**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF PUERTO RICO**

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| **HUMANISTAS SECULARES DE PUERTO RICO, INC.; DOE 1, DOE 2, DOE 3**<br><br>**PLAINTIFFS**<br><br>**v.**<br><br>**Eligio Hernandez Perez, in his official capacity as Secretary of Education and Luz Ramos, in her official and individual capacities**<br><br>**DEFENDANTS** | **CIVIL NO.** |

**PLAINTIFFS' MOTION FOR LEAVE TO PROCEED USING PSEUDONYMS AND FOR PROTECTIVE ORDER**

TO THE HONORABLE COURT:

COME NOW Plaintiffs through the undersigned attorneys, who allege, expose, and request relief as follows:

1. Plaintiffs file this Motion for Leave to Proceed Using Pseudonyms and for Protective Order, and Memorandum of Law in Support, contemporaneously with Plaintiffs' Complaint.

2. In this case, Plaintiffs bring claims under 42 U.S.C. § 1983, alleging that the Defendants have violated Plaintiffs' First Amendment rights.

3. Plaintiffs request permission to proceed pseudonymously based on (1) the fact that Plaintiffs are suing government officials; (2) the fact that Plaintiffs include two minor students and the mother of two minors; (3) the fact that Plaintiffs' concerns are reasonable, based on the history of violence and intimidation waged against Establishment Clause plaintiffs; and (4) the reasonable expectation that Plaintiffs will be the victim of harassment, injury, and other serious

harm if their identity becomes known to the public, based on their personal experiences within their school community.

4. The basis for this request is laid out more fully in the Memorandum of Law in Support.

5. In order to protect the identities of Does 1, 2, and 3, Plaintiffs have submitted, as part of the Proposed Order accompanying this Motion, a Protective Order that is designed to allow Defendants' attorneys and other essential personnel the opportunity to review identifying information that may be necessary to effectively defend the case, while protecting the identities of the individual Plaintiffs. The Protective Order establishes protocol for the production of information that could identify Doe 1, Doe 2, or Doe 3, and the handling of identifying information Defendants produce.

3. As argued in the Memorandum in Support, Plaintiffs' request that Does 1, 2, and 3 be permitted to proceed pseudonymously is sought pursuant this Court's discretion under L.Cv.R. 83G (g) pertaining to *Special Orders in Appropriate Cases.* Although the jurisprudence of the First Circuit Court of Appeals has not directly dealt with motions for leave to proceed under pseudonym, the District Court of Massachusetts addressed the matter in *Liberty Media Holdings, LLC v. Swarm Sharing Hash File*, 821 F.Supp.2d 444, 453 (2011). The Puerto Rico Supreme Court also lacks jurisprudence on this issue. However, the Puerto Rico Court of Appeals has addressed the use of pseudonyms as recently as 2019, favoring their usage in necessary cases.

4. The Proposed Order addresses Plaintiffs' concerns as to the handling of any identifying information, while ensuring that Defendants' attorneys will maintain the opportunity to review such information, subject to the terms of the Protective Order.

5. For the foregoing reasons, Plaintiffs respectfully request that their Motion for Leave to Proceed Under Pseudonyms and For Protective Order be granted.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO PROCEED USING PSEUDONYMS AND FOR PROTECTIVE ORDER**

**CONTENT**

## INTRODUCTION

Plaintiffs request permission to proceed pseudonymously in order to protect Doe 1, who is the mother of minor children, and Does 2 and 3, who are minor children, from harassment, injury, or serious harm as a result of their bringing this First Amendment challenge to government sanctioned prayer, as set forth in the instant complaint.

The present lawsuit challenges the Luis M. Santiago School's (LMS or School) practice of holding prayer sessions at the beginning of the school day on alternating Mondays and other school activities. Plaintiffs contend that the Defendants' practice violates the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution and seek declaratory judgment and an injunction barring Defendants from organizing prayer events during the school day, leading prayers during school events, or encouraging students to participate in prayer while at school.

Plaintiffs who file complaints to enforce the Establishment Clause frequently face social ostracism, economic injury, governmental retaliation, and even physical violence. The instant case involves two minor children who attend the school presided over by Defendants. Plaintiffs, hence, fear they would be the subject of harassment, retaliation injury, or serious harm if their identities are not protected by the use of pseudonyms. Therefore, Plaintiffs respectfully request that the Court grant Plaintiffs leave to proceed using pseudonyms and enter Plaintiffs' proposed protective order pertaining to disclosure of identifying information.

**ARGUMENT**

Generally, pleadings must disclose the identities of the litigants. *See* Fed. R. Civ. P. 10(a) ("[T]he title of the complaint must name all the parties.…"). But courts have the power to allow plaintiffs to use pseudonyms. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973); *Poe v. Ullman*, 367 U.S. 497 (1961); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 294 (2000); *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981); *Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992); *Doe v. Barrow Cty.*, 219 F.R.D. 189, 190 (N.D. Ga. 2003).

While the First Circuit Court of Appeals has not addressed directly the issue of party anonymity and use of pseudonyms, federal courts often grant pseudonym motions in cases involving organized prayers and religion in public settings. *See, e.g.*, *Santa Fe*, 530 U.S. 290 (finding school-sponsored football game prayers unconstitutional in pseudonymous challenge); *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 853 (7th Cir. 2012) (*en banc*) (holding that public school graduation in church was unconstitutional), *cert. denied*, 134 U. S. 2283 (2014); *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004) (holding that public schools cannot teach the Christian bible as religious truth); *Stegall*, 653 F.2d at 184–86 (allowing pseudonyms in challenge to public-school bible readings).

The United States District Court for the District of Massachusetts addressed the use of pseudonyms in *Liberty Media Holdings, LLC v. Swarm Sharing Hash File*, applying a balancing test that weighed "the litigant's substantial right to privacy" against "the constitutionally embedded presumption of openness in judicial proceedings." 821 F.Supp.2d 444, 452–53 (2011). The court denied blanket pseudonymity to the 38 Doe plaintiffs, which was premised on the "mere embarrassment" "of being associated with allegations of infringing hardcore pornography," *id.* at

453, but noted that it would entertain individual requests for anonymity from plaintiffs with demonstrated concern over being "outed" as homosexual, since "publicly identifying an individual as a homosexual may fall within the recognized exceptions to the general proposition that all parties to a lawsuit be named in the pleadings." *Id.* at 453, n.8 (citing cases which further establish pseudonymity exceptions for "cases involving 'abortion, birth control, transexuality, mental illness, welfare rights of illegitimate children, [and] AIDS," among others).

The Puerto Rico Supreme Court has not addressed the use of pseudonyms in the courts on the island. However, the Puerto Rico Court of Appeals has touched upon the issue as recently as 2019. In *De Tal v. Demandada A,* KLCE201900238, 2019 WL 4493398 (P.R. Cir. Aug. 30, 2019), the Court of Appeals applied a balancing test that considered the following factors:

> 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;
> 6. whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

*Id.* (citing *Doe v. Provident Life & Accident Ins. Co.*, 176 FRD 464 (E.D. Pa. Jan. 19, 1997)).

While there is no specific consensus test within the First Circuit, "[t]he ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings.'" *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992), *citing Stegall*, 653 F.2d at 186. The Fifth Circuit in *Stegall* and The Eleventh Circuit in *Frank* enumerate four relevant factors for courts to use when balancing plaintiffs' privacy and safety against open courts: (1)

whether plaintiffs seeking anonymity are suing to challenge a governmental activity; (2) whether prosecution of the suit will compel plaintiffs to disclose information of the utmost intimacy; (3) whether plaintiffs are compelled to admit an intent to engage in illegal conduct; and (4) the privacy concerns of the plaintiffs, such as whether the plaintiffs are children and the potential for public reaction and retaliation. *Stegall*, 653 F.2d at 185–86; *Frank*, 951 F.2d at 323, n.5.

In this case, the *Frank*/*Stegall* factors, as well as all six interrelated factors recognized by the Puerto Rico Court of Appeals in *De Tal*, weigh heavily in favor of pseudonymity and a protective order. The Doe family is suing a governmental entity; in filing this case they have been forced to reveal information of the "utmost intimacy;" and Plaintiffs include two minor children. Moreover, the history of harassment and violence against Establishment Clause plaintiffs, and the proselytizing and adverse differential treatment already directed at the Doe children, support the need for anonymity. Likewise, the public interest weighs heavily in favor of bringing governmental activity into compliance with constitutional law. The identities of the individual Plaintiffs are not needed to achieve that end, since the issues raised in this case are primarily legal and any factual disputes will be minimal and unrelated to the Does' identities. Finally, the Doe family does not have an ulterior motive in seeking anonymity. There reasons outlined herein are more than enough.

**A. <u>The Doe family is challenging a governmental activity.</u>**

The Doe family is suing Puerto Rico's Secretary of Education in his official capacity only, and the Principal of the Luis M. Santiago School in his official capacity as a government officer. Because the law against organized or teacher-led prayer is so well established, Plaintiffs are also suing Principal Ramos in her personal capacity for prospective relief and nominal damages. Even though an LMS School employee is personally joined for intentionally violating—or being

recklessly or callously indifferent to—protected rights, the primary challenge is to government officers acting in their official capacities to further a government policy and practice.

Citizens have a greater interest in seeing that the government complies with the Constitution than in knowing which fellow citizen is seeking to force that compliance. Even the causes of action against Principal Ramos in her individual capacity implicate the governmental activity factor because citizens also have an interest in ensuring that the people who occupy government offices do not wantonly disregard their duty and expose the government to legal and financial liability.

**B. <u>The Doe family will be forced to reveal information of the "utmost intimacy" if they are required to proceed without pseudonyms.</u>**

In the course of this suit, the Does will be forced to reveal information about their religious beliefs—information of the "utmost intimacy." Courts have recognized that "religion is perhaps the quintessentially private matter." *Stegall*, 653 F.2d at 186. The Fifth Circuit has reasoned, "Although they do not confess either illegal acts or purposes, the Does have, by filing suit, made revelations about their personal beliefs and practices that are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior." *Id.* The Supreme Court agrees, the "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Lee v. Weisman*, 505 U.S. 577, 589 (1992). Without pseudonyms, this intensely private information will be made public, for the entire LMS School community to judge.

In addition to having to "directly state their religious affiliations, or lack thereof," the Does will additionally have to explain their injuries—a requisite element to prove standing—which will necessarily "require [them] to reveal [their] beliefs concerning the proper interaction between

government and religion." *Doe v. Barrow Cnty.*, 219 F.R.D. 189, 193 (N.D. Ga. 2003). "The court recognizes that such concerns can implicate privacy matters similar to those associated with actual religious teachings and beliefs." *Id.* at 193.

Religion is an intensely private matter and citizens should not be forced to air those beliefs because government officers chose to force *their* religious beliefs on students while acting in their official capacities.

### C. The Doe family's two minor children, both younger than 14 years old, are especially vulnerable and deserve heightened protection.

The potential harm to children in Establishment Clause cases is great and thus, courts have frequently allowed minor plaintiffs to proceed using pseudonyms. *See, e.g.*, *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Doe v. Porter*, 370 F.3d at 560–61; *Stegall*, 653 F.2d 180. In *Stegall*, the Fifth Circuit found "especially persuasive . . . that plaintiffs are children." 653 F.2d at 186. The *Stegall* Court "view[ed] the youth of these plaintiffs as a significant factor in the matrix of considerations arguing for anonymity." *Id.*

Recognizing the vulnerabilities of minors in litigation, the Federal Rules of Civil Procedure require minors to be identified by their initials. *See* FED. R. CIV. P. 5.2; L.Cv.R. 5.2 (a)(2). This measure of protection is insufficient here due to the intensely personal religious issues involved and the size of the school community. Because the Does come from such a small pool of individuals, even the use of initials for the minor Plaintiffs would make them easily identifiable.

Minors are exceptionally vulnerable in Establishment Clause litigation. The *Stegall* court held that "[t]he gravity of the danger posed by the threats of retaliation against the Does for filing this lawsuit must also be assessed in light of the special vulnerability of these child-plaintiffs." 653

F.2d at 186. The Doe children deserve "heightened protection." Doe 1's anonymity, as the mother of these children, is likewise necessary to protect her children.

**D. History indicates that the Doe family will be subject to harassment, intimidation, and violence if their identities are made public.**

In *Doe v. Porter*, plaintiffs sought to enjoin religious instruction in public schools. The Sixth Circuit noted that religious issues are uniquely controversial and found that forcing the plaintiffs to reveal their identities could "subject them to considerable harassment." 370 F.3d at 561. This is typical in Establishment Clause cases. As with other Establishment Clause plaintiffs, the Doe family faces a very real threat to their physical and mental health.

History has shown that there is a unique risk inherent to bringing Establishment Clause challenges, which typically involve highly charged religious issues. "Lawsuits involving religion can implicate deeply held beliefs and provoke intense emotional responses." *Doe ex rel Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 723 (7th Cir. 2011), *vacated by* 678 F.3d 840 (7th Cir. 2012) (adopting opinion on issue of justiciability and anonymity).

The well-researched law review article written by Prof. Edwards (Ex. A) lays out this history and its importance clearly and concisely. Vashti McCollum sued in 1945 because the public school allowed students to attend religious classes held in public school classrooms. *See Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948). Ms. McCollum was fired, her house was vandalized, she received more than one thousand letters of hate, and her sons were assaulted. *See* Edwards at 456–57; Robert S. Alley, WITHOUT A PRAYER: RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS 84–89 (1996).

In 1981, Joann Bell and Lucille McCord filed suit to block prayer sessions and the distribution of Gideon Bibles in their children's schools. *See Bell v. Little Axe Indep. Sch. Dist.*

*No. 70*, 766 F.2d 1391 (10th Cir. 1985). The plaintiffs' children, who regularly attended Christian churches, were branded "devil worshipers." Edwards at 457 n.124; Alley at 106. "An upside-down cross was hung on thirteen-year-old Robert McCord's locker" and the Bells received threatening phone calls. Alley at 106. "More than once a caller said he . . . was going to break in the house, tie up the children, rape their mother in front of them, and then 'bring her to Jesus.'" *Id.* at 107–08. The threats were not empty: the Bells' home was burned down. *Id.*

In 1994, Lisa Herdahl challenged prayer practices in her children's schools. *See Herdahl v. Pontotoc Cty. Sch. Dist.*, 887 F. Supp. 902 (N.D. Miss. 1995). As a result, her children were called "atheists and devil worshipers" by their classmates. Stephanie Saul, *A Lonely Battle in Bible Belt: A Mother Fights to Halt Prayer at Miss. School*, Newsday, Mar. 13, 1995, at A8. Lisa was a Christian Scientist and her husband a Lutheran. Alley at 178. Other parents threatened to beat their own children if they were caught talking to, or playing with, the Herdahl children. Alley at 177. There were reports that a boycott would be organized against the convenience store where Lisa Herdahl worked. Saul at A08. Herdahl gave up her job "because of threats against her children." Alley at 182. She received death threats and threats that her home would be firebombed. *Id.* at 186.

The plaintiff's son in *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000) (challenging prayer at school-related events), was "harassed at school almost daily." Jonathan Ringel, *Alabama Claims U.S. Court Order Denies Students' Right to Pray*, Fulton County Daily Rep., Dec. 4, 1998, at 1. And even though she was not a plaintiff but merely a vocal opponent of the school-prayer policy challenged in *Santa Fe*, 530 U.S. 290, Debbie Mason received threatening phone calls and was followed home by people trying to intimidate her. Kenny Byrd, *Baptist Family Opposed to Football Prayer Feels Pressure*, Baptist Standard, June 12, 2000. Her family was unable to find work in their own town. *Id.*

Tammy Kitzmiller, the lead plaintiff in a high-profile case challenging a Pennsylvania school district's promotion of intelligent design, received hate mail and death threats. *Judgment Day: Intelligent Design on Trial* (PBS *NOVA* television broadcast Nov. 13, 2007); *see generally, Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 721-22 (M.D. Pa. 2005). New Jersey high-school student Matthew LaClair also received a death threat after he tape-recorded and publicly objected to his history teacher's frequent proselytizing of students. Tina Kelly, *Talk in Class Turns to God, Setting Off Public Debate on Rights*, N.Y. Times, Dec. 18, 2006, at B1. After speaking out, LaClair was ostracized. Matthew LaClair, *Scholarship Essay*, www.aclu.org/students/34399res20080314.html.

Proxy violence—violence against plaintiffs' pets to send the message that they are next—is also common. The McCollum's family cat was "lynched;" the McCord's prize goats were "slashed and mutilated;" every squirrel in the Maddox's yard was shot and the corpses hung from trees; and Darla Wynne's cats were killed, hung from a tree, and gutted, her dog was beaten, and her parrot beheaded—a note, "You're next," attached to the severed head. Edwards at 457, 458, 466; Christina Lee Knauss, *A Quiet Life No More*, The State, Sept. 19, 2004, at D1; Jack Kilpatrick, *Wiccan's Case Reveals Town's Intolerance*, Deseret News, Aug. 14, 2004. The Harris's "two pet cats were poisoned and died as the family watched helplessly." Alley at 141.

Violence is also directed at Establishment Clause plaintiffs themselves. Tyler Deveny, the eighteen year-old plaintiff in *Deveney v. Bd. of Educ.*, 231 F. Supp. 2d 483 (S.D. W. Va. 2002), was assaulted after successfully challenging the invocation planned for his high-school graduation ceremony. *See* Charles Shumaker, *Student Beaten for Prayer Suit*, *He Says*, Charleston Gazette & Daily Mail, June 19, 2002, at 6D. Eight teens evidently displeased with Deveny for upholding the

First Amendment attacked Deveny in a public place, with one saying, "Oh, you hate God," before punching Deveny in the face. *Id.*

The Dobrich family—plaintiffs in *Dobrich v. Walls*, 380 F. Supp. 366 (D. Del. 2005)—suffered so much harassment, anti-Semitic taunts, and threats that they were forced to move, after challenging their public school district's practices allowing teachers to proselytize and distribute bibles. *See* David Bario, *A Lesson in Tolerance*, Am. Lawyer, July 2008, at 122.

In a Seventh Circuit case challenging a city's display of Christian paintings, Judge Cudahy described events surrounding the substitution of a new, anonymous plaintiff for the named one:

> The record indicates that the original plaintiff in this case, Richard Rohrer, was, in effect, ridden out of town on a rail for daring to complain about the City's conduct. The present plaintiff has concealed her identity to avoid suffering the same treatment. However much some citizens of Ottawa may disagree with the position that the Plaintiffs have taken, however, much they may think the Plaintiffs annoying and overlitigious, the conduct of some of them has been deplorable.

*Doe v. Small*, 964 F.2d 611, 626 (7th Cir. 1992) (Cudahy, J., concurring) (citations omitted).

These reprisals are not a function of time or place. As recently as 2010–2012, a young girl, a high school student in liberal Rhode Island, was reviled in her community for challenging her high school's prayer banner. Jessica Ahlquist faced "bullying and threats at school, on her way home from school and online." *Ahlquist v. City of Cranston ex rel. Strom*, 840 F. Supp. 507, 516 (D.R.I. 2012). She was "subject to frequent taunting and threats at school, as well as a virtual online hate campaign via Facebook." *Id.* Jessica's state representative, Peter Palumbo, called her an "evil little thing" on the radio and florists refused to deliver flowers ordered for Jessica. Edwards at 458–60. Jessica eventually needed a police escort to attend public meetings and class. *Id.*

The threats to Jessica did not end with the court case. Four months after the court decided in her favor, she received a letter reading in part: "Get the fuck out of R.I. you bitch whore. You

are nothing more than a sex-toy of a slut. Maybe you will [be] gang-banged before we throw you out of one of our cars. WE WILL GET YOU— LOOK OUT!" *See* Edwards at 460 for the full letter.

As this history shows, the retaliation against Establishment Clause plaintiffs—arson, assault, attacks on family, intimidation, public humiliation, proxy violence against pets, and much more—is far worse than what a typical plaintiff faces.

**E. The Doe family has a reasonable fear of facing harassment, threats, and physical violence based on the history mentioned above and the unwanted proselytization and differential treatment the Doe children have already experienced.**

"To proceed anonymously for fear of retaliation and harassment a 'plaintiff must demonstrate that . . . retaliation is not merely hypothetical but based in some real-word evidence; a simple fear is insufficient." *Does v. Snyder*, No. 12-11194, 2012 WL 1344412 (E.D. Mich. Apr. 18, 2012). In this case, the Doe family's fears of retaliation, harassment, and harm are reasonable and are based on the well-documented history of plaintiffs in similar positions to their own, as well as the actual proselytization and differential treatment already experienced by the Doe children within the School, due to their minority religious status.

As demonstrated in the complaint, the Doe children have already experienced unwanted proselytization and negative differential treatment at school from those who know that they are not religious. Doe 2 has already faced hostile remarks from at least one classmate after a teacher outed the Doe family as non-Christian to the parent of Doe 2's classmate. *See* Compl. ¶¶ 47–49. The classmate told Doe 2, "if you don't believe in God, like your mother, you will go to Hell." *Id.* ¶ 48. On another occasion, an LMS School teacher made Doe 2 sit out during a coloring activity when the class was instructed to color figures from the biblical nativity scene, rather than finding

an alternative coloring activity for Doe 2. *Id.* ¶ 50. This caused Doe 2 to feel ostracized in their own classroom. *Id.* ¶ 51.

Doe 3, who is a straight-A student, was unable to take an exam as a result of Doe 1's efforts to avoid the prayer practice and was denied an opportunity to make-up for that exam by one of the teachers who delivers the prayers. *Id.* ¶¶ 25–27, 41–42. The treatment Doe 3 experienced from this teacher got so bad that Doe 1 eventually requested Doe 3's removal from that classroom. *Id.* ¶ 43. And both Doe children have been threatened by School staff with tardy marks that may result in lower grades due to their avoidance of the school prayer practice. *Id.* ¶¶ 38–40.

Defendants and other LMS School employees have already demonstrated a willingness to defy well-established law, *id.* ¶ 57 (citing the on-point *Engle v. Vitale* decision from 1962), and the express wishes of the Doe family, *id.* ¶¶ 25–26, 28–29, by implementing the challenged school prayer practice and by incorporating prayer into other school events. *Id.* ¶ 52. It is reasonable to assume that others within the LMS School community would act similarly if the Doe family's identities became widely known. In fact, given the extensive history of harassment experienced by Establishment Clause plaintiffs, it is likely that some in the community would be willing to act out far more harshly against the Doe family.

**F. <u>There is no risk of unfairness to Defendants and the public interest favors maintaining anonymity.</u>**

In opposition to the above-mentioned factors, the Court must consider "the customary and constitutionally-embedded presumption of openness in judicial proceedings," *Stegall*, 653 F.2d at 186, as well as other public interest considerations. While customarily courts favor openness, much of this custom stems from practical considerations, like the importance of defendants knowing plaintiffs' identities in order to develop a robust defense. Federal courts recognize that "[i]t is also

relevant to consider whether the defendants are being forced to proceed with insufficient information to present their arguments against the plaintiff's case." *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 636 (6th Cir. 2005) (citing *Doe v. Porter*, 370 F.3d 558, 561 (6th Cir. 2004)).

When there is little risk of prejudice to defendants, a considerable weight is lifted from the side of the scales opposed to anonymity. *See, e.g.*, *Barrow Cty.*, 219 F.R.D. at 194 ("The court notes that the inconvenience to defendants should be relatively low. This is not a case that will be determined by plaintiff's credibility or recitation of facts. Rather, as long as plaintiff has standing to sue, this case will depend on the resolution of a legal question: Does the display of the Ten Commandments in the county courthouse violate the Constitution?"). In this case, allowing the Doe family to proceed anonymously will not prejudice the Defendants. The proposed protective order ensures that the Defendants will have access to any information needed to mount a robust defense and there are no foreseeable disputes over material facts in this case that hinge on the Doe family's identities. In fact, Plaintiffs anticipate no disagreements over the material facts at all, as the challenged school prayer practice takes place regularly and openly in a public setting.

Additionally, "[a] plaintiff's interest in proceeding anonymously is considered particularly strong" in cases challenging a statute or governmental policy because "[i]n such circumstances the plaintiff presumably represents a minority interest (and may be subject to stigmatization), and *there is arguably a public interest in a vindication of his rights*." *EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. Feb. 19, 2003) (emphasis added); *see also Porter*, 370 F.3d at 560 (alluding to this principle in Establishment Clause case); *Stegall*, 653 F.2d at 185–86 (applying this principle in Establishment Clause case). In is in the public interest to support minority plaintiffs in

challenging discriminatory government conduct, and disclosure in this instance would likely deter future plaintiffs from seeking to rectify similar unconstitutional government actions.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Leave to Proceed Using Pseudonyms and For Protective Order be granted. Pseudonyms are the only procedural mechanism that will adequately guarantee the Doe family's privacy interests in being safe from retaliation or injury, while at the same time safeguarding fairness to Defendants and balancing the public's interest in open judicial proceedings with its interest in promoting minority challenges to discriminatory government conduct.

**CERTIFICATE OF SERVICE: I HEREBY CERTIFY** That on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the participants appearing in said record.

**RESPECTFULLY SUBMITTED.**

In Caguas, Puerto Rico this 27th of February 2020.

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