UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, *et al.*,	)	
Plaintiffs,	)	Civ. No. 17-2770-ABJ
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

PLAINTIFFS' OPPOSITION TO PROPOSED INTERVENOR DEFENDANTS' MOTION TO PROCEED UNDER A PSEUDONYM

"One of the defining characteristics of American judicial proceedings is the right of public access." *J.W. v. D.C.*, 318 F.R.D. 196, 198 (D.D.C. 2016). That right is reflected in the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Nat'l Ass'n of Waterfront Emp'rs v. Chao*, 587 F. Supp. 2d 90, 99 (D.D.C. 2008). Thus, "parties to a lawsuit must typically openly identify themselves in their pleadings to protect the public's legitimate interest in knowing all of the facts involved, including the identities of the parties." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995) (internal quotation marks omitted). This rule is encapsulated in both the Federal Rules of Procedure and this Court's Local Civil Rules. *See* Fed. R. Civ. P. 10(a) (all pleadings must at least "nam[e] the first party on each side"); LCvR. 5.1(c)(1) ("The first filing by or on behalf of a party shall have in the caption the name and full residence of the party."); LCvR. 11.1 (same).

"The rare dispensation of allowing parties to proceed pseudonymously" in contravention of these customs and rights "is only justified in the critical case or the unusual case." *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005) (internal quotation marks omitted); *accord Microsoft*,

56 F.3d at 1463. "[M]otions to file under pseudonym should be granted sparingly"; only in those cases where "'identification creates a risk of retaliatory physical or mental harm, those in which anonymity is necessary to preserve privacy in a matter of a sensitive and highly personal nature, and those in which the anonymous party would be compelled to admit criminal behavior or be subject to punishment by the state." *Doe v. Teti*, No. 15-mc-01380, 2015 WL 6689862, at *2 (D.D.C. Oct. 19, 2015) (internal quotation marks omitted).

Despite this high bar, two parties, one a trust and the other its trustee who appears only in his corporate capacity, seek to intervene in this matter under the pseudonyms John Doe 2 and John Doe 1, respectively (the "Doe Intervenors"). In their motion to proceed by pseudonyms, however, they do not argue that this litigation is the sort of critical case warranting the rare dispensation of anonymity. Nor do they discuss the relevant factors to the relief they seek or make any showing of harm that might result if they were to proceed under their true names. Their request, therefore, must be denied.

I. The Doe Intervenors Fail to Justify Their Request for Anonymity Under the Applicable Test

The Doe Intervenors do not discuss the factors relevant to the relief they seek, and they cannot meet them. Courts in this circuit have applied five factors in deciding whether to allow a party to proceed using a pseudonym:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature;
> (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties;
> (3) the ages of the persons whose privacy interests are sought to be protected;
> (4) whether the action is against a governmental or private party; and
> (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Teti, 2015 WL 6689862, at *2; *Yaman v. U.S. Dep't of State*, 786 F. Supp. 2d 148, 153 (D.D.C. 2011); *Chao*, 587 F. Supp. 2d at 99. These factors all weigh against allowing the Doe Intervenors to proceed anonymously.

A. The Doe Intervenors Merely Seek to Avoid Criticism and Have No Legitimate Interest in Privacy in These Proceedings

First, the Doe Intervenors seek to proceed anonymously "merely to avoid annoyance and criticism that may attend any litigation." *Chao*, 587 F. Supp. 2d at 99. This is made clear by their stated rationale for the relief they seek, which is their purported "right not to be identified in the FEC's investigative file in MUR 6920." Mot. to Proceed Under a Pseudonym at 2, ECF No. 12. Their brief does not identify any harm that would befall them if they were associated with this investigation. At best, they identify harms in the related action in which the Doe Intervenors seek a gag order against the FEC that would result from publication of their names: the "harm to their reputations" that might result if they were publicly identified in association with an FEC investigation, and a "chill [on] the future exercise of their free speech rights" if they were required to report a $1.71 contribution made to a registered political action committee. *See* Pls.' Emergency Mot. for TRO and Prelim. Inj. at 14–15, *Doe v. FEC*, No. 17-cv-2694-ABJ (D.D.C. Dec. 19, 2017). Those harms—to the extent they exist—are insufficient.

"[W]here a [party] merely cites personal embarrassment as the basis of the need for confidentiality," that party may not proceed anonymously. *Chao*, 587 F. Supp. 2d at 100. That is all the Doe Intervenors have here cited. Their "bare assertion[s]" of any additional reputational harm do not add to their case, because they do "not offer any way for a court to substantively evaluate the nature and extent of the potential reputation harms that [they] assert[]." *Teti*, 2015 WL 6689862, at *3; *see also Chao*, 587 F. Supp. 2d at 100 ("[F]ears of embarrassment or vague, unsubstantiated fears of retaliatory actions . . . do not permit a plaintiff

to proceed under a pseudonym."). Nor is the issue to which they would be connected of a "sensitive and highly personal" nature. *Chao*, 587 F. Supp. 2d at 99. Matters that are sufficiently private to warrant anonymity are those "dealing with birth control, abortion, homosexuality or the welfare rights of illegitimate children or abandoned families." *Chao*, 587 F. Supp. 2d at 99 n.8. The Doe Intervenors' participation in a political contribution *which by law is subject to disclosure* is simply incomparable.[1] Indeed, even when real sensitive and personal matters are at issue—such as sexual harassment or assault, or HIV status—courts have still required parties to proceed under their true names. *Doe v. Shakur*, 164 F.R.D. 359, 361–62 (S.D.N.Y. 1996) (discussing cases); *see also Roe v. Bernabei & Wachtell PLLC*, 85 F. Supp. 3d 89, 96 (D.D.C. 2015) (discussing cases, noting "plaintiff who would have to disclose alcoholism [was] not permitted to proceed anonymously"). The Doe Intervenors fail to identify any harm that would result to them that would be greater than these individuals who were required to proceed under their own names.[2]

[1] The Doe Intervenors may point to FOIA Exemption 7(c) as the basis for that privacy interest, but as they fail to raise that interest in their opening brief, it is waived. *Rivera v. Rosenberg & Assoc., LLC*, 142 F. Supp. 3d 149, 159 (D.D.C. 2015). Moreover, that argument would fail if raised. One proposed intervenor, a trust, enjoys no privacy right under 7(c). *FCC v. AT&T*, 562 U.S. 397, 408–09 (2011). Moreover, 7(c) does not provide an absolute privacy interest but rather calls for balancing, *CREW v.* DOJ, 746 F.3d 1082, 1091 (D.C. Cir. 2014), and the public's interest would strongly outweigh any interest on the party of the trustee intervenor. Further, the driving purpose behind the exemption simply is nonexistent where a party is voluntarily coming forward to seek relief from the court and to limit the rights of a third-party. *Cf. Tripp v. Dep't of Defense*, 193 F. Supp. 2d 229 (D.D.C. 2002) (in reverse-FOIA case to enforce exemption 7(c), plaintiff proceeds under true name); *AFL-CIO v. FEC*, 177 F. Supp. 2d 48 (D.C. Cir. 2001) (same). Finally, any "embarrassment" that may arise from their being identified with an investigation is categorically insufficient to justify use of a pseudonym in litigation. *Chao*, 587 F. Supp. 2d at 100.

[2] Nor would disclosure here "compel[] [the Doe Intervenors] to admit criminal behavior or be subject to punishment by the state." *Teti*, 2015 WL 6689862, at *2 (internal quotation marks omitted). The government is already aware of the Doe Intervenors' identities and their connection with the conduct at issue here. Further, the FEC's investigation is limited to civil

Indeed, here, there can be no reputational harm to the Doe Intervenors because their association with the FEC investigation and the unreported contribution to a political committee is already widely known (though not yet to Plaintiffs). Not only does the FEC know of their identity, but so too do individuals at Now or Never PAC, the American Conservative Union, Government Integrity, LLC ("GI LLC"), and Axiom Strategies, all of whom were the beneficiaries of and collaborators with the Doe Intervenors in passing their contribution on to Now or Never PAC. Moreover, it is very likely that dozens of elected officials and their political affiliates know the identities of the Doe Intervenors, because, "[w]hile the public may not have been fully informed about the sponsorship of" political spending, "candidates and officeholders often [are]." *McConnell v. FEC*, 540 U.S. 93, 128–29 (2003). It is highly unlikely that the Doe Intervenors dropped more than $1.71 million into an election without at least ensuring those elected officials who benefited knew whom to reward.[3] Where others are familiar with the association the party seeks to avoid, the party "cannot now complain to the court about the potential for future coverage" by proceeding under its true name. *Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. 264, 268 (E.D. Tex. 2007) (child victim of sexual abuse could not proceed anonymously where "[s]everal individuals within the school district" know her true identity).

Further, with respect to the potential and entirely speculative chilling effect on their speech that the Doe Intervenors claim would result from disclosure, it is not this litigation nor the FEC's investigation that triggers the duty to disclose their $1.71 million contribution to a political committee, it is the Federal Election Campaign Act ("FECA"). 52 U.S.C.

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liability and does not involve criminal behavior. 52 U.S.C. § 30106(b) (FEC limited to civil enforcement, and even then, only by seeking a court judgment).

[3] As Plaintiffs are still not privy to the Doe Intervenors' identities, Plaintiffs cannot verify whether they are known to elected officials for their work.

§ 30104(b)(3)(A) (all contributors of over $200 to a political committee must be disclosed). Forty years of Supreme Court precedent have found the public interest in disclosure of campaign spending easily outweighs any potential chill that might result, at least in the absence of real and concrete evidence of "threats, harassment, or reprisals." *See Citizens United v. FEC*, 558 U.S. 310, 368–370 (2010); *McConnell*, 540 U.S. at 194–99; *Buckley v. Valeo*, 424 U.S. 1, 66–68 (1976); *see also Speechnow.org v. FEC*, 599 F.3d 686, 696-98 (D.C. Cir. 2010) (en banc) (upholding mandatory disclosure of contributions to political committees). Clearly, if an individual is legally subject to public disclosure for making a $1.71 million contribution, the desire to avoid disclosing that same contribution cannot serve as a valid basis to proceed in this action anonymously.

Rather than make any showing of cognizable harm to support anonymity, the Doe Intervenors cite three cases,[4] but none are applicable. In *J.W. v. District of Columbia*, the court found that parents of an autistic child could remain anonymous because the parents' and the child's identities were "intertwined." 318 F.R.D. 196, 199 (D.D.C. 2016). The Doe Intervenors, however, are not children. One is not even a person, but rather a corporate entity that does not even enjoy privacy interests, *see AT&T*, 562 U.S. at 408–09, and the other appears only in his corporate capacity. While the other case they cite, *Doe v. CFPB*, allowed a corporate entity to remain anonymous, 195 F. Supp. 3d 9, 24 (D.D.C. 2016), that court applied the wrong standard, *see Yaman*, 786 F. Supp. 2d at 152, and the anonymous corporation had at least proven by sworn affidavits that revelation of its identity and its being at the center of a still secret investigation into whether its core business activities were illegal would cause "debilitating reputation and

[4] As noted below, rather than make a showing in this action for anonymity, the Doe Intervenors relied on *ex parte* and sealed briefing. That reliance greatly prejudices Plaintiffs, as discussed further below.

financial hardship," *CFPB*, 195 F. Supp. 3d at 21–23; *id.* at 19 (finding privacy interest in subjects of "ongoing government investigations" but not closed investigations); *Doe Co. v. CFPB*, 321 F.R.D. 31, 35 (D.D.C. 2017) (noting CFBP was "investigating whether Plaintiffs' core business violates . . . federal consumer financial law"). The Doe Intervenors are not the subjects of secret and ongoing investigations and they make no showing of harm similar to that proven by the anonymous company.

Finally, the Doe Intervenors cite *In re Grand Jury Subpoena NO. 11116275*, a case in which an anonymous twitter user sought to quash a grand jury subpoena that would reveal his identity to the government. 846 F. Supp. 2d 1, 2–3 (D.D.C. 2012). Notably, the court *rejected* that challenge, and thereby allowed the government and grand jury to learn of the movant's identity. *Id.* at 10. Moreover, the court only allowed the movant to proceed pseudonymously because (1) his identity was the very merits issue before the court and thus the court could not deny the motion to proceed under a pseudonym without finally resolving the case, and (2) the court found the movant had a First Amendment right to anonymously post on the internet. *Id.* at 4 & n.6. Here, however, the issue to be litigated is not the publicity of the Doe Intervenors' identity, but the propriety of the FEC's action in the matter below. Furthermore, as noted above, the only exercise of First Amendment rights that could be at issue here is the contribution of $1.71 million dollars to a political committee, an exercise for which one has no constitutional or legal right to anonymity. *See supra* pp. 5–6.

Simply put, what the Doe Intervenors seek to avoid is any public knowledge that they made a reportable contribution of $1.71 million to a political action committee. Because they are legally obligated to disclose that information anyway, because that information is already well

known by a number of individuals, and because they fail to show any harm that would result from disclosure here, they fail to show they warrant anonymity.[5]

B. Disclosure Poses No Risk of Physical Retaliation or Harm, Nor Does it Involve Minors

Turning to the second and third factors, the Doe Intervenors do not and cannot show they warrant anonymity. They do not assert disclosure here would result in any physical or mental harm to them, and there is no innocent third party to whom such harm could befall. Nor are the Doe Intervenors minors; one is not even human and the other is only named in his corporate capacity.

C. The Doe Intervenors Challenge Plaintiffs, Private Parties Who Have the Right to Confront Their Challengers

The fourth factor similarly weighs against allowing the Doe Intervenors to proceed anonymously. "Courts have concluded that anonymous litigation is more acceptable when the defendant is a governmental body because government defendants do not share the concerns about 'reputation' that private individuals have when they are publicly charged with wrongdoing." *J.W.*, 318 F.R.D. at 201 (internal quotation marks omitted). While the FEC is a party in this case as a defendant, the Doe Intervenors are not here challenging the government, but rather seek to join the suit on the FEC's side to deprive Plaintiffs of their statutory rights to

[5] While the Doe Intervenors suggest they might forgo their purported right to intervene in this case if they are required to proceed publicly, *see* Mot. at 2, that is of no concern. The fact that publicity of parties means "a few valid causes of action, by plaintiffs' own choices and calculations, may stay out of court" does not outweigh the fact that publicity prevents "many more frivolous and less heartfelt causes, which is in the interest of both the public and the courts." *Qualls*, 228 F.R.D. at 13; *see also Shakur*, 164 F.R.D. at 362 (noting that while requiring parties to litigate under their true names might mean "victims of sexual assault will be deterred from seeking relief through civil suits," parties must still "seek vindication of their rights publicly").

campaign finance data and to adequate FEC enforcement. Consequently, this factor weighs against granting the Doe Intervenors anonymity.[6]

D. Anonymity Would Prejudice Plaintiffs

Lastly, the fifth factor here—the prejudice to Plaintiffs—weighs heavily against allowing the Doe Intervenors to proceed anonymously. It is notable that the Doe Intervenors' proposal is not merely to proceed with their identities sealed; rather, they propose to deprive Plaintiffs of knowledge of their identities and deprive Plaintiffs' of full access to those documents in the administrative record that might reveal their identities. *See* Mot. to Proceed Under a Pseudonym at 3. The Doe Intervenors cite no authority, however, allowing a party to intervene and yet keep its identity secret not only from the public, but also from the opposing party and its counsel for all purposes. Their proposal is "quite a departure from normal procedure" and "raises profound questions of fundamental fairness and perhaps even due process." *Microsoft*, 56 F.3d at 1457.[7]

Indeed, the profound lack of fairness in the Doe Intervenors' proposal is proven by the proposal itself. Rather than attempt to show they deserve anonymity in their briefing here, the Doe Intervenors instead rely on relief granted in the related litigation pursuant to briefing *that remain under seal and inaccessible to Plaintiffs.* In other words, the Doe Intervenors have already sought relief here based on *ex parte* arguments and evidence to which they propose to never give Plaintiffs access, to Plaintiffs' prejudice. There is good reason to believe the Doe Intervenors intend to continue to prosecute their case here based on *ex parte* arguments and

[6] For this reason alone, the fact the Doe Intervenors were granted anonymity in the related litigation does not govern whether they should be granted the same relief here.

[7] Plaintiffs are only aware of one case that allowed a party to proceed pseudonymously and without disclosing its address to the other party: where the plaintiff was the victim of childhood sexual abuse at the hands of the defendant and wanted to prevent the disclosure of her current address to him. *Yaman*, 786 F. Supp. 2d at 153. That case has no comparison here.

secret submissions. An important part of the related litigation is the Doe Intervenors' relationship with the administrative matter below—an issue that is also relevant here—yet the record on that question in the related litigation remains largely under seal. If the Doe Intervenors could prosecute their case in the related litigation only by relying on sealed materials, they are certain to do the same here.

The Doe Intervenors' reliance on sealed materials simply proves that knowledge of the Doe Intervenors' identities is fundamental to fair adjudication of this matter. Their identities also bear heavily on a central question before the Court here: whether three commissioners acted contrary to law in refusing to adopt their staff's recommendation to find reason to believe that the Doe Intervenors violated the FECA. The public record related to that question is replete with redactions—often compromising multiple lines of text, *see, e.g.*, Third General Counsel's Report at 12, MUR 6920 (Sept. 15, 2017), http://eqs.fec.gov/eqsdocsMUR/17044435484.pdf (showing three fully redacted lines of text, with most of a fourth line redacted and parts of six other lines redacted)—that were presumably all removed because they shed light on the Doe Intervenors' identities. Indeed, the very first sentence in the FEC staff's report for why they recommended finding reason to believe—*i.e.*, the principal reason they thought the FEC should investigate the Doe Intervenors—is redacted. *See id.* at 10. ("The record supports a reasonable interference [redacted] was the true source of funds GI LLC funneled through ACU. [Entire next sentence redacted].").[8] Presumably that sentence recommended reason to believe due to some fact about

[8] This is not the only substantive redaction. The FEC staff also recommended finding reason to believe the Doe Intervenors acted as conduits in violation of the FECA, but most of that reasoning is redacted. *See, e.g., id.* at 13 ("Even if currently unknown facts were to suggest that GI LLC, and not [redacted] was the true source of the funds, the record provides a reasonable inference that [redacted] assisted in making a contribution in the name of another. The Commission has noted that the regulation prohibiting assisting in the making of a contribution in the name of another applies to those who 'initiate or instigate or have some significant

the Doe Intervenors' identities, otherwise it would not have been redacted. Clearly, whatever issue the FEC staff identified was not sufficient for the three commissioners who decided against investigating the Doe Intervenors, but Plaintiffs cannot test the reasonableness of that conclusion unless they have access to that reasoning.[9]

The importance of the Doe Intervenors' identities is further demonstrated by the importance of the identities of the other individuals that were subject to the FEC investigation below. For example, one basis for the Commission's finding reason to believe James Thomas knowingly and willfully violated the FECA is that it recognized Thomas's relationship with two entities involved in the contribution, and because of his experience with other political committees in the past. *See, e.g.*, Notification with General Counsel's Brief to Now or Never PAC and James C. Thomas, in his official capacity as treasurer at 2–3, MUR 6920 (Oct. 6, 2017) https://www.fec.gov/files/legal/murs/current/100487855.pdf (noting reason to believe finding based, in part, on relationship with GI LLC and Now or Never PAC, and experience with political committees). Those connections could only have been made because the FEC had knowledge of Thomas's identity and thus his relationships. It is quite possible the Doe Intervenors also enjoy significant relationships with other parties in this case, *see*, *e.g.*, *id.* at 3 (noting at least one Doe Intervenor "funded GI LLC"); Circulation of Discovery Documents at 2, MUR 6920 (Aug. 4, 2017), http://eqs.fec.gov/eqsdocsMUR/17044435462.pdf (stating Doe Intervenor "appointed GI LLC's now-deceased principal"), and have extensive experience with political contributions. Such facts would support finding reason to believe a violation occurred,

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participation' in making such a contribution. [Next two-plus lines of text redacted]. Further, [redacted] has refused to respond . . . .").

[9] Also, as already discussed, Plaintiffs require knowledge of the Doe Intervenors identities to test whether their political patronage is already known to others. *See supra* p. 5.

strengthening CREW's argument that the FEC's failure to do so was contrary to law. However, without access to the Doe Intervenors' identities, CREW would not be able to make important arguments such as this.

Plaintiffs have used knowledge of the contributing entity in the past to prove an earmarked contribution was in violation of the FECA. In one administrative matter, Plaintiffs used public comments of a contributor to show that contributions to various social welfare groups were in fact earmarked to fund independent expenditures—political advertisements that impose their own reporting obligations under the FECA. *See, e.g.*, Conciliation Agreement, MUR 6816 (June 21, 2016), http://eqs.fec.gov/eqsdocsMUR/16044397368.pdf . Plaintiffs were only able to make that connection because they could connect public comments to the eventually run ads, requiring them to know the identities of both the organization running the ads and the contributor. Here, it is quite possible the Doe Intervenors have made public comments showing that money they passed to the GI LLC was intended to be passed along to Now or Never PAC, statements of which the FEC would have been aware and which would have been unreasonable for the FEC to ignore. Alternatively, Plaintiffs could show that the Doe Intervenors have engaged in other reported political activity, perhaps in support of the same candidates aided by Now or Never PAC—information readily available to the FEC. Such a showing would bolster the conclusion that their contribution to GI LLC was a transfer with similar purposes and that it would be arbitrary and capricious for the Commission to ignore such activity. There may be other uses, but Plaintiffs cannot be expected to know the exact usefulness of the Doe Intervenors' identities before they are apprised of them. Moreover, as the moving party, the Doe Intervenors "bear[] the burden to demonstrate a legitimate basis for proceeding" with pseudonyms by

proving that their identity is under no set of circumstances relevant to this litigation, *Qualls*, 228 F.R.D. at 13, something they completely fail to do.

Finally, the FECA itself provides another compelling reason for the Doe Intervenors to disclose their identities to Plaintiffs. The FECA provides Plaintiffs the right to pursue litigation directly against the Doe Intervenors in the event the FEC does not act in accordance with any court judgment here. 52 U.S.C. § 30109(a)(8)(C) ("[T]he complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint."). The structure of the FECA, therefore, contemplates that those bringing challenges to FEC inaction under § 30109(a)(8)(C) will have knowledge of the identity of the individual against whom the FEC refused enforcement. Only with such knowledge is the FECA's remedy given any significance: if the plaintiff were denied that knowledge, the target could easily escape justice to the frustration of the carefully crafted congressional scheme for enforcement of our nation's campaign finance laws.

In short, none of the relevant factors favor granting the Doe Intervenors the right to proceed anonymously. The Court should therefore deny their request.

II. The Doe Intervenors Also Fail to Satisfy the Inapplicable *Hubbard* Factors

While the *Chao* factors provide the proper metric for determining whether the Doe Intervenors may proceed using pseudonyms, at least one court has looked to factors outlined in *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980), which provides the standards for sealing documents, *id.* at 314–21; *see also CFPB*, 195 F. Supp. 3d at 15 (noting court applied six-factor *Hubbard* test in deciding whether plaintiff could proceed anonymously). While the *Hubbard* factors are not applicable here, *see Yaman*, 786 F. Supp. 2d at 152, the Doe Intervenors' request would fail under them as well.

The *Hubbard* factors are:

> (1) the need for public access to the documents at issue; (2) the extent to which the public had access to the document prior to the sealing order; (3) the fact that a party has objected to disclosure and the identity of that party; (4) the strength of the property and privacy interests involved; (5) the possibility of prejudice to those opposing disclosure; and (6) the purpose for which the documents were introduced.

CFPB, 195 F. Supp. 3d at 15. Each factor weighs in favor of disclosure.

First, the public has a compelling and constitutionally protected interest in access here: "knowing all of the facts involved [in a litigation], including the identities of the parties." *Microsoft*, 56 F.3d at 1463. Indeed, the public's interest is doubly important as the Doe Intervenors are not only involved in judicial proceedings, but were also involved in administrative proceedings below. *Nat'l Archives and Records Admin v. Favish*, 541 U.S. 157, 171–72 (2004) (public's interest in agency records "to know what their Government is up to" is a "structural necessity in a real democracy"); *AFL-CIO v. FEC*, 333 F.3d 168, 179 (D.C. Cir. 2003) (finding "promoting Commission accountability . . . . justif[ies] releasing" adjudicatory files). That interest is not limited to redacted documents: it extends to knowledge of "the identities of the parties." *Microsoft*, 56 F.3d at 1463. Furthermore, the public has a congressionally recognized interest in knowing the Doe Intervenors' identities because they are—as they concede—the source of or a conduit for a $1.71 million contribution to a political committee. As such, the public *must* know who they are to protect the "free functioning of our national institutions." *Buckley*, 424 U.S. at 66.

On the second factor, while the Doe Intervenors' names are not contained in official reports at this time, if the law had been followed and Now or Never PAC properly reported the source of and conduits for its contributions, the public would already have had access to the Doe Intervenors' identities. Further, as noted above, many individuals already know of the Doe Intervenors' identities in connection with the FEC investigation and the contribution. Thus, this

factor also does not favor anonymity. *See also Am. Prof. Agency, Inc. v. NASW Assurance Serv., Inc.*, 121 F. Supp. 3d 21, 24 (D.D.C. 2013) (lack of prior public release means only that this factor is "neutral").

On the third factor, the objecting party is not an innocent third party pulled into litigation against their will. *Cf. Hubbard*, 650 F.2d at 319 ("[W]here a third party's property and privacy rights are at issue the need for minimizing intrusion is especially great."). The Doe Intervenors are affirmatively seeking to intercede in this litigation—their interest in anonymity is thus at its lowest ebb.

On the fourth factor, as discussed extensively above, the Doe Intervenors have no legitimate property or privacy interest at issue here. They have identified no harm that would befall them from proceeding under their own names, and their reputational fears are mere unsupported speculation. The fifth factor also weighs against anonymity as, for the reasons discussed above, granting the requested relief would be an irreparable and constitutionally impermissible prejudice to Plaintiffs.

Finally, the last factor, which *Hubbard* called the "single most important element" in the analysis, 650 F.2d at 321, also weighs against granting anonymity. As opposed to documents introduced solely to protect the Fourth Amendment privacy rights, *cf. id.*, the documents the Doe Intervenors seek to introduce here anonymously are their motions and pleadings in support of a government agency's lack of enforcement. *See, e.g.*, Proposed Intervenor-Defs.' Mot. to Dismiss, ECF No. 11-1. That weighs strongly against anonymity. *Hubbard*, 650 F.2d at 321 (records must be disclosed if they reveal "a governmental failure to prosecute in light of overwhelming probable cause [that] substantially impugns the integrity of prosecutorial function"); *Hyatt v. Lee*, 251 F. Supp. 3d 181, 186 (D.D.C. 2017) (finding "the motions of

parties, and the records . . . relied upon by the parties and presented to the Court in support of their motions" are not entitled to privacy). This factor thus also weighs against anonymity.

Accordingly, even under the *Hubbard* factors, the Doe Intervenors' request must be denied.

CONCLUSION

The Doe Intervenors come to this Court on their own volition to defend the actions of a government agency and to stop Plaintiffs from protecting their rights to access campaign finance data and to effective enforcement by the FEC. While the merits of that request are the subject of separate briefing, it is absolutely clear that they may not proceed under pseudonyms in this action, regardless of what relief the Court affords in separate litigation. The Doe Intervenors identify no protectable interest sufficient to overcome the high bar they face, and their proposal gravely prejudices Plaintiffs. Plaintiffs therefore respectfully request the Court deny their request and order the Doe Intervenors to refile their papers under their true names.

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Respectfully submitted,

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