government ‘involve no injury to the Government’s reputation.’”).

Likewise, sometimes the defendant may have already been found guilty, stipulated to liability, or defaulted, thereby eliminating the presumption of innocence and reducing concerns about unfair prejudice. *See, e.g., Doe v. Sidar*, 93 F.4th, at 250 (Wilkinson, J., concurring) (noting that “the defendant has impaired his claim to reputational damage by defaulting on liability”). In all these scenarios, one-sided pseudonymity does not undermine fairness to the same degree as it does in lawsuits where the plaintiff is accusing a presumptively innocent defendant of serious personal misconduct. But this case presents none of the rare circumstances that might justify one-sided pseudonymity.

## CONCLUSION

Courts may sometimes have good reasons to allow plaintiffs to proceed pseudonymously. At the same time, it is also important to protect defendants from undue prejudice, given their presumption of innocence and the plaintiffs’ burden of proof. Both parties, if named, would face public scru-

tiny, reputational harm, and stigma before any finding of fact. And allowing pseudonymity to one side while exposing the other undermines the fairness and integrity of the judicial process.

For these reasons, a plaintiff who chooses to accuse a defendant by name of serious personal misconduct generally should not be allowed to proceed pseudonymously. Accordingly, *amicus* asks this Court to affirm the denial of pseudonymity to Plaintiff in this case.

Respectfully Submitted,

s/ Eugene Volokh

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,139 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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