
**NEW YORK SUPREME COURT
APPELLATE DIVISION – SECOND DEPARTMENT
Docket No. 2020-03855**

In the Matter of

ARK3 DOE,

Plaintiff-Respondent,,

-against-

DIOCESE OF ROCKVILLE CENTRE A/K/A THE ROMAN CATHOLIC DIOCESE OF
ROCKVILLE CENTRE, NEW YORK,

Defendant,

-and-

ST. HUGH OF LINCOLN A/K/A ST. HIGH OF LINCOLN ROMAN CATHOLIC CHURCH
A/K/A ST. HUGH'S,

Defendant-Appellant,

-and-

DOES 1-5 whose identities are unknown to Plaintiff,

Defendants.

BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFF

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Spröber, N., et. al, *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*, BMC PUBLIC HEALTH, 14:282, doi: 10.1186/1471-2458-14-282 (2014) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3995507/> 21

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, CHILD USA, is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA develops evidence-based solutions and information needed by policymakers, youth-serving organizations, courts, media, and the public to increase child protection and the common good.

CHILD USA works to protect children from abuse in various contexts including its national child sex abuse statute of limitations reform initiative. CHILD USA's interests in this case are directly correlated with its mission to increase public safety and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

ARGUMENT

The Court should grant Plaintiff's request to proceed under pseudonym on her claims pursuant to the Child Victims Act, CPLR §214-g, because Plaintiff's privacy rights outweigh the presumption of openness of courts.

POINT I

THIS COURT MAY VALIDLY EXERCISE ITS DISCRETION IN FINDING THAT VICTIM'S PRIVACY RIGHTS OUTWEIGH THE PRESUMPTION OF OPENNESS OF COURTS

The right to privacy is a constitutionally protected right and encompasses a plaintiff's interest in non-disclosure of personal information. *See Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (recognizing that "a right of personal privacy . . . does exist under the Constitution"); *see also Whalen v. Roe*, 429 U.S. 589, 599 (1977) (noting cases finding protected privacy interests include an "individual interest in avoiding disclosure of personal matters"); William C. Donnino, Practice

Commentaries, NY Crim Pro §60.42 (citing *People v. Williams*, 614 N.E.2d 730 (1993))(New York recognized that “testimony about the past sexual acts of victims of sex crimes often serves solely to harass the victim and confuse the jurors” so it passed a rape shield law to protect the privacy of rape victims, keeping their past sexual conduct from courts when it does not serve the interests of justice.)

Despite the right to privacy, adult survivors seeking to proceed under pseudonym on their claims arising from childhood sexual abuse must overcome many hurdles, the most significant of which is the presumption of openness of courts. *See Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979) (discussing the common law rule of open civil and criminal proceedings); *see also Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997) (“Identifying the parties to the proceeding is an important dimension of publicness [of courts].”); *Doe v. Doe*, 668 N.E.2d 1160, 1164 (Ill. App. Ct. 1996) (requiring parties to identify themselves “protects the public’s legitimate interest in knowing all of the facts involved in the case, including the identities of the parties”). This presumption, however, is not absolute. *See James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (stating that openness “operates only as a presumption and not as an absolute, unreviewable license to deny”); *see also, Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (stating that the presumption of openness of judicial proceedings may be overridden in “exceptional circumstances”). To determine whether a plaintiff should be permitted to move forward on their claim under a pseudonym, courts will consider a list of factors established by federal law and upon which state courts have built. *See Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 189-90 (2nd Cir. 2008) (identifying a non-exhaustive list of factors to be considered including, but not limited to: (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; (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; (5) whether the suit is challenging the actions of the government or that of private parties; (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; and (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). Courts exercise considerable discretion when determining whether a plaintiff may proceed under a pseudonym based on these factors and any other factors relevant to the case. *Id.*; *see also Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y. 1996) (citing *Jacobson*, 6 F.3d at 238).

Courts that have permitted plaintiffs to proceed under pseudonyms on their claims arising from childhood sexual abuse, even after the age of majority, have done so largely based on three common factors: 1) the public's interest (or lack thereof) in knowing the plaintiff's identity; 2) the potential harm to plaintiff if their identity were to be disclosed; and 3) the highly sensitive and intimate nature of the claims. *See, e.g., Doe No. 2 v. Kolko*, 242 F.R.D. 193, 196 (E.D.N.Y. 2006) (holding in a childhood sexual abuse case that "courts have granted anonymity to protect against disclosure of a wide range of issues involving matters of the utmost intimacy, including sexual assault"); *Doe 130 v. Archdiocese of Portland in Or.*, No. CV. 07-1732-PK, 2008 WL 656021, *4 (D.Or. Mar. 6, 2008) (allowing adult plaintiff to maintain pseudonym in suit alleging child sex abuse by priest because of the risk to harm to which plaintiff was particularly vulnerable); *Doe v. Megless*, 2010 WL 3076246, *2 (E.D. Pa. 2010) (permitting plaintiff to proceed anonymously because the case involved highly sensitive and personal matters); *Doe v. Brown*, 2009 WL

5322462, *3 (Conn. Super 2009) (permitting pseudonym for adult plaintiff in suit concerning abuse that took place while a minor where it would serve the “overriding interest of protecting the plaintiff from exposure in the community of her private situation”); *Doe v. MacFarland*, 66 Misc.3d 604, 622 (NY Sup. Ct. Rockland County Dec. 10, 2019) (permitting plaintiff to proceed anonymously on claims under the Child Victims Act recognizing the sensitive and intimate nature of the claims); *Doe v. Diocese Corp.*, 647 A.2d 1067, 1072 (Conn. Super. Ct. 1994) (“One’s sexual history and practices are among the most intimate aspects of a person’s life. When one has a sexual history falling outside the realm of the ‘conventional,’ that privacy interest is enhanced greatly, whether one has created that history voluntarily or it is forced upon a person as a result of abuse.”).

In short, the ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff’s substantial right to privacy outweighs the “customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Shakur*, 164 F.R.D. at 361 (citing *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (citing *Stegall*, 653 F.2d at 186).

A. Plaintiff’s Involuntary Loss of Privacy if Required to Publicly Disclose Their Identity Will Deprive Them of Their Constitutional Right to Access Courts

Regardless of this nation’s history of open courts, the presumption of openness significantly disadvantages victim plaintiffs who are forced to bear the tremendous burden on their privacy rights. *See Commonwealth ex rel. Platt v. Platt*, 404 A.2d 410, 429 (Pa. Super. Ct. 1979) (internal citation omitted) (“The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others.”); see also, *EW v. N.Y. Blood Center*, 213 F.R.D. 108, 113 (E.D.N.Y. 2003) (granting plaintiff’s motion to proceed anonymously because the facts of the case

provided no basis for “imposing [the] invasion of privacy as the price for litigating a legitimate private complaint”).

Victim plaintiffs have a constitutional right to access courts to seek legal redress for the harms they suffered as children at the hands of their perpetrators. *See, e.g., Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) (“Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment.”); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (noting access to courts is a fundamental right). That right is significantly diminished if plaintiffs cannot maintain their privacy by pursuing their claims anonymously or pseudonymously. *See Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588*F, 2002 WL 202464, *6 (Mass. Super. Feb. 4, 2002) (noting “[i]f the identit[ies] of these victims are not protected by the courts, then their access to the courts will be severely diminished, because they will not be able to turn to the courts for relief from or compensation of their emotional injuries without aggravating those same injuries.”). This involuntary loss of privacy amounts to a loss of access to the courts. *See Roe v. Providence Health System-Oregon*, Civil No. 061680-HU, 2007 WL 1876520, *4 (D.Or. June 26, 2007) (noting that the public had an interest in seeing a case decided on the merits, which might be undermined if plaintiffs were mandated to provide their true identity and were thereby deterred from continuing the lawsuit).

B. The Public Interest in Encouraging Victims to Disclose Sexual Abuse is Generally Coupled With a Lack of Public Interest in Knowing the Identity Of Specific Victim Plaintiffs

Notwithstanding courts’ recognition of the presumption of openness of court proceedings, “[t]he equation linking the public’s right to attend trials and the public’s right to know the identity of the parties is not perfectly symmetrical.” *Stegall*, 653 F.2d at 185. Courtroom doors will not

“close” to the public and reporters may still access and report on hearings, even if the plaintiff’s identity is unknown. *See Doe v. Evans*, 202 F.R.D. 173, 176 (E.D. Pa. 2001) (“[A]lthough the public certainly has an interest in the issues Mary Doe’s complaint raises, protecting her identity will not impede the public’s ability to follow the proceedings.”). In fact, many of the justifications for openness of courts are unimpeded by anonymous or pseudonymous plaintiffs. *See, e.g., Stegall*, 653 F.2d 180 at 185 (explaining the “public right to scrutinize governmental functioning is not so completely impaired by a grant of anonymity to a party as it [would be] by [the] closure of the trial itself. Party anonymity does not obstruct the public’s view of the issues joined or the court’s performance in resolving them. The assurance of fairness preserved by public presence at a trial is not lost when one party’s cause is pursued under a fictitious name. These crucial interests served by open trials are not inevitably compromised by allowing a party to proceed anonymously.”).

The public interest in parties’ identities is derived from the public interest in open courts generally. While it is in the interest of the public to know who has been accused in court of child sex abuse for purposes of prevention, the public interest in knowing the name of the victim is considerably less. This is particularly true in the context of civil litigation wherein plaintiffs seek to vindicate private rights. *See, e.g., Doe v. City of New York*, 201 F.R.D. 100, 102 (S.D.N.Y. 2001) (“[P]laintiff is challenging government activity [. . .] indicates that there is a public interest in the facts of the incident at issue as opposed merely to a public interest in knowledge of the manner in which the courts function in resolving disputes.”); *Shakur*, 164 F.R.D. at 361 (noting that governmental bodies do not share the concerns about ‘reputation’ that private individuals have when they are publicly charged with wrongdoing.); *see generally, Doe v. Hartz*, 52 F. Supp. 2d 1027, 1046-47 (N.D. Iowa 1999). It is not so much the identity of the parties to which the public

generally bears an interest but rather to the specifics of the cause of action and the legal precedential value of the case. *See MacFarland*, 66 Misc.3d at 608-09 (explaining that the risk of allowing a plaintiff to proceed anonymously is minimized when the issues raised are purely legal and do not rely upon the identification of specific parties).

In the overwhelming number of civil cases, the public has little legitimate interest in knowing plaintiff's identity if their identity has little or no bearing on the case.

POINT II

THE USE OF PSEUDONYMS SHOULD BE EXPLICITLY RECOGNIZED BY COURTS FOR VICTIMS OF CHILDHOOD SEXUAL ABUSE TO PREVENT HARM TO THE VICTIMS

One factor that is ubiquitous among courts considering whether to permit a plaintiff to proceed anonymously on their claims arising from childhood sexual abuse is whether identification of the victim will cause the victim further psychological harm. *See, e.g., Jacobson*, 6 F.3d at 238; *Frank*, 951 F.2d at 323; *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998); *Shakur*, 164 F.R.D. at 361; *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000).

Child sex abuse inflicts trauma that can result in lifelong harm that psychologically disables its victims. *See, e.g., Chen, L., BS, et. Al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) MAYO CLIN. PROC. 618 (July 2010) (concluding that a history of sexual abuse is associated with increased lifetime risk of diagnosis of multiple psychiatric disorders); see generally Bessel Van Der Kolk, *The Body Keeps The Score: Brain Mind And Body In The Healing Of Trauma* (2014). Victims' experience of childhood sexual abuse is often dominated by negative emotions such as shame and embarrassment that ultimately creates a barrier to disclosure. *See Paine, M. & Hansen, D., Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271, 271-75 (2002) (discussing shame and embarrassment about abuse, making

victim feel to blame for abuse); *see also*, Hunter, S., *Disclosure of child sexual abuse as a life-long process: Implications for health professionals*, 32(2) AUSTRALIAN AND NEW ZEALAND JOURNAL OF FAMILY THERAPY 159-172 (2011) (explaining that feelings of fear, shame, and embarrassment decrease child victims desire to disclose abuse). This is true regardless of age. *See e.g.*, *Doe v. Hartford Roman Catholic Diocesan Corp.*, No. CV074026864S, 2007 WL 4213153, *1 (Conn. Super. Ct. Nov. 5, 2007) (holding that fact that the childhood sexual abuse “occurred more than 20 years ago and is only being made the subject of a lawsuit now, does not detract materially from the notion that the alleged event was socially stigmatizing and that revealing the plaintiff’s true identity now would promote or increase that stigmatization”).

The nature of child sex abuse is such that re-victimization and harm is particularly acute, and extends beyond mere embarrassment and humiliation, when victims’ identities are revealed when they need to remain private. *See, e.g.*, Kilpatrick, D. & Otto, R., *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 WAYNE L. REV. 7, 25 (1987) (describing secondary victimization by the justice system); *see also*, *Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588*F, 2002 WL 202464, * 6 (Mass. Super. Feb. 4, 2002) (“[F]or many victims of sexual abuse . . . public revelation of the abuse, if not sought by them, victimizes them yet again.”).

The disclosure of the abuse itself can exacerbate existing emotional and psychological problems and seriously curtail survivors’ efforts at recovery. *See, e.g.*, *Doe v. Firn*, No. CV065001087S, 2006 WL 2847885, *5 (Conn. Super. Ct. Sept. 22, 2006) (explaining that, “[t]o force the plaintiff to proceed without the protection of the pseudonym Jane Doe could only subject the plaintiff to additional psychological harm and emotional distress.”); *Archdiocese of Portland in Or.*, 2008 WL at *4 (explaining that, “[t]he experience of sexual abuse can be deeply

psychologically traumatic, and public knowledge of such abuse can trigger new trauma even years after the fact. [Plaintiff] faces a real risk of harm to which he, as a survivor of clergy sexual abuse, is peculiarly vulnerable, and his fears regarding that risk are entirely reasonable.”); *see also*, Leone S., *Protecting Rape Victims’ Identities: Balance Between the Right to Privacy and the First Amendment*, 27 NEW ENG. L. REV. 883, 910-11 (1993) (“Each victim has a unique healing process and the public disclosure of her identity could disrupt that process before the victim is ready.”). This is particularly true if courts are not supportive of victims claims or sensitive to their needs. *See* O’Leary, P., *The Effect of Severe Child Sexual Abuse and Disclosure on Mental Health during Adulthood*, 19(3) J. OF CHILD SEXUAL ABUSE 275-289, 277 (2010) (“A disclosure that is met with a dismissive, disbelieving, nonsupportive, hostile, or nonprotective response can be traumatic in itself and lead to long-term mental health symptoms.”); *See also*, Shakespeare-Finch, J. & Dassel T., *Exploring Posttraumatic Outcomes as a Function of Childhood Sexual Abuse*, 18 J. CHILD SEXUAL ABUSE 623, 634 (2009) (discussing a study finding that “lack of support was particularly deleterious to [the victims’] well-being”).

The fact that minor victims are afforded anonymity in civil and criminal proceedings, attests to the fact that child sex abuse can generate long-term psychological and physical illness.. *See, e.g., Stegall*, 653 F.2d at 186 (conceding that plaintiff anonymity should be permitted in cases involving “vulnerable parties” and identifying the “safe-guarding the physical and psychological well-being” of children to be a “compelling state interest” such that the child’s age, psychological maturity and understanding as well as the nature of the crime factor into the courts determination about whether to close civil proceedings.); *see also*, Chen, L., et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) MAYO CLIN. PROC. 618, 627 (July 2010) (“[S]exual abuse survivors face a challenging spectrum of physical and mental health concerns, with

associated higher health care use and greater medical expenditures. . . [S]exual abuse is associated with multiple psychiatric disorders, including lifetime diagnosis of anxiety disorders, depression, eating disorders, PTSD, sleep disorders, and attempted suicide.”). Adults who experience the insidious psychological effects of childhood sexual abuse are simply a manifestation of this recognition.

The psychological vulnerabilities that justify anonymity for child victims generally persist, and oftentimes intensify, during adulthood. *See* Hunter, M., *ABUSED BOYS*, 59 (Ballantine Books, 1991) (“Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.”); Freyd, J., et. Al., *The Science of Child Sexual Abuse*, 308 *SCIENCE* 501 (Apr. 22, 2005) (explaining that childhood sexual abuse is associated with serious mental and physical health problems even late into adulthood, including substance abuse, criminality, posttraumatic stress disorder, depression, and suicide, and interferes with attachment, emotional regulation, and major stress response systems).

The general presumption against pseudonyms for adult survivors does not reflect the experience of the vast majority of victims who typically disclose abuse decades after they turned eighteen and who still need and deserve protection from further psychological injury. *See infra* section II Offering anonymity to those plaintiffs who would suffer psychological harm if their identities were publicly disclosed is an effective way to achieve the strong public interest in providing society-based justice for the victims and shifting the cost of the abuse from the victim to the ones who caused it.

POINT III

THE AVAILABILITY OF PSEUDONYMS FOR ADULT SURVIVORS SEEKING LEGAL REDRESS ADVANCES THE PUBLIC POLICY OF ENCOURAGING DISCLOSURE OF CHILD SEXUAL ABUSE

The public needs to know who the hidden child predators are, and that means there is a compelling interest in not deterring child sex abuse victims from entering the legal system against their perpetrators. Permitting plaintiffs to proceed anonymously or pseudonymously promotes the legislative intent embodied by the Child Victims Act which is to “help the public identify hidden child predators. . . and shift the significant and lasting costs of child sexual abuse to the responsible parties.” *MacFarland*, 66 Misc.3d at 608-09 (citing *ARK 55 Doe v. Archdiocese of New York*, (Sup. Ct. New York County, November 4, 2019, Silver, J. Index #950049/2019) (quoting, without attribution, the New York Committee Report, 2019 NY S.B. 2440 (NS), January 26, 2019)). These interests are further implicated by the prevalence of child sexual abuse and the social costs entailed in treating victims for the same. Briere, J. and Eliot, D.M, *Prevalence and Psychological Sequence of Self-Reported Childhood Physical and Sexual Abuse in General Population*, 27 (10) CHILD ABUSE & NEGLECT, 1205-1222 (2003) (finding that as many as one in three girls and one in seven boys will be sexually abused at some point in their childhood); McGregor, K., et al., *Health Professionals' Responses to Disclosure of Child Sexual Abuse History: Female Child Sexual Abuse Survivors' Experiences*, 19(3) J. CHILD SEXUAL ABUSE 239, 240 (2010) (“Adult survivors of child sexual abuse are high users of health and mental health services and make up a significant proportion of many clinical health population groups.”); *see also*, Wurtele, S., *Preventing Sexual Abuse of Children in the Twenty-First Century: Preparing for Challenges and Opportunities*, 18(1) J. CHILD SEX ABUSE 1, 3 (2009) (citing a 1996 report from the Justice Department estimating

medical costs stemming from childhood sexual abuse at around \$1.5 billion, and medical expenses by U.S. victims at around \$23 billion).

Despite the epidemic of child sex abuse that has ravaged youth-facing institutions and families, incidents of child sex abuse have been, and continue to be, significantly underreported. In fact, data from the Department of Justice suggests that 86% of child sexual abuse goes unreported altogether. *Youth Victimization, Prevalence and Implications*, Department of Justice, 2003 page ii. Though most victims of abuse never disclose, those who do typically wait until they are well into adulthood before they are prepared to do so. See, Alaggia, R., *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19 J. CAN. ACAD. CHILD ADOLESC. PSYCHIATRY 32, 32 (2010) (“By some estimates between 60-80% of CSA victims withhold disclosure[.]”); see also, Spröber, N., et. al, *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*, BMC PUBLIC HEALTH, 14:282, doi: [10.1186/1471-2458-14-282](https://doi.org/10.1186/1471-2458-14-282) (2014) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3995507/> (citing a study of over 1,000 survivors where the average age at the time of disclosure of childhood sexual abuse was 52 years.).

Child sex abuse remains hidden from public view for decades until disclosure, thereby enabling predators to victimize in perpetuity. See Frawley-O'Dea, M.G., *Perversion of Power: Sexual Abuse in the Catholic Church* 21 (Vanderbilt Univ. Press 2007) (“Secrecy...is the acknowledged cornerstone of sexual abuse.”); see also, Lanning, K., *Child Molesters: A Behavioral Analysis*, 37 (4th ed. 2001) available at http://www.cybertipline.com/en_US/publications/NC70.pdf (“A [. . .] child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender

and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Barriers to public identification of perpetrators, such as plaintiff’s inability to proceed in civil claims under pseudonym, must be removed in order to protect children. Courts that do not permit plaintiffs to maintain anonymity create a chilling effect on victims’ willingness to identify and bring claims against their abusers. *See Evans*, 202 F.R.D. at 176 (permitting anonymity partly because “the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights”); *Shakur*, 164 F.R.D at 362 (acknowledging the “unfortunate result” that “victims of sexual assault will be deterred from seeking relief through civil suits if they are not permitted to proceed under a pseudonym”); *see also, MacFarland*, 66 Misc.3d at 608-09 (stating that, “plaintiff faces a Hobson's choice if the Court denies her application [to proceed under pseudonym] — reveal herself and risk harm to herself and her children or discontinue the action and allow what *might* otherwise be a meritorious claim to go undetected.”). This chilling effect is exacerbated by the nearly instant and widespread dissemination of harmful, largely permanent, information on the internet and over social media. *See, e.g., Plaintiff B v. Francis*, 631 F.3d 1310, 1320 (11th Cir. 2011) (holding district court erred in ignoring the fact that minors filmed engaging in sexually explicit acts “had put on a convincing case that, by being identified, they will permanently be linked with the videos containing the footage of them.”); *see also, Kolko*, 242 F.R.D. at 197 (“[A]s courts in this Circuit have recognized, it is now possible to determine whether a given individual is a party to a lawsuit in federal court anywhere in the country by the simplest of computer searches, to access the docket sheet of any such case electronically, and... that entire case files will be accessible over the Internet. Given the

ease with which the public could access court files in this case, it is reasonable that plaintiff's fears extend beyond ostracism in the Brooklyn community.”).

For the sake of the public interest, courts need to consider whether the denial of an application to proceed anonymously or under a pseudonym will affect the willingness of a party to proceed. *L.H. A.Z., K.K, & D.R. v. Schwarzenegger*, No. CIV. S-06-2042 LKK/ GGH, 2007 WL 662463, at 18 (E.D. Cal. Feb. 28, 2007) (noting that “[w]hen the willingness to file suit is chilled by fear of retaliatory action, the public interest in seeing the suit move forward on its merits outweighs the public interest in knowing the plaintiffs’ names”). If the opportunity to seek relief under the Child Victims Act is conditioned on plaintiffs’ involuntary disclosure of their identifying information, too many victims will simply forgo their action. It would be manifestly unjust if the denial of an application to proceed anonymously were to abrogate a party’s newly restored rights. *See. N.Y. Blood Center*, 213 F.R.D. at 113 (granting plaintiff’s motion to proceed anonymously because the facts of the case provided no basis for “imposing [the] invasion of privacy as the price for litigating a legitimate private complaint”).

Granting anonymity to plaintiffs gives victims an incentive to come forward and to bring societies hidden perpetrators to light. This will increase public awareness regarding the prevalence of child abuse and may prevent harm to future victims.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* requests this Court to grant Plaintiff’s request to prosecute this action pursuant to the Child Victims Act , CPLR §214-g, using a “John Doe”/ “initials” designation in the caption in place of Plaintiff’s true name and other relief.

Respectfully submitted,



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