No. 24-

IN THE

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

THE TRUSTEES OF INDIANA UNIVERSITY, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

PHILIP A. BYLER
LAW OFFICES OF
PHILIP A. BYLER
11 Broadview Dr.
Huntington, NY 11743
(631) 848-5175
pbyler1976@gmail.com

WILLIAM R. LEVI
CODY L. REAVES*
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8000
cody.reaves@sidley.com

Counsel for Petitioner

* Counsel of Record

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QUESTION PRESENTED

When John Doe brought suit against Indiana University for violating both the Constitution and Title IX in deciding to expel him from medical school, he moved to proceed under a pseudonym. Applying a non-exhaustive multifactor test, the district court granted the motion, but eventually granted summary judgment to defendants. On appeal, the Seventh Circuit vacated the judgment, holding that the University violated the Due Process Clause in expelling Doe.

But the court did not stop there. Rejecting the multifactor test applied by all but one circuit court, the Seventh Circuit held that the district court abused its discretion by permitting John Doe to conceal his name "without finding that he is a minor, is at risk of physical harm, or faces improper retaliation." Pet. App. 10. In remanding the case, the court gave Doe a Hobson's choice—reveal his true name and receive a remedy or dismiss the complaint.

The circuits are intractably split on the proper test to apply to a motion to use a pseudonym. The First Circuit considers the totality of the circumstances, asking whether the case falls within four categories that ordinarily warrant anonymity. The Seventh Circuit asks only whether the plaintiff is a minor, at risk of physical harm, or faces improper retaliation. Every other circuit applies a non-exhaustive multifactor test, examining up to ten factors.

The question presented is:

1. Whether a district court abuses its discretion when, without a finding of risk of physical harm, improper retaliation, or minor status, it permits a plaintiff to proceed under a pseudonym in a suit collaterally attacking a University's Title IX proceedings?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, the plaintiff below, is John Doe.

Respondents, the defendants below, are The Trustees of Indiana University; Indiana University School of Medicine; Indiana University Purdue University – Indianapolis; Indiana University Kelley School of Business; Gregory Kuester, in his official and individual capacity; Bradley Allen, in his official and individual capacity; and Jay Hess, in his official and individual capacity.

No corporate parties are involved in this case.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Southern District of Indiana and the United States Court of Appeals for the Seventh Circuit: *John Doe* v. *The Trustees of Indiana University, et al.*, Case No. 20-CV-02006 (S.D. Ind.); and *John Doe* v. *The Trustees of Indiana University, et al.*, Case No. 22-1576 (7th Cir.).

No other proceedings are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

John Doe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 101 F.4th 485 and reproduced at Pet. App. 1a–10a. The district court's opinion granting summary judgment is available at 2022 WL 972792 and reproduced at Pet. App. 11a–36a. The district court's opinion and order granting plaintiff's *ex parte* motion to proceed under a pseudonym is unreported and reproduced at Pet. App. 37a–43a.

JURISDICTION

The Seventh Circuit issued its opinion and judgment on April 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1681(a) of Title 20, U.S. Code, provides:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Section 1983 of Title 42, U.S. Code, provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

> the United States or other person within the jurisdiction thereof to the deprivation of any rights, privilege, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ….

INTRODUCTION

Pseudonymity is woven into the fabric of our Nation. Thomas Paine published his incendiary and sensational Common Sense under a shroud of anonymity. Hamilton, Madison, and Jay did the same for The Federalist Papers, signing their influential and authoritative essays in favor of the new Constitution as "Publius." When the Jay Treaty came under fire, Hamilton once again assumed a nom de plume to pen his Camillus essays. Some two hundred years later, this case presents a circuit split on a critical issue relating to pseudonymity: the proper test courts should apply when a plaintiff moves to proceed under a pseudonym in a suit collaterally attacking a University's Title IX proceedings. Twelve of the thirteen circuits have weighed in on this question and are split three ways. Only this Court can resolve the conflict.

1. In this case, a student at the Indiana University School of Medicine brought suit collaterally attacking Title IX proceedings launched by the University after accusations of misconduct by his ex-girlfriend and classmate. The University conducted the proceedings confidentially and ultimately expelled Doe from medical school. In challenging those proceedings, John Doe moved to proceed under a pseudonym to protect his identity and the identity of Jane Doe.

The district court rightly concluded that John Doe should be permitted to proceed under a pseudonym.

Balancing Doe's legitimate interest in anonymity against the public's interest in full disclosure, the court applied a non-exhaustive multifactor test and found pseudonymity warranted. Indeed, the court found that *all* relevant factors favor anonymity—Doe challenges government activity, the litigation requires disclosure of information of the utmost intimacy, identification would put Doe at risk of suffering physical or mental injury, identification of Doe could harm innocent non-parties such as Jane Roe, the University would not be prejudiced by allowing Doe pseudonymity, and the actual identities of Doe and Roe are of minimal value to the public. Pet. App. 42a.

The lower court's thorough opinion should have been the last word on pseudonymity. But the Seventh Circuit had other plans. After the district court granted summary judgment to the University, Doe appealed. At oral argument before the Seventh Circuit, Judge Easterbrook immediately seized on the propriety of Doe's pseudonym, asking "why should a medical student get a pass when [other] litigants do not?" After argument, the court ordered—and the parties filed—supplemental briefs on the propriety of pseudonymity in this case.

In its opinion, the Seventh Circuit vacated the lower court's judgment, holding that the Dean of the Medical School violated the Due Process Clause by failing to provide Doe a hearing before expelling him. But the court disagreed with the lower court's decision to apply "a multi-factor approach … that has not been adopted by this circuit," noting that several factors the court considered were not "pertinent" to the proper analysis. In particular, the court rejected consideration of whether the plaintiff challenged government activity and whether identification of Doe would reveal "information of the utmost intimacy,"

and refused to consider whether identification would harm innocent non-parties.

Ultimately, the Seventh Circuit concluded that the lower court abused its discretion by permitting John Doe to conceal his name "without finding that he is a minor, is at risk of physical harm, or faces improper retaliation." In other words, without such a finding, a plaintiff may not proceed under a pseudonym. The court also gave Doe a Hobson's choice: reveal "his true name" and receive a remedy for the violation of his due process rights, or elect "not to reveal his name" and dismiss the complaint.

2. The Seventh Circuit's decision puts it on island alone, deepening a circuit conflict over the proper test to apply when a plaintiff moves to proceed under a pseudonym in a suit collaterally attacking Title IX proceedings. The Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh and D.C. Circuits apply a non-exhaustive multifactor test, considering up to ten factors. See, e.g., *Doe* v. *Megless*, 654 F.3d 404, 408–09 (3d Cir. 2011) (collecting cases). The First Circuit, meanwhile, has "eschewed the multi-factor tests employed in other circuits" and "sketched 'four general categories of exceptional cases in which party anonymity ordinarily will be warranted,'" including where identification could harm "innocent non-parties" or the suit is bound up with a "prior proceeding made confidential by law." *Doe* v. *Town of Lisbon*, 78 F.4th 38, 46 (1st Cir. 2023) (quoting *Doe* v. *MIT*, 46 F.4th 61, 71 (1st Cir. 2022)). The Seventh Circuit, standing alone, asks only whether the plaintiff is "a minor," "at risk of physical harm," or "faces improper retaliation." Pet. App. 10a.

To this point, the Court has "yet to address the issue of when a pseudonym may be used" in federal civil litigation. 5a Wright & Miller, *Federal Practice*

and Procedure Civil § 1321 (4th ed.). But there is no reason for further delay. Twelve of the thirteen circuits have weighed in and are intractably split three ways. See generally Eugene Volokh, *The Law Of Pseudonymous Litigation* 73 Hastings L.J. 1353, 1353 (2022) (explaining that the answer to when parties in civil cases may proceed pseudonymously is "deeply unsettled"). Without this Court's guidance, the conflict will persist.

3. The decision below is also wrong. The Seventh Circuit's long-standing hostility to pseudonymity, particularly in suits—like this one—collaterally attacking Title IX proceedings, is misguided. While courts have long applied a presumption against the use of pseudonyms, this presumption "has no footing in the United States Code" and "is not perfectly traceable to any federal constitutional provision or rule." *Doe* v. *MIT*, 46 F.4th 61, 67 (1st Cir. 2022). Even more, whatever this presumption's pedigree, it has no place in Title IX suits, where the underlying proceeding is conducted confidentially by law and the need for anonymity is particularly acute, serving to protect the student accused of misconduct and his accuser. Indeed, "[i]t makes little sense to lift the veil of pseudonymity that—for good reason—would otherwise cover [Title IX] proceedings simply because the university erred and left the accused with no redress other than a resort to federal litigation." *Id.* at 76 (citation omitted).

4. The question presented is critically important and recurring, and this case is an ideal vehicle. Until this Court weighs in, college students left with no recourse but federal litigation to vindicate violations of their due process rights in University-run Title IX proceedings will face crippling uncertainty over whether they may do so under a veil of pseudonymi-

ty. The interests of the accused student and the accuser are too important to leave up to geographic chance. The split is also outcome-determinative: In any other circuit, the lower court would have considered all the relevant factors and affirmed the ruling on pseudonymity. Without intervention by this Court, John Doe will be forced to unmask in order to receive the remedy to which he is entitled. Finally, while the obvious need for pseudonymity in such cases often leaves this Court with little or no paper trail, here the parties fully briefed the issue before the district court, and the Seventh Circuit decided this issue with the benefit of thorough, issue-specific supplemental briefing from the parties.

This Court should grant review.

STATEMENT OF THE CASE

A. Factual Background

In the fall of 2017, John Doe matriculated to Indiana University School of Medicine, putting him one step closer to fulfilling his lifelong dream of becoming a doctor. Pet. App. 13a. Shortly after, Doe began a romantic relationship with his medical school classmate, Jane Roe. *Id.* Due in no small part to the stress of their rigorous academic pursuits, this yearlong relationship proved rocky and tempestuous, resulting in several brief break-ups and reconciliations. *Id.* In June 2018, for example, the two reconciled after "Roe struck Doe several times and threw a flower vase at [his] head." *Id.*

In July 2018, after dinner and drinks, a late-night argument at Roe's father's home ended with Doe and Roe colliding as Doe—carrying his large dog—left through a narrow hallway that led out of the garage. Pet App. 13a–14a; Dkt. 140 at 2. After this incident,

Doe and Roe reconciled once again and continued their relationship. Dkt. 8 at 24–25. The following month, Doe began meeting with a therapist at the medical school to discuss his relationship with Roe and to seek advice on how to end the relationship. *Id.* at 25–26.

On October 19, 2018, Doe ended the relationship. *Id.* at 26. Just five days later, Roe reached out via email to Emily Walvoord, the medical school's Associate Dean for Student Affairs, to report two alleged episodes of physical violence by Doe. Dkt. 127-15 at 1. Two days after that, on October 26, 2018, the proctor of Doe's final exam approached him immediately prior to the exam to inform him that he needed to proceed to the office of Dr. Marti Reeser, an Assistant Dean, after he completed his exam. Dkt. 8 at 26. After the exam, Doe met with Walvoord and Reeser, who notified Doe that someone had filed a complaint against him. Dkt. 140 at 2.

In January 2019, Gregory Kuester, an interim investigator retained by the University, notified Doe that a formal Title IX investigation had begun concerning his possible involvement in incidents that occurred between November 2017 and July 2018. Pet. App. 14a.[1] The Title IX notice also imposed a no contact order prohibiting Doe from having any contact with Roe, either directly or indirectly, which the in-

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[1] On November 26, 2018, Roe responded to an email inquiry from Mr. Kuester regarding the investigation, informing him that she had "decided that it would be best if I discontinue the investigation" and asking whether there were "any official actions [she] need[ed] to take [to] end this process." Dkt. 77-12 at 1–2. Mr. Kuester replied to confirm that he received the request for "no further action" but informed Roe that "the decision whether or not to investigate is one that is determined by the University." *Id.* at 1.

vestigator later made mutual. Dkt. 8 at 28–29. About a week later, Doe received a new class schedule reassigning him to a "virtual" campus. *Id.* at 29. Dr. Allen, yet another Dean, informed Doe that he would not be permitted to access *any* Indianapolis campus resources, including the library, without receiving advanced permission. *Id.* The University likewise did not allow Doe to take his second-year exams in the same room as his classmates. *Id.* at 29–30.

In April 2019, Dean Allen informed Doe that he would not be permitted to attend a career fair planned the following week or the Class of 2021 reception. Dkt. 8 at 33. Dean Allen informed Doe that the medical school had instead arranged for Doe to complete his two-week orientation at the medical school's campus in West Lafayette, Indiana, approximately one hour away. *Id.* at 33. In the closing days of April—just weeks before Doe's Step 1 Board Exam—the University released the final report of its investigation into the Title IX allegations against Doe, charging him with two violations (physical abuse and verbal abuse) of the Code of Student Rights, Responsibilities & Conduct. Dkt. 140 at 2.

On May 20, 2019, Doe appeared with counsel before a three-person administrative hearing panel. Dkt. 140 at 2; Pet. App. 14a. Its members included: (1) Chairwoman Wende' Ferguson, Senior Associate Director for Student Affairs at the University's McKinney School of Law and a member of the University's Sexual Assault Prevention, Intervention, and Response Task Force (and now Associate Dean For Diversity, Equity, and Inclusion at Penn State Law); (2) Jose De Jesus Magallon Maciel, a Resident Coordinator at Indiana University Purdue University, Indianapolis (IUPUI); and (3) Robert Yost, a biol-

ogy professor at IUPUI. Dkt. 8 at 36–37. The panel refused to allow Doe to question Roe directly regarding her allegations, instead requiring him to submit questions to Chairwoman Ferguson, who selected questions she then posed to Roe. *Id.* at 38–39.

Three days later, the panel issued its decision letter. Dkt. 69-6 at 1. The panel concluded that Doe was responsible for physical abuse within a dating relationship, in violation of the Sexual Misconduct Policy, but found that the information submitted did not support a finding of verbal abuse. *Id.* at 1–2. The panel imposed a one-year suspension from the medical school, among other sanctions. *Id.* at 2–3; Pet. App. 14a. Doe appealed the panel's findings and sanctions to Dr. Jason Spratt from the Division of Student Affairs, who denied the appeal. Dkt. 76-9 at 1–2. Shortly after the panel decision, Doe received notice from Walvoord and Allen that, because the Panel found Doe violated the Sexual Misconduct Policy—which is considered a violation of the medical school's Professional Conduct Policy—Doe had to appear before the medical school's Student Promotions Committee, which could impose medical school-specific sanctions. Pet. App. 14a.

Doe appeared before the Committee in late October 2019. Dkt. 78-1 at 2. Approximately fifteen members of the Committee were in attendance—including fellow students—during which Doe answered approximately six questions. *Id.*; Dkt. 8 at 47. The Committee ultimately voted 8-1-1 (in favor, against, abstention) to recommend to the Dean of the School of Medicine that Doe be dismissed from the medical school. Dkt. 78-1 at 2. The University denied his request for reconsideration. Dkt. 8 at 48–49. Doe appealed the decision denying his request for reconsideration, and the medical school granted Doe an appeal hearing.

Id. at 49. The Appeal Committee, however, rejected Doe's appeal, voted to expel him from the medical school, and forwarded its decision of dismissal to the Dean. *Id.* at 49–50.

Months later in March 2020, Doe met with Dean Jay Hess to discuss the Appeal Committee's recommendation. Dkt. 70-5 ¶ 21; Pet. App. 14a. To Doe's surprise and relief, Dean Hess informed Doe that he would grant Doe's appeal and reject the recommendation of dismissal. Pet. App. 14a. As Dean Hess stated in his sworn affidavit in the district court, he had conducted this review approximately "three to four times per year" during his seven years as Dean and had granted an appeal only twice—one being Doe's case. Dkt. 70-5 ¶ 18. In addition, Doe and Dean Hess discussed the possibility of Doe applying to Indiana University's Kelley School of Business, where he could attend while serving his suspension from the medical school. Dkt. 8 at 51.

On March 27, 2020, Dean Hess sent Doe a letter memorializing that he would be informing the Student Promotions Committee of his decision to grant Doe's appeal. Dkt. 76-16 at 1. The letter further provided that, to be eligible to return to the medical school, Doe would need to complete "all the sanctions" imposed by the panel, along with "additional conditions" imposed by Dean Hess, which included an additional year of administrative leave. *Id.*; Pet. App. 14a–15a. This additional year would make Doe eligible to return to medical school in April 2021, joining the Class of 2023. So too, Dean Hess's letter harkened back to his discussion with Doe regarding applying to business school, noting that Dean Reeser "works closely with our dual degree students and is available to talk with you further about those opportunities." Dkt. 76-16 at 1.

About a month later, Doe applied for admission to the Kelley School of Business's MBA program. Pet. App. 15a. Before submitting his application, Doe reached out to Dean Allen on two separate occasions (April 9th and 23rd) seeking direction regarding how to "go about accurately presenting the outcome of this [Title IX] matter" in his application. Dkt. 74-9 at 1–2. Dean Allen never responded, forcing Doe to submit his application to the Kelley School without any guidance from the medical school. Dkt. 127-4 at 20. Doe disclosed the Title IX proceedings and its outcome in his application, which triggered a review of his application by the Prior Misconduct Review Committee (PMRC). Pet. App. 15a. Doe also signed two FERPA disclosure forms, permitting review of all information relating to the Title IX investigation. Dkt. 127-12; Dkt. 127-14. A couple weeks later, the PMRC notified Doe that it had discovered inconsistencies between his application statements and Dean Hess's letter. Dkt. 76-18 at 1.

After the PMRC asked for clarification, Doe provided a supplemental disclosure statement recounting Hess's decision to grant Doe's appeal and explaining that Doe had "completed all required sanctions" set out in Dean Hess's letter. *Id.* at 3. With these sanctions completed and his "one-year suspension … fulfilled," Doe conveyed his "understanding … that upon [his] return to the medical school, [he] will not be further limited or restricted as a medical student." *Id.* Doe also "fully encourage[d] a discussion with Dean Jay Hess" to provide further clarity, and expressed his intention to be "as transparent as possible about the prior investigation, the findings, and the appeal decision." *Id.*

Not long after, the PMRC met to review Doe's application statements and supplemental disclosure,

concluded that he "withheld pertinent information and gave false or incomplete information," and denied his application to the Kelley School of Business on that basis. Pet. App. 15a–16a. The PMRC also notified Dean Hess of Doe's actions. *Id.* A few weeks later, in June 2020—without inviting any response from Doe—Dean Hess informed Doe via letter that, because "statements in support of his [Kelley] application do not accurately represent" Doe's discussions with Dean Hess and the Dean's subsequent letter, Doe would "be dismissed from the IU School of Medicine, immediately." Dkt. 37-21 at 1–2; Pet. App. 16a.

This suit followed.

B. Proceedings Below

In July 2020, Doe brought suit against the University and several University officials for damages and injunctive relief, alleging violations of Title IX and due process. Dkt. 1. Alongside his complaint, Doe moved to proceed under a pseudonym, prompting the court to order Doe to file under seal a disclosure statement providing his true name and the true name of Jane Roe, his classmate and accuser. Dkt. 11. The district court then referred the matter to a magistrate who, in a written opinion, applied a non-exhaustive multifactor test and granted Doe's motion. Pet. App. 37a.

In its opinion, the magistrate explained that there is a "strong presumption in favor of open proceedings in which all parties are identified," but that "federal courts also have discretion to allow a plaintiff to proceed anonymously." Pet. App. 38a. The court then examined six factors—(1) whether the plaintiff "challeng[es] governmental activity; (2) whether the action requires disclosure of information of the "utmost intimacy"; (3) whether the action requires plaintiff to

disclose an intention to "engage in illegal conduct"; (4) whether identification would put plaintiff "at risk of suffering physical or mental injury"; (5) whether pseudonymity would prejudice the defendant; and (6) the public interest in open access to proceedings—along with the "related issue" whether "disclosure of Plaintiff's identity could harm third parties," to determine whether plaintiff's "substantial privacy right" outweighs the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Id.* at 39a, 41a n.2.

Finding the third factor irrelevant to the case and that *all* other factors favored pseudonymity, the court held that Doe had "overcome the strong presumption" against pseudonymity and granted the motion to proceed under a pseudonym. Pet. App. 42a. Ultimately, however, the district court granted summary judgment to the University and entered final judgment. *Id.* at 36a. Doe appealed the grant of summary judgment.

Before the Seventh Circuit, Doe sought reversal of the district court's decision, arguing that the University violated Title IX and the Due Process Clause in reaching the decision to expel Doe. Pet. App. 1a–2a. Neither party mentioned pseudonymity in its briefing. At oral argument, however, the presiding judge immediately jumped in: "Let me ask you a preliminary question, Mr. Byler, which is why the plaintiff has been permitted to proceed under a pseudonym?" CA7 Oral Arg. at 0:46–0:56 (Oct. 27, 2022). After argument, the court ordered—and the parties filed—supplemental briefs "addressing whether it is appropriate for [Doe] to proceed anonymously in this case," including the "Seventh Circuit's decisions addressing anonymous litigation." CA7 Dkt. 64 (Oct. 28, 2022).

Nearly eighteen months later, the Seventh Circuit issued its opinion vacating the judgment below. Pet. App. 1a–10a. The court held that Dean Hess violated Doe's due process rights by "fail[ing] to allow Doe an opportunity to present his position before expelling him." *Id.* at 10a. The court, however, did not stop there. Instead, the court turned to the issue of pseudonymity, holding that the district court "abused [its] discretion when permitting 'John Doe' to conceal his name without finding that he is a minor, is at risk of physical harm, or faces improper retaliation." *Id.* Notably, the court disagreed with the lower court's decision to apply "a multifactor approach … that has not been adopted by this circuit," and reasoned that several factors the court considered were not "pertinent" to the proper analysis. *Id.* at 8a. In particular, the court rejected consideration of whether the defendant is an educational institution and whether identification of Doe would reveal "information of the utmost intimacy," and refused to consider whether identification would harm innocent non-parties. *Id.* at 6a–9a.

With its final lines, the Seventh Circuit gave Doe a Hobson's choice. If Doe reveals his "true name" the suit can "continue" and the "district court must decide what remedy is appropriate." Pet. App. 10a. If Doe "elects not to reveal his name," however, "the complaint must be dismissed." *Id.*

This petition followed.

REASONS FOR GRANTING THE PETITION

I. The Courts Of Appeals Are Split Three Ways Over The Proper Test To Apply When A Plaintiff Collaterally Attacking Title IX Proceedings In Federal Court Seeks To Proceed Under A Pseudonym.

Twelve of the thirteen circuit courts have weighed in on the question presented. The vast majority of circuits courts—including the Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits—apply a non-exhaustive multifactor test. The First Circuit has shunned the multifactor approach, instead applying a totality of the circumstances test that asks whether the suit falls within four general categories of exceptional cases in which pseudonymity is usually appropriate. The Seventh Circuit, meanwhile, applies an entirely different test, expressly declining to consider several factors considered by all its sisters circuits, that asks only whether the plaintiff is a minor, is at risk of physical harm, or faces improper retaliation. At bottom, the circuits are intractably split—and only this Court can resolve the conflict.

A. The Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits Apply A Non-Exhaustive Multifactor Test.

All but two circuits have adopted a non-exhaustive multifactor test that considers up to ten factors in balancing the plaintiff's stated interest in anonymity against the public's countervailing interests in full disclosure and any prejudice to the defendant. See Volokh, *supra*, at 1366 (explaining that—before the Fifth Circuit and Seventh Circuit broke ranks—"[d]ifferent circuits have come up with similar but dif-

ferently worded multifactor balancing tests for pseudonymity").

1. The Second Circuit applies a non-exhaustive ten factor test to determine "whether to grant an application to proceed under a pseudonym." *Sealed Plaintiff* v. *Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008). Relying heavily on the decisions of its sister circuits, the court noted with approval "the following factors, with the caution that this list is non-exhaustive and [that] district courts should take into account other factors relevant to the particular case":

> (1) whether the litigation involves matters that are highly sensitive and [of a] personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly in light of his age; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity; (9) whether, because of the purely legal nature of the issues presented or

> otherwise, there is an atypically weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Id. at 189–90 (cleaned up).

The court has consistently reaffirmed and applied this test, see, e.g., *United States* v. *Pilcher*, 950 F.3d 39, 42 (2d Cir. 2020) (per curiam), and has permitted the use of pseudonyms in countless cases arising from Title IX proceedings, see *Roe* v. *St. John's Univ.*, 91 F.4th 643, 647 n.1 (2d Cir. 2024); cf. *Doe* v. *Colgate Univ.*, No. 5:15-cv-1069, 2016 WL 1448829, at *3 (N.D.N.Y. Apr. 12, 2016) (applying this test, granting pseudonymity, and finding that the cases from "courts across the country" allowing pseudonymity "indicate that the accused colleges and universities recognize the highly personal and sensitive nature of these cases as well as the limited value of forcing plaintiffs to reveal their identities when seeking to vindicate their federal rights").

2. The Third Circuit has adopted a similar test modeled after its "many … sister courts of appeals." *Megless*, 654 F.3d at 408. Noting that district courts within the circuit had long applied a non-exhaustive list of "nine factors successfully" when considering the propriety of pseudonymity, the court "endorse[d]" that test. Under that approach, courts weigh six factors "in favor of anonymity":

> (1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4)

> whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

Id. at 409 (citation omitted). On the other side of the scale, the court weighs three factors:

> (1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.

Id. In adopting this test, the court noted that trial courts also must consider other factors "which the facts of the particular case implicate." *Id.* at 409–10.

3. The Fourth Circuit has adopted a non-exhaustive five factor test that considers whether (1) the request for pseudonymity is merely to "avoid … annoyance and criticism" or "is to preserve privacy in a matter of sensitive and highly personal nature," (2) identification poses "a risk of retaliatory physical or mental harm to the requesting party" or "innocent non-parties," (3) the age of the party seeking to use a pseudonym, (4) the action is against a governmental or private party, and (5) the "risk of unfairness to the opposing party" from permitting anonymity. *James*

v. *Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993); see *Doe* v. *Pub. Citizen*, 749 F.3d 246, 273–74 (4th Cir. 2014) (applying five-factor test); *Doe* v. *Doe*, 85 F.4th 206 (4th Cir. 2023) (applying test in case arising from Title IX proceedings); *Doe* v. *Sidar*, 93 F.4th 241, 247–48 (4th Cir. 2024) (applying these "five nonexhaustive factors" and reversing district court's grant of motion to remove pseudonym (citation omitted)); see also *Sidar*, 93 F.4th at 250 (Wilkinson, J., concurring) (agreeing with the court's decision "eschew[ing] a categorical approach to case-sensitive questions which cannot be answered categorically").

4. The Fifth Circuit applies a non-exhaustive four factor test, considering whether (1) the plaintiff seeking anonymity "challenge[s] governmental activity," (2) the suit requires disclosure of information "of the utmost intimacy," (3) the "plaintiffs were compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution," and (4) the plaintiff is a minor. *Doe* v. *Stegall*, 653 F.2d 180, 185–86 (5th Cir. 1981, Unit A). The court noted that these factors are not "prerequisites to bringing an anonymous suit," and that it would "be a mistake to distill a rigid, three-step test for the propriety of party anonymity." *Id.* Indeed, the court in *Stegall* went on to analyze other privacy concerns related to religion, the potential for public retaliation, and plaintiffs' minor status. *Id.*

5. The Sixth Circuit has adopted the four-factor test from *Stegall*, asking whether plaintiff is a minor, or whether the suit challenges government activity, requires disclosure of information of the "utmost intimacy," or compels disclosure of an intention to violate the law. *Doe* v. *Porter*, 370 F.3d 558, 560 (6th Cir. 2004) (quoting *Stegall*, 653 F.2d at 185–86). Recognizing the fluidity of this test, the court considered

one other factor: whether permitting plaintiff to proceed under a pseudonym would force the defendants to proceed with insufficient information to present arguments against the plaintiff's case. *Id.* at 561; see *Citizens for a Strong Ohio* v. *Marsh*, 123 F. App'x 630, 636 (6th Cir. 2005).

6. The Eighth Circuit—the last circuit to address "the standard by which a litigant may proceed under a pseudonym"—crafted a seven factor test pulled from the factors "identified" by its "sister circuits." *Cajune* v. *Indep. Sch. Dist. 194*, 105 F.4th 1070, 1077 (8th Cir. 2024). Emphasizing that the listed factors are "non-exhaustive and that other factors, or a combination thereof, may be relevant," the court considered whether (1) the party is challenging government activity, (2) identification threatens to reveal information of a "sensitive and highly personal nature," (3) the party would be required to admit an intention to engage in criminal contact, (4) there exists a danger of retaliation, (5) anonymity poses "a unique threat of fundamental unfairness to the defendant," (6) identification would further the public interest, (7) alternative mechanisms exist that could protect "the confidentiality of the litigants." *Id.*

7. The Ninth Circuit, citing to *James* and *Stegall*, adopted a five factor test, instructing courts to consider (1) the severity of the threatened harm, (2) the reasonableness of the anonymous party's fears, (3) the anonymous party's vulnerability to such retaliation, (4) the prejudice to the opposing party, and (5) whether the public's interest would be best served by requiring the litigants to reveal their identities. *Does I Thru XXIII* v. *Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000); see *Doe* v. *Kamehameha Schs./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042–44 (9th Cir. 2010) (applying test).

8. The Tenth Circuit has adopted a non-exhaustive three factor test that considers whether (1) the case involves matter of a highly sensitive and personal nature, (2) identification risks real danger of physical harm, (3) the injury litigated would be incurred as a result of the disclosure of the plaintiff's identity. *Femedeer* v. *Haun*, 227 F.3d 1244 (10th Cir. 2000). The court weighs those factors along with a fourth—the public interest. *Id.* at 1246 (citing *M.M.* v. *Zavaras*, 139 F.3d 798, 802–03 (10th Cir. 1998)).

9. The Eleventh Circuit has adopted the three factor test from *Stegall*, considering whether the plaintiff (1) "challeng[es] government activity," (2) would be required to "disclose information of the utmost intimacy," and (3) would be "compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution." *Doe* v. *Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (citing *Stegall*, 653 F.2d at 185). The court in Frank noted that this is not a "rigid, three-step test," that no "one factor [is] dispositive," and that a judge "should carefully review *all* the circumstances of a given case" in deciding whether plaintiff should be permitted to proceed under pseudonym. *Id.*

10. The D.C. Circuit recently explained that it had "not provided clear guidance as to when a petitioner may proceed anonymously," and noted that is sisters circuit "have endorsed various multi-factor tests involving as many as ten non-exhaustive factors." *In re Sealed Case*, 931 F.3d 92, 96–97 (D.C. Cir. 2019) (collecting cases). Recognizing that district courts in the circuit had considered the "five factors set forth by the Fourth Circuit in *James*," the court held that those factors "serve well as guideposts from which a court ought to begin its analysis," but noted its "singling out of the *James* factors should not lead a trial

court to engage in a wooden exercise of ticking the five boxes"—courts instead should consider all the "factors relevant to the case before it." *Id.* at 97.

B. The First Circuit Applies A Totality of the Circumstances Test That Asks Whether The Case Falls Within Four General Categories That Ordinarily Warrant Anonymity.

The First Circuit, has "eschewed the multi-factor tests employed in other circuits," instead applying a totality of the circumstances test. *Town of Lisbon*, 78 F.4th at 46 (citing *MIT*, 46 F.4th at 70 (Selya, J.) (refusing to "festoon the easily understood 'totality of the circumstances' standard with any multi-factor trappings")). Under this test, the court asks whether the case falls within "four general categories of exceptional cases in which party anonymity ordinarily will be warranted." *MIT*, 46 F.4th at 71. These categories are: (1) cases in which disclosure of the would-be Doe's identity would "cause him unusually severe harm"; (2) "cases in which identifying the would-be Doe would harm 'innocent non-parties'"; (3) "cases in which anonymity is necessary to forestall a chilling effect on future litigants who may be similarly situated"; and (4) "suits that are bound up with a prior proceeding made confidential by law." *Id.* Notably, the court held that, if a case fits into one of these categories, anonymity is "no[t] automatic," but "ordinarily will be warranted." *Id.*; see *Town of Lisbon*, 78 F.4th at 46–47 (same).

C. The Seventh Circuit Adopts A Rigid Test And Expressly Rejects Factors Examined By Its Sisters Circuits.

With no circuit precedent to follow, the lower court employed the non-exhaustive multifactor approach

employed by almost all the circuits. In granting Doe's request to use a pseudonym, the court expressly considered six factors drawn from the Fifth Circuit's opinion in *Stegall* and the Fourth Circuit's opinion in *James*. Pet. App. 39a. The court found that that all the relevant factors weighed in favor of pseudonymity, including that Doe challenged government action, that the action required disclosing information of the "utmost intimacy," including "information regarding [Doe's and Roe's] sexual relationship," that identification would put Doe at risk of suffering physical or mental injury, that defendant would not be prejudiced by allowing Doe to proceed anonymously, and that the public had little interest in knowing Doe's actual identity. *Id.* at 40a.

In holding that the district court abused its discretion in applying the multifactor test, the court explained that the "multifactor approach … has not been adopted by this circuit. Pet. App. 8a. The court then went on to expressly reject consideration of several factors looked to by its sister circuits. *Id.* at 6a–9a.

On the first factor—whether plaintiff challenges government action—the court declared that it "d[id] not see how this consideration is pertinent." Pet. App. 8a. The court also flatly rejected consideration of the "utmost intimacy" factor solely because the suit "is not about what happened *during* sexual relations." *Id.* (emphasis added). But this reasoning plainly fails to recognize that, as the district court explained, the Complaint targets Title IX proceedings that necessarily required disclosure of intimate and detailed information regarding Doe's and Roe's sexual relation-

ship. *Id.* at 39a–40a.[2] Finally, the court rejected the lower court's analysis on the risk of physical or mental injury factor, claiming that the lower court found only that Doe faced a risk of "stigmatization from the community and public," and that "embarrassment does not justify anonymity." *Id.* at 8a–9a.[3]

After rejecting these factors, the court crafted its test: A district court abuses its discretion when it permits a plaintiff "to conceal his name without finding that he is a minor, is at risk of physical harm, or faces improper retaliation." Pet. App. 10a. In other words, in the Seventh Circuit, an adult plaintiff like Doe here can proceed under a pseudonym *only if* he can show a "risk of physical harm" or that he "faces improper retaliation." *Id.*; see *Doe* v. *Loyola Univ. Chi.*, 100 F.4th 910, 912–13 (7th Cir. 2024) (applying this test and rejecting pseudonymity for plaintiff collaterally attacking Title IX proceedings); see also *Doe* v. *Fenix Internet, LLC*, No. 1:21-cv-06624, 2024 WL 2845961, at *2 n.2 (N.D. Ill. June 5, 2024) (applying this test and rejecting pseudonymity); *Carol B.* v.

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[2] Remarkably, the court's narrow view that this factor applies only in cases "about what happened during sexual relations," fails to account for a related factor especially pertinent in Title IX cases and squarely considered by the district court—that identification of Doe could harm innocent non-parties such as Roe. Pet. App. 8a.

[3] The court's reasoning on this final factor attacks a strawman. Contrary to the Seventh Circuit characterization, the lower court in fact found that this factor weighed in favor of anonymity because Doe would face "*harassment and* stigmatization." Pet App. 41a (emphasis added). Notably, the lower court also explained that, if Doe were successful in his claims against Defendant—which is *exactly what happened* before the Seventh Circuit—the revelation of Plaintiff's identity "would further exacerbate the emotional and reputational injuries he alleges." *Id.*

Waubonsee Cmty. Coll., No. 23-cv-02033, 2024 WL 3069974, at *8 (N.D. Ill. June 20, 2024) (same).

The court's rigid test fails to consider *any* of the other factors considered by its sister circuits, including whether the plaintiff challenges government action, whether the plaintiff faces risk of *mental* harm, whether the suits requires disclosing information of the utmost intimacy, and whether identification would harm innocent non-parties. Notably, failing to consider these final two factors makes the Seventh Circuit the *only* circuit in the country that refuses to consider whether pseudonymity is appropriate based on the harm that might befall innocent non-parties—even in Title IX cases, such as this one, where pseudonymity protects not only Doe, but also his classmate and accuser, Roe.

* * *

In the end, the Seventh Circuit's decision rejecting the non-exhaustive multifactor approach creates an intractable three-way split that only this Court can resolve. The circuits have hashed it out for decades with no guidance from this Court. With twelve circuit having now weighed in, there is no reason for delay. This Court should grant the petition and announce the proper test to be applied when a plaintiff seeks to proceed under a pseudonym in the limited context of a suit collaterally attacking Title IX proceedings. Alternatively, the Court should grant the case, vacate the Seventh Circuit's opinion, and remand with instructions to—like every other circuit court in the country that has examined this issue—consider whether identification of Doe might harm innocent non-parties or reveal information of the utmost intimacy.

II. The Decision Below Is Wrong.

The Seventh Circuit's decision below and its long-standing hostility to pseudonymity—especially in cases collaterally attacking Title IX proceedings—is misguided. *First*, it rests on a presumption against pseudonymity that lacks any foundation in the Constitution, the United States Code, Federal Rules of Civil Procedure, or our history and tradition. *Second*, the court's rejection of a non-exhaustive multifactor or totality of the circumstances test in favor of a myopic approach that fails to consider whether identification would reveal information of the utmost intimacy or harm innocent third-parties fails to examine all the "relevant facts and circumstances," particularly in Title IX cases.

1. Though the Seventh Circuit definitively adopted the test to apply to requests to proceed pseudonymously for the first time in this case, the court has "repeatedly voiced [its] disfavor of parties proceeding anonymously" for decades. *Doe* v. *Vill. of Deerfield*, 819 F.3d 372, 376–77 (7th Cir. 2016); see *Doe* v. *Sheriff of DuPage Cnty.*, 128 F.3d 586, 587 (7th Cir. 1997) ("We hope we will not see too many more John or Jane Does in the future."). Indeed, the Seventh Circuit has, like most courts of appeals, "recognized a strong presumption against the use of pseudonyms in civil litigation." *Does 1-3* v. *Mills*, 39 F.4th 20, 25 (1st Cir. 2022) (collecting cases). But as the First Circuit explained in *MIT*, courts have endorsed this presumption without "fully explicating its legal foundation." 46 F.4th at 67.

A closer examination reveals that this presumption in fact has "no footing in the United States Code" and is "not perfectly traceable to any federal constitutional provision or rule." *Id.* So where does this presumption come from? Federal Rules of Civil Proce-

dures 10(a) and 17 (a)(1) appear the best candidates, but they provide little more than a "toehold." *Does 1-3*, 39 F.4th at 25; see *MIT*, 46 F.4th at 67. Rule 10 provides that "[t]he title of the complaint must name all the parties," Fed. R. Civ. P. 10(a), and Rule 17 provides that "[a]n action must be prosecuted in the name of the real party in interest," Fed. R. Civ. P. 17(a)(1). But it is "less than obvious that a party's 'name' in this context means his true name, to the exclusion of a pseudonym." *MIT*, 46 F.4th at 67; cf. *Roe* v. *Borup*, 500 F Supp. 127, 129 (E.D. Wis. 1980) (rejecting "highly mechanical interpretation of the Federal Rules of Civil Procedure" that would preclude using pseudonyms).[4] Indeed, if these Rules could be read to require the plaintiff to file suit in his true name, it is "odd that courts have converted this command into a rebuttable presumption." *MIT*, 46 F.4th at 67 (citing *United States* v. *Tsarnaev*, 595 U.S. 315, 315–16 (2022) (explaining that "supervisory rules cannot conflict with or circumvent" a Federal Rule)).

Some circuits have suggested that this presumption springs from the "tradition of open judicial proceedings" grounded in the First Amendment and common law. *In re Sealed Case*, 931 F.3d at 96; see *Frank*,

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[4] Several scholars in fact have rejected such a reading of Rule 10 and Rule 17. *See*, e.g., Carol M. Rice, *Meet John Doe: It Is Time For Federal Civil Procedure To Recognize John Doe Parties*, 57 U. Pitt. L. Rev. 883, 915–16 (1996) (explaining that "Rule 10(a) simply seeks to distinguish the more formal caption in the complaint from all others" and "does not necessarily dictate the substance of the name designation," and that Rule 17(a) "requires that the party … has a real interest in the claim" and "does not address what name that person must use"); Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff In The Information Age*, 53 U. Kan. L. Rev. 195, 215–16 (2004) (arguing that denying pseudonymity based on Rule 10(a) is "excessively formalistic").

951 F.2d at 324 ("Lawsuits are public events."). Others—including the court of appeals here, Pet. App. 6a—have grounded this presumption in the basic idea that "[t]he people have a right to know who is using their courts." *Doe* v. *Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997); *Pub. Citizen*, 749 F.3d at 273 ("The public has an interest in knowing the names of the litigants.").

Most promising, perhaps, some courts have viewed the qualified First Amendment right of public access to certain documents filed in civil litigation as limiting pseudonymity, too. *MIT*, 46 F.4th at 67; Volokh, *supra*, at 1368. To be sure, this Court has recognized "a general right to inspect and copy public records," *Nixon* v. *Warner Commc'ns, Inc.*, 435 U.S. 589, 597–98 (1978); see *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 474 (6th Cir. 1983) (noting that "[t]he recognition of this right of access goes back to the Nineteenth Century" and the D.C. Circuit's opinion in *Ex Parte Drawbraugh*, 2 App. D.C. 404 (1894)). But that right to access has little to say about the use of pseudonyms in federal civil litigation, particularly cases arising from Title IX proceedings. *Kamehameha Schs.*, 596 F.3d at 1042 (describing the presumption against pseudonymity as "loosely related to the public's right to open courts"). Even if it did, as this Court has held, that right "is not absolute." *Nixon*, 435 U.S. at 598.

The First Circuit—the only circuit court to examine the underpinnings of this presumption—has taken the view that courts have distilled this presumption "from a brew of custom and principle, including the values underlying the right of public access to judicial proceedings and documents under the common law and the First Amendment," *MIT*, 46 F.4th at 68, and enforce this presumption under their "inherent power

to 'formulate procedural rules not specifically required by the Constitution or the Congress,'" *id.* (quoting *Carlisle* v. *United States*, 517 U.S. 416, 426 (1996)); see *Stegall*, 653 F.1d at 185 (describing the presumption against pseudonymity as "a procedural custom fraught with constitutional overtones"); cf. Amy Coney Barrett, *Procedural Common Law*, 94 Va. L. Rev. 813, 823 n.23 (2008).

2. No matter the validity or source of this presumption, this Court's precedent is clear: When courts are called on to balance private interests against the public's common law right of access, as here, they must consider *all* "relevant facts and circumstances." *Nixon*, 435 U.S. at 599; see *Sealed Plaintiff*, 537 F.3d at 189 (explaining that this "balancing test" weighs "the plaintiff's need for anonymity against countervailing interests in full disclosure"). The nonexhaustive multifactor tests applied in the vast majority of circuits embody this requirement, mandating that district courts consider "*all* the circumstances of a given case" in deciding whether pseudonymity is appropriate. *Frank*, 951 F.2d at 323; *In re Sealed Case*, 931 F.3d at 96–97; *Megless*, 654 F.3d at 409–10.

So too its decisions reversing lower courts who fail to consider *all* relevant factors in determining whether pseudonymity is appropriate. See *Sidar*, 93 F.4th at 247 (reversing lower court's decision to remove Doe's anonymity on this basis); *James*, 6 F.3d at 242 (reversing lower court's denial of request for anonymity on this basis and reasoning that "[d]iscretion in this matter is … made 'informed'" by analyzing "certain judicially recognized factors"); *Zavaras*, 139 F.3d at 803 (explaining that lower court's decision "must be based upon 'informed' discretion, after taking all relevant factors into consideration," and that "failure to take relevant factors into account … makes an ex-

ercise of discretion not 'informed'"); *Luo* v. *Wang*, 71 F.4th 1289, 1296–97 (10th Cir. 2023) (same); *Plaintiff B* v. *Francis*, 631 F.3d 1310, 1315 (11th Cir. 2011) (reversing district court where it "fail[ed] to actually consider the circumstances of the case and to weigh the relevant factors"); *Advanced Textile*, 214 F.3d at 1069 (same).

Here, the Seventh Circuit plainly failed to consider all relevant factors. Under the test employed in every circuit *but* the Seventh Circuit, the court would have considered factors considered by the lower court but deemed not "pertinent" by the court of appeals—namely, that Doe challenged government activity, that the suit required disclosure of information of the "utmost intimacy," and that identification of Doe could harm innocent non-parties. Indeed, the Seventh Circuit stands alone in failing to consider these factors.

Under the First Circuit's totality of the circumstances approach, too, the court would have considered the same relevant factors and affirmed the lower court. As noted, Doe's case fits firmly within the second "general category" identified by the First Circuit—cases where disclosure of Doe's name will "likely lead to disclosure of a nonparty's identity, causing the latter substantial harm." *MIT*, 46 F.4th at 72. So too, this case falls the third and fourth categories—cases in which disclosure of Doe's identity "would likely deter, to an unacceptable degree, similarly situated individuals from litigating," and where the suit is "bound up with a prior proceeding subject by law to confidentiality protections and forcing disclosure of the party's identity would significantly impinge upon the interests served by keeping [those] proceeding[s] confidential." *Id.* Doe's unmasking necessarily would deter other students—at Indiana University and

elsewhere—from attacking constitutionally infirm Title IX proceedings, and the proceedings below were, as required by federal law, conducted confidentially.

Remarkably, though the author of the panel decision below previously recognized that "anonymity [is] common in Title IX suits," *Loyola Univ. Chi.*, 100 F.4th at 913 (Easterbrook, J.), the Seventh Circuit made no mention of Title IX in its pseudonymity analysis here. The First Circuit in *MIT*, by contrast, recognized that the Title IX wrinkle "demands our attention." 46 F.4th at 74; see *id.* at 75 (noting that "federal law aims to keep [Title IX] proceedings largely under wraps," and that "it would be a mistake to conclude that the confidentiality attending Title IX proceedings is unimportant").

Indeed, the decision below is entirely incompatible with the First Circuit's holding in *MIT* that "[i]n federal suits that amount to collateral attacks on Title IX proceedings, a full appreciation of the public's interest in transparency *must factor in* the choice by Congress and the Department to inhibit a school's disclosure of private information, such as the name of the accused." *Id.* at 76 (emphasis added). After all, as the First Circuit explained, "[i]t makes little sense to lift the veil of pseudonymity that—for good reason—would otherwise cover these proceedings simply because the university erred and left the accused with no redress other than resort to federal litigation." *Id.*

In sum, the Seventh Circuit's decision is egregiously wrong and—under the test applied in any other circuit—the lower court's grant of plaintiff's motion to proceed under a pseudonym would have been affirmed.

III. This Case Is An Ideal Vehicle To Resolve An Exceptionally Important And Recurring Issue.

1. This case is profoundly important on multiple levels. Universities have drawn considerable ire for their failure to protect the due process rights of the accused by providing basic procedural fairness in Title IX investigations. See generally FIRE, *Spotlight on Campus Due Process* (2022). With each new administration, Title IX's implementing regulations are revamped and revised, changing how colleges conduct investigations and hearings in such matters. See generally 34 C.F.R. § 106.

Indeed, the President recently approved and released the Department of Education's sweeping changes to the regulations, effective August 1, 2024. DOE Press Release, *U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination* (Apr. 19, 2024). These regulations provide universities considerable latitude, permitting a campus Title IX investigator to serve both as the fact finder and decisionmaker in a case and allowing schools to dispense with live hearings, cross-examination, and expert testimony. See 89 Fed. Reg. 33,474, 33,662–63, 33,891, 33,894–95 (Apr. 29, 2024). Even more, the regulations require that universities use a "preponderance of the evidence standard of proof" unless the school shows that it uses a "clear and convincing evidence standard of proof in all other comparable proceedings." *Id.* at 33,893; see *id.* 33,701–703.[5]

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[5] A district court enjoined the Rule in its entirety, and the Sixth Circuit denied the government's request to stay the court's preliminary injunction. *See Tennessee* v. *Cardona*, --- F. Supp. 3d ---, 2024 WL 3019146 (E.D. Ky. June 17, 2024), *aff'd*, No. 24-

These changes unquestionably diminish the due process protections afforded to students subjected to Title IX proceedings. Until this Court weighs in, college students left with no recourse but federal litigation to vindicate violations of their due process rights in University-run Title IX proceedings will face crippling uncertainty over whether they may do so under a veil of pseudonymity.

Equally important, the Seventh Circuit here *agreed with* John Doe that the University violated due process, entitling him to a remedy. Without this Court's intervention, however, John Doe will be forced to unmask in order to receive the remedy to which he is entitled. Such a result would send a resounding and chilling message to students at colleges located within the Seventh Circuit who might muster the resources and the courage to hold the University to account for violating their due process rights. Under the test applied in any other circuit, Doe would not face this Hobson's choice. The interests at play in suits attacking Title IX proceedings—both those of the accused student and his accuser—are far too important to leave up to geographic chance.

2. This case is an excellent vehicle for resolving this issue. "[A]nonymity [is] common in Title IX suits." *Loyola Univ. Chi.*, 100 F.4th at 913. But the need for pseudonym treatment in such cases is often obvious, leaving courts of appeals few chances to examine whether pseudonymity should be permitted and—consequently—leaving this Court limited opportunities to intervene in a case with a paper trail. See *Doe* v. *Purdue Univ.*, 928 F.3d 652 (7th Cir. 2019) (Barrett, J.) (permitting pseudonymity without discus-

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5588, 2024 WL 3456880 (6th Cir. July 17, 2024), *application for stay filed* (U.S. July 22, 2024) (No. 24A79).

sion); *Doe* v. *Columbia Univ.*, 831 F.3d 46 (2d Cir. 2016) (same); *Doe* v. *Va. Polytechnic Inst. & State Univ.*, 77 F.4th 231 (4th Cir. 2023) (same). No such problems exist here. The parties fully briefed this issue before the district court, and the Seventh Circuit decided this issue with the benefit of thorough supplemental briefing from the parties on the propriety of pseudonymity here.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

PHILIP A. BYLER
LAW OFFICES OF
PHILIP A. BYLER
11 Broadview Dr.
Huntington, NY 11743
(631) 848-5175
pbyler1976@gmail.com

WILLIAM R. LEVI
CODY L. REAVES*
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8000
cody.reaves@sidley.com

*Counsel of Record

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