No. _____

In the
# Supreme Court of the United States

JOHN DOE,

*Petitioner*,

v.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD, ET AL.,

*Respondents*.

**On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

The Sarbanes-Oxley Act of 2002 empowers the Public Company Accounting Oversight Board to investigate and discipline auditors of public companies. The Act requires that "all documents and information" in such proceedings remain strictly nonpublic unless and until the Board issues a final order imposing sanctions. *See* 15 U.S.C. § 7215.

The Board instituted a nonpublic disciplinary proceeding against Petitioner, and he sued to enjoin it as unconstitutional. The D.C. Circuit, affirming denial of Petitioner's motion to litigate pseudonymously, interpreted the Sarbanes-Oxley confidentiality mandate as not protecting the *names* of Board-accused auditors, an interpretation that no party presented and that unsettles the shared understanding of lawmakers, regulators and auditors for the past 25 years. The court therefore accorded the statute no weight in its pseudonymity analysis, conflicting with First Circuit holdings that statutory confidentiality mandates should weigh heavily in pseudonymity decisions in ancillary judicial proceedings.

The questions presented are:

1. Is the confidentiality mandate of 15 U.S.C. § 7215 inapplicable to the names of Board-accused auditors—as the D.C. Circuit held—and thus irrelevant to an auditor's request to challenge the Board's constitutionality in court using a pseudonym?

2. Did the D.C. Circuit violate the party-presentation principle by holding that § 7215 does not protect the names of Board-accused auditors, an interpretation no party argued for or suggested was plausible?

## PARTIES TO THE PROCEEDING

The Petitioner is John Doe, a pseudonym for a natural person.

The Respondent is the Public Company Accounting Oversight Board (the "Board"), a private, nonprofit corporation created by the Sarbanes-Oxley Act of 2002 with headquarters in Washington, D.C.

The United States was an intervenor in the proceedings below.

No *amici curiae* have thus far appeared in this case.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from *John Doe v. Public Company Accounting Oversight Board, et al.*, No. 24-5195 (D.C. Cir.), in which the D.C. Circuit entered its per curiam judgment on June 9, 2026, followed by separate orders denying panel and en banc rehearing on August 26, 2026. App.1a–11a, 26a–29a. The case was on interlocutory appeal from an opinion and order entered on August 2, 2024, in *John Doe v. Public Company Accounting Oversight Board*, No. 1:24-cv-00780 (D.D.C.), in which the district court denied Petitioner Doe's motion for leave to litigate his case pseudonymously but stayed the effect of that ruling pending appeal. App.12a-25a.

While this matter was on interlocutory appeal to the D.C. Circuit, the district court case was consolidated with two others raising overlapping constitutional and pseudonymity issues: *John Doe Corporation v. Public Company Accounting Oversight Board*, No. 25-cv-70 (D.D.C.) (later dismissed by stipulation in September 2025), and *John Doe v. Public Company Accounting Oversight Board*, No. 25-cv-186 (D.D.C.).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner John Doe respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the D.C. Circuit.

## OPINIONS BELOW

The D.C. Circuit's unpublished per curiam judgment, 2026 WL 1661910 (D.C. Cir. June 9, 2026), is reproduced at App.1a–11a. The district court's unpublished memorandum opinion and order, 2024 WL 3954189 (D.D.C. Aug. 2, 2024), is reproduced at App.12a–25a.

## JURISDICTION

The D.C. Circuit entered its judgment on June 9, 2026, App.1a. The court entered separate orders denying Doe's timely petition for panel and en banc rehearing on August 26, 2026. App.26a–29a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional, statutory, and regulatory provisions are reproduced in the Appendix. App.30a–42a.

## STATEMENT OF THE CASE

1. The Sarbanes-Oxley Act of 2002 established the Respondent Board as a private, non-profit corporation "with expansive powers to govern an entire [public-company auditing] industry" subject to Securities and Exchange Commission ("SEC") oversight and appointment of the Board's leaders. *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 485 (2010). The Board's powers include promulgating binding auditing

and ethics standards that carry the force of federal law. *Id.* Violations can result in million-dollar monetary penalties and, if willful, criminal fines and up to 20 years' imprisonment. *Id.* In *Free Enterprise Fund*, the Court accepted the parties' agreement that the Board should be treated as part of the Government for constitutional purposes. *Id.* at 486.

2. Sarbanes-Oxley also authorized the Board to conduct nonpublic investigations and disciplinary proceedings against regulated accounting firms and "associated" accountants. *See* 15 U.S.C. §§ 7211(c)(4), 7215(b)(1), 7215(c)(1)(A)–(C). In these proceedings, the Board's enforcement staff—private citizens who do not work for the government and are not constrained by the many statutory guardrails imposed on governmental officials, yet enjoy a similar degree of immunity, *see id.* § 7215(b)(6)—wields vast law-enforcement power and discretion, including the power to investigate, demand testimony and documents, take sworn testimony, and examine books and records. *See id.* § 7211(c)(4); Board Rules 5102, 5103, 5104, 5424.[1] The Board can, and typically will, harshly penalize accountants who do not comply with these staff demands or otherwise fail to "cooperate" to the Board's satisfaction. 15 U.S.C. § 7215(b)(3); Board Rule 5110. Unlike SEC and other conventional governmental agencies, the Board can impose these harsh sanctions for noncooperation without first seeking a court order validating its demands and without any pre-enforcement mechanism for

[1] The current version of the Board's rules is available at https://pcaobus.org/about/rules-rulemaking/rules.

recipients to challenge those demands in court. *See* 15 U.S.C. § 7215(b)(3), (c)(4); Board Rule 5110.

3. This lack of due process and other guardrails is tempered by the fact that Board investigations and disciplinary proceedings are conducted in strict secrecy pursuant to several confidentiality provisions of Sarbanes-Oxley. One such provision requires that, with limited exceptions,

> all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an … investigation … shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government.

15 U.S.C. § 7215(b)(5)(A). Another provides that disciplinary hearings "shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing." *Id.* § 7215(c)(2).[2] Unsurprisingly, no Board respondent

[2] These statutory mandates are reinforced by the Board's own strict secrecy rules governing the type of proceeding Doe is challenging in this lawsuit. *See* Board Rules 5108 (confidentiality of investigatory records), 5203 (nonpublic hearings absent all parties' consent); and 5440 (forbidding purchase of hearing transcript by a nonparty to the proceeding); Board Ethics Code § EC5(c)(1) (Board members and staff may not "disseminate or otherwise disclose any confidential, nonpublic information obtained by virtue of their position with the Board, regardless of

has ever consented to a public disciplinary hearing, so there has never been one.

4. No jury or Article III court is involved in Board disciplinary proceedings. A proceeding is typically superintended by a Board-employed hearing officer, who plays a role materially similar to that of an administrative law judge. Board Rule 5200(c).[3] The hearing officer's initial decision is appealable to the Board's SEC-appointed leaders, who decide the appeal with no jury or Article III court involvement. Board Rule 5460. If no party appeals the hearing officer's decision, it becomes the final decision of the Board. *See* Board Rule 5204(d).

5. Unless and until the Board issues a final decision that imposes disciplinary sanctions, the Board's disciplinary proceeding and any antecedent Board investigation remain secret forever. If the Board issues a final order that imposes sanctions, the sanctioned accountant may appeal to SEC in yet another juryless proceeding that lacks any Article III judicial involvement. 15 U.S.C. § 7217(c). If SEC affirms the Board's sanctions in whole or in part, only then may the accountant seek review in a federal appeals court, which reviews SEC's non-jury factual findings under the deferential substantial-evidence standard. *Id.* § 78y. Persevering through the full gauntlet of Board and SEC adjudicative proceedings typically takes at least five years—at considerable

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whether that information may be considered to be 'material' under the securities laws"); Board Ethics Code § EC9 (similar).

[3] The Board's last hearing officer retired in 2025 and has not been replaced.

legal expense—and thus far only two of the Board's several hundred sanctioned respondents have ever made it that far.

6. Petitioner Doe is an accountant formerly associated with a Board-registered "public accounting firm" as that term is defined in Sarbanes-Oxley Section 2(a)(9), 15 U.S.C. § 7201(9)(A). App.2a-3a. After an investigation, the Board commenced a nonpublic disciplinary proceeding against Doe in December 2022 and assigned its initial adjudication to a Board-employed hearing officer. *Id.*

7. Doe then sued the Board to enjoin the disciplinary proceeding and have it declared unconstitutional. *Id*. at 3a. He alleged that the Board's proceeding is unlawfully funded in violation of Article I of the Constitution and insufficiently supervised by any principal officer of the Executive Branch in violation of Article II and the private nondelegation prohibition. He also alleged that the Board's hearing officer is an inferior constitutional officer who is not appointed in conformity with the Appointments Clause of Article II and enjoys multiple layers of protection from removal by the President in violation of Article II. Next, he alleged that the Board's disciplinary process is systemically biased, secretive, and unfair in violation of the Due Process Clause of the Fifth Amendment. Finally, he alleged that the Board's process deprives him of his Seventh Amendment right to a jury trial and his right to adjudication in an Article III court.[4]

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[4] The Board voluntarily stayed its disciplinary proceeding shortly after Doe filed his lawsuit.

8. Upon filing his Complaint, Doe requested leave to litigate the case pseudonymously. D. Ct. ECF Doc. No. 3 (Jan. 19, 2023). He renewed that motion in May 2024 after the case was transferred from the Northern District of Texas to the U.S. District Court for the District of Columbia. D. Ct. ECF Doc. No. 66 (May 17, 2024). Among other things, Doe argued that the statutory confidentiality mandate governing nonpublic Board disciplinary proceedings weighed heavily in favor of allowing him to challenge the structural constitutionality of those proceedings without revealing his identity to the general public. App.8a. He also cited the undisputed fact that the Board was already aware of his identity and thus suffered no prejudice from his use of a pseudonym. *Id.*

9. The district court denied Doe's pseudonymity request. App.12a. Although the parties and the district court shared the baseline premise that Sarbanes-Oxley protected Doe's name from being publicly disclosed during the pendency of the Board's nonpublic disciplinary proceeding, the district court agreed with the Board's contention that Doe's lawsuit against the Board triggered a statutory exception that allows for disclosure of confidential documents and information if and when "presented in connection with a public proceeding." App.20a-23a (quoting 15 U.S.C. § 7215(b)(5)(A)). In doing so, the district court disagreed with Doe's contention that the Board's expansive view of the exception contradicted the statute's plain text and purpose.

10. Doe filed a timely notice of appeal pursuant to the collateral order doctrine, and the district court granted Doe's motion to stay the effectiveness of its

pseudonymity denial pending appeal. D. Ct. ECF Doc. No. 78 (Aug. 16, 2024); D. Ct. ECF Docket entry (Sept. 26, 2024). The district court subsequently extended that stay pending this Court's disposition of this petition, but only if Doe filed the petition early (by November 9, 2026). D. Ct. ECF Docket entry (Sept. 29, 2026).

11. The D.C. Circuit affirmed the district court's pseudonymity denial without hearing oral argument. App.1a-11a, 43a-44a. It found no abuse of discretion in the district court's application of the circuit's prevailing five-factor, non-exhaustive balancing test for assessing requests to litigate pseudonymously. App.4a-8a. The appeals court, however, did not decide whether the district court correctly interpreted the "public proceeding" exception to the confidentiality protections of Sarbanes-Oxley, as briefed by the parties. It held instead, *sua sponte*, that those protections were "not triggered in the first place" because they "do not cover the identities of subjects of Board proceedings." App.10a–11a. The court therefore accorded the Sarbanes-Oxley confidentiality mandate no weight at all in its pseudonymity analysis.

12. The court then denied Doe's timely petition for panel and/or en banc rehearing. App.26a-29a.

13. During the pendency of Doe's appeal, his case simultaneously proceeded without interruption in the district court, with Doe's pseudonymity presenting no logistical impediment and requiring no sealing or redaction of documents. On September 30, 2026, after full briefing and oral argument of the parties' competing motions for summary judgment—all done entirely on the public record—the district court denied

Doe's motion, granted the Board's cross-motion, and dismissed Doe's complaint in its entirety. D. Ct. ECF Doc. Nos. 134 and 135. Doe intends to separately appeal that decision.

## REASONS FOR GRANTING THE PETITION

The Court should grant certiorari, and consider summary reversal, for several reasons.

First, by according no weight to the Sarbanes-Oxley confidentiality mandate in its pseudonymity analysis, the D.C. Circuit created a split with the First Circuit. The First Circuit has held that even where a relevant statutory confidentiality mandate is technically inapplicable due to an exception or otherwise, the statute nevertheless "represent[s] a congressional judgment about the importance of maintaining the confidentiality of nonpublic information" and therefore "should weigh heavily" in a court's pseudonymity analysis. *Doe v. Mass. Inst. of Tech.*, 46 F.4th 61, 76 (1st Cir. 2022) ("*MIT*") (quoting *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 675 (D.C. Cir. 2017)); *accord Doe v. Town of Lisbon*, 78 F.4th 38, 46–47 (1st Cir. 2023) (reaffirming *MIT*). In its decision below, by contrast, the D.C. Circuit accorded the Sarbanes-Oxley confidentiality mandate no weight at all.

Second, the D.C. Circuit's interpretation of a key provision of Sarbanes-Oxley—a statute of immense national economic importance—is egregiously wrong and unsettled the uniformly understood meaning of the statutory text that has prevailed since Congress enacted it 25 years ago. This Court should restore the settled understanding of the statute. If the Court instead leaves the decision below undisturbed, the

D.C. Circuit's erroneous interpretation will likely endure as the most authoritative judicial interpretation of this essential statutory feature of Sarbanes-Oxley, thereby deterring other would-be litigants from pursuing timely structural constitutional challenges to the myriad defects in Board proceedings.

Third, the D.C. Circuit could have easily avoided its egregious error simply by adhering to the party-presentation principle. The court violated that principle and thereby abused its discretion by devising, *sua sponte*, a novel interpretation of Sarbanes-Oxley that neither party presented or even suggested was plausible. The court compounded its unforced error by not inviting supplemental briefing and by cancelling oral argument. It then denied panel and en banc rehearing, depriving Doe of the opportunity to explain why the court's unorthodox reading of the statute was implausible and contrary to the uniform understanding shared by legislators, accountants, commentators, and regulators (including the Board itself). This Court has not hesitated to summarily reverse similar abuses of discretion. *See, e.g.*, *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. 339 (2026); *Clark v. Sweeney*, 607 U.S. 7 (2025); *United States v. Sineneng-Smith*, 590 U.S. 371, 375–376 (2020). It should do so here, too.

Fourth, although this Court has decided many cases featuring pseudonymous litigants, it has never provided guidance to lower courts regarding how they should evaluate requests to litigate pseudonymously. Consequently, as scholars in this field have observed, "lower court decisions are chaotically split on this

subject." Pseudonymous Litig. Scholars Amicus Br. at 16, 25, *Doe v. Trs. of Ind. Univ.*, No. 24-88, 2024 WL 4183466 (U.S. Sept. 9, 2024) ("Scholars Brief"). These scholars identify a three-way circuit split, with the largest faction (including the D.C. Circuit) using vague and differing multi-factor tests, sometimes weighing even common factors across those tests differently. *Id.* at 17–18. At a minimum, this case provides the Court a clean vehicle to instruct lower courts on the extent to which a decision on pseudonymity in ancillary judicial proceedings should be influenced by a clear legislative policy judgment that related nonjudicial proceedings must be conducted in strict secrecy.

## I. THE DECISION BELOW CREATED A CIRCUIT SPLIT

In ruling that Sarbanes-Oxley never protected Doe's name "in the first place," App.11a, the D.C. Circuit accorded the statute no weight at all when assessing the merits of Doe's request to litigate pseudonymously.[5] That approach directly conflicts with the First Circuit's approach—which accords substantial weight to a statutorily created confidentiality mandate even if that mandate does not strictly cover the information at issue.

In *Doe v. Massachusetts Institute of Technology*, 46 F.4th 61 (1st Cir. 2022)—a case challenging the lawfulness of a university's confidential investigation into a former student's alleged misconduct—the First Circuit held that the federal statutory confidentiality

[5] The district court likewise accorded no weight to the Sarbanes-Oxley confidentiality mandate after agreeing with the Board that an exception applied. App.23a.

mandate applicable to such investigations reflected a "congressional judgment" that "should weigh heavily" when courts decide whether to allow litigants to challenge the underlying confidential proceeding using a pseudonym. *Id.* at 76 (quoting *MetLife*, 865 F.3d at 675); *accord Doe v. Town of Lisbon*, 78 F.4th 38, 46-47 (1st Cir. 2023) (reaffirming *Doe v. MIT*). That heavy deference to Congress's legislative policy judgment, the court held, applies even when the relevant statutory confidentiality mandate is "not absolute" and "not airtight"—for example, because an exception applies to the specific circumstances at hand. *Id.* at 75.

The First Circuit rejected the "rose-colored glasses" argument that just because the "background" confidentiality mandate was not strictly applicable in the specific circumstances, it should "fall by the wayside as soon as the plaintiff sue[s] in court to challenge the confidential proceeding." *Id.* at 75. Thus, even though the background confidentiality mandate did not technically apply to the specific facts of the case, that did not "defenestrate the student's privacy interests simply because he has sued the school." *Id.* Rather, those privacy interests "continue to have force," and "courts cannot ignore the background confidentiality regime in assessing the circumstances relevant to a request for pseudonymity." *Id.* at 75-76. Thus, "it would be a mistake to conclude that the confidentiality attending [the underlying investigative] proceedings is unimportant simply because it is not absolute. It is evident, we think, that federal law aims to keep such proceedings largely under wraps." *Id.* at 75.

The First Circuit in *Doe v. MIT* found "persuasive" and borrowed heavily from an earlier D.C Circuit opinion in *MetLife, Inc. v. Financial Stability Oversight Council*. *See MIT*, 46 F.4th at 76 (quoting *MetLife*, 865 F.3d at 675). In *MetLife*, the D.C. Circuit reversed a district court decision that had interpreted statutory confidentiality provisions in the Dodd-Frank Act as categorically displacing the common-law right of access to judicial records in ancillary court proceedings, thus requiring the court to seal and redact significant portions of the court record. 865 F.3d at 663. The D.C. Circuit disagreed and directed the district court on remand to analyze each individual sealing and redaction request under the usual balancing standards established by circuit precedent, adding that "Dodd-Frank's confidentiality provision should weigh *heavily* in that analysis." *Id*. at 675 (emphasis added). Although the statute did not categorically protect the information at issue, "it does represent a congressional judgment about the importance of maintaining the confidentiality of nonpublic information submitted to [the agency]." *Id*.; *accord In re Sealed Case*, 237 F.3d 657, 666 (D.C. Cir. 2001) (statutory confidentiality protections governing Federal Election Commission investigations "create an extraordinarily strong privacy interest" in keeping confidential records sealed in ancillary judicial proceedings—so strong that "only rarely, if ever" might the remaining factors in the sealing analysis counterbalance it.)

The D.C. Circuit's decision below also conflicts with this Court's decision in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). There, certain media outlets sought physical copies of tape

recordings that had already been played in open court during a prominent criminal trial of several of former President Nixon's advisers. The trial court had already furnished written transcripts of those recordings to both the jurors and court spectators. Despite the intense public interest in the case, and despite the court's prior release of the written transcripts, the Court agreed with the district court's decision to deny public access to the tape recordings. *Id*. at 602-08.

Why? Because Congress had enacted a statute (the Presidential Recordings Act) that "created an administrative procedure for processing and releasing to the public, on terms meeting with congressional approval, all of [President Nixon's] Presidential materials of historical interest, including the recordings of the conversations at issue here." *Id*. at 603. And it did not matter that the literal terms of the relevant statute covered only *originals* of presidential recordings (not copies), *see id.* at 603 & n.15; what mattered was that Congress had statutorily provided "an alternative means" that was "the most appropriate means of assuring public access to the material, subject to prescribed safeguards," *id.* at 603-06. The availability of such an alternative statutory mechanism "tips the scales in favor of denying release" to the public, such that the Court "need not decide how the balance would be struck" if it were to have weighed various competing factors otherwise relevant to the decision concerning release of the tapes. *Id.* at 603-06.

So too here. Congress has statutorily provided a similar "alternative" and "most appropriate" means of disclosing Petitioner Doe's true name to the public at

a specific time, and under certain circumstances, that Congress has chosen to strike as the right balance between a Board-accused accountant's privacy and reputation, on the one hand, and the public's right to know the accountant's name, if found liable, on the other. Surrounded by the nearby secrecy provisions previously discussed, the statute provides that only *after* the Board completes its process, and only *if* the Board imposes a disciplinary sanction, "the Board shall report the sanction to ... the public," such report to include "the name of the sanctioned person." 15 U.S.C. § 7215(d). That public report reflects Congress's legislative policy judgment regarding the appropriate time, place, and manner for the first public disclosure of the sanctioned accountant's name. Just as in *Nixon*, the courts below should have held that Doe's name must remain nonpublic instead of short-circuiting the explicit, orderly statutory process that Congress chose for publicly revealing the names of Board-accused accountants.[6]

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[6] It bears emphasis that *MIT*, *MetLife*, and *Nixon* all involved statutory confidentiality provisions that were far less "absolute" or "airtight" than the Sarbanes-Oxley provisions at issue here. The provisions in *MIT* did not literally prohibit educational institutions from publicly disclosing confidential information at all; they merely withheld federal funding to educational institutions that did not keep certain information confidential. *See MIT*, 46 F.4th at 74-76 (citing relevant statutes). The Dodd-Frank provisions in *MetLife* had no express application to judicial proceedings (whereas the Sarbanes-Oxley provisions do) and expressly subjected otherwise confidential information to routine public disclosure under the Freedom of Information Act (whereas Sarbanes-Oxley expressly *exempts* confidential Board information from FOIA). *See MetLife*, 865 F.3d at 674, 669-72. And the Presidential Records Act provisions in *Nixon* literally

## II. THE D.C. CIRCUIT UNSETTLED A NATIONALLY IMPORTANT QUESTION ABOUT THE SARBANES-OXLEY ACT THAT THIS COURT SHOULD SETTLE

### A. The Decision Below Contradicts the Universally Accepted Understanding Shared by Legislators, Regulators, and Accountants

When Congress empowered the Board—a private corporation staffed by private, nongovernmental actors—to investigate, accuse, and punish accountants for violating federal law and Board rules, it struck a delicate legislative policy balance: To protect the personal and professional reputations of accountants investigated and accused by the Board's private staff, Congress determined that those investigations and unproven charges must remain concealed from public view unless and until the Board completes all of its internal adjudicative processes and the Board's SEC-appointed leaders—the only Board personnel with even indirect accountability to the President or the electorate—validate the staff's accusations by issuing a final order that imposes sanctions.

Congress codified this legislative judgment in four complementary subparagraphs of Section 105 of Sarbanes-Oxley, 15 U.S.C. § 7215. First, Congress required that, with limited exceptions not addressed by the decision below, "all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and

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covered only original tape recordings, not the copies at issue in the case. *See Nixon*, 435 U.S. at 603 n.15.

agents, in connection with an … investigation … shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government." *Id.* § 7215(b)(5)(A). Second, Congress required that Board disciplinary hearings "shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing." *Id.* § 7215(c)(2). Third, Congress provided that only "*[i]f* the Board imposes a disciplinary sanction, … the Board shall report the sanction to … the public (once any stay on the imposition of such sanction has been lifted)." *Id.* § 7215(d)(1) (emphasis added). Fourth, because Board sanctions are automatically stayed if the sanctioned accountant seeks SEC review, the Board's proceedings and resulting sanctions remain confidential unless and until SEC orders the stay lifted. *Id.* § 7215(e)(1); *see* App.9a-10a (n. 2 of Judgment).

Until the D.C. Circuit unsettled the issue with its decision below, it was universally understood and accepted—by legislators, accountants, commentators, and regulators (including the Board)—that unless a statutory exception applies, the Sarbanes-Oxley confidentiality mandate protects nonconsenting, Board-accused accountants from having their names publicly disclosed during the pendency of the Board's proceedings. It was also universally understood and accepted that an act of Congress would be required to have those names become a matter of public record.

Not everyone agreed with the policy choice Congress made, but everyone agreed on what that choice was.

The Board understood this better than anyone. In 2010, Board leaders began publicly criticizing the Sarbanes-Oxley confidentiality mandate and urged Congress to amend it to allow the Board to make its pending disciplinary proceedings matters of public record. *See* PCAOB News Release, *PCAOB Staff Directed to Develop Proposal to Ask Congress to Make Public Disciplinary Hearings and Related Proceedings* (Aug. 5, 2010).[7] The Board's then-Acting Chairman complained that, under existing law (which remains unchanged), nonpublic litigation of contested Board disciplinary proceedings "postpones—often for several years—the day on which the public learns that the Board has charged the auditor or firm." Speech from Daniel L. Goelzer, *Legislative Proposal on Public Enforcement Proceedings* (Aug. 5, 2010).[8] Until the litigation concludes, he lamented, "[n]o other auditor, investor, audit committee or member of the media is entitled to know what the Board considers to merit discipline, *whom we have charged*, what issues are being litigated, or whether the Board's staff has won or lost," thus leaving the public "in the dark." *Id.* (emphasis added). As he acknowledged, the Board's desired ability to publicize its disciplinary proceedings

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[7] Available at https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-staff-directed-to-develop-proposal-to-ask-congress-to-make-public-disciplinary-hearings-and-related-proceedings_302.

[8] Available at https://pcaobus.org/news-events/speeches/speech-detail/legislative-proposal-on-public-enforcement-proceedings_269.

and disclose the names of those it has charged "would require a change in the Sarbanes-Oxley Act." *Id.*

The following year, Senators Grassley and Reed introduced legislation to implement the Board's wish. PCAOB Enforcement Transparency Act of 2011, S. 1907, 112th Cong., 1st Sess. (2011); 157 Cong. Rec. S7831-32 (daily ed. Nov. 18, 2011) (statement of Sen. Reed). That legislation went nowhere. The same senators have introduced substantially identical bills every two years ever since, but those too have gone nowhere.[9] Neither senator—nor any other legislator, nor the Board, *nor anyone else*—has ever suggested that this proposed legislation was superfluous because the Board was already free to disclose the names of the accountants charged in its nonpublic disciplinary proceedings.

The accounting industry, which has consistently opposed the Grassley-Reed legislation, likewise understands that under current law, the names of Board-accused accountants and firms are strictly confidential. Testifying before Congress in 2012, the then-Chairman and CEO of the American Institute of

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[9] *See* PCAOB Enforcement Transparency Act of 2013, S. 848, 113th Cong., 1st Sess. (2013); PCAOB Enforcement Transparency Act of 2015, S. 1084, 114th Cong., 1st Sess. (2015); PCAOB Enforcement Transparency Act of 2017, S. 610, 115th Cong., 1st Sess. (2017); PCAOB Enforcement Transparency Act of 2019, S. 1256, 116th Cong., 1st Sess. (2019); PCAOB Enforcement Transparency Act of 2021, S. 2009, 117th Cong., 1st Sess. (2021); PCAOB Enforcement Transparency Act of 2023, S. 865, 118th Cong., 1st Sess. (2023); PCAOB Enforcement Transparency Act of 2025, S. 2919, 119th Cong., 1st Sess. (2025).

Certified Public Accountants summarized the industry's understanding as follows:

> [Board] enforcement proceedings currently are confidential under Sarbanes-Oxley, because Congress understood that auditors belong to a profession in which a good reputation is essential and publication of *unproven* charges may end an individual auditor's career or audit firm's existence. Congress created a special confidentiality regime for [Board] enforcement proceedings because of that concern and because the [Board] is not part of the government and thus is not subject to the procedural due process requirements imposed on government agencies pursuant to the Administrative Procedures [*sic*] Act.
>
> Most assuredly, the AICPA and the accounting profession want to eliminate bad actors from the profession. The stain from one affects all. But there needs to be an appropriate balance of the rights of the accused and due process for someone unjustly accused.

*Accounting and Auditing Oversight: Pending Proposals and Emerging Issues Confronting Regulators, Standards Setters and the Economy: Hearing Before the Subcomm. on Cap. Mkts. and Gov't Sponsored Enters., H. Fin. Servs. Comm.*, 117th Cong.

(2012) (written testimony of Barry C. Melancon, CPA, Am. Inst. of Certified Pub. Accts.).[10]

In short, the D.C. Circuit's unprecedented holding that the names of Board-accused accountants are not part of the "documents and information" protected by the confidentiality provisions of Sarbanes-Oxley is contrary to the universally shared understanding of legislators, regulators, and accounting professionals since those provisions were enacted in 2002. Yet, under the D.C. Circuit's reading, the Board has never needed any statutory amendment allowing it to disclose those names whenever and however it saw fit. The Board could, for example, maintain a running list of those names on its website, or announce them in press releases, press conferences, and public speeches. But that is plainly not what Congress meant, nor what anyone heretofore had believed the plain text of Sarbanes-Oxley ever permitted.[11]

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[10] Available at https://financialservices.house.gov/uploadedfiles/hhrg-112-ba-wstate-bmelancon-20120328.pdf.

[11] The Board's restrictive understanding of Sarbanes-Oxley is exemplified by its decision not to disclose on its public website any information revealing its final order imposing disciplinary sanctions against an accountant named Cynthia Reinhart. The Board's disciplinary action against Reinhart has been a matter of public record since at least May 2019, when SEC cancelled the Board's sanctions in a 26-page public decision that describes the facts of the case—including Reinhart's identity—in detail. *See In re Reinhart*, SEC Rel. No. 34-85964, 2019 WL 2297280 (May 29, 2019). SEC's decision—properly made public under Sarbanes-Oxley because Reinhart's appeal to SEC brought the matter within the "public proceeding" *exception* to the confidentiality mandate—remains posted on SEC's public website to this day, yet the Board's own website conspicuously makes no mention of

### B. The D.C. Circuit's Holding Is Egregiously Wrong

The Sarbanes-Oxley confidentiality mandate broadly protects, with limited exceptions not relevant to this petition, "all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with … an investigation." 15 U.S.C. § 7215(b)(5)(A). The D.C. Circuit acknowledged that, "in the abstract," an accused accountant's name "might fall within the 'dictionary definition' of 'information' that is protected by the confidentiality provisions." App.10a. The court nevertheless concluded that "the context—[the statute's] focus on information 'prepared or received by' the Board 'in connection with … an investigation'—'tugs strongly in favor of a narrower reading.'" *Id.* (quoting *Yates v. United States*, 574 U.S. 528, 539 (2015)). It found support for its novel reading in the title of the relevant statutory subsection: "Use of documents." *Id.* Finally, the court found persuasive that, unlike the SEC whistleblower statute included in the Dodd-Frank Act of 2010, Sarbanes-Oxley does not expressly mention protecting the identities of accused accountants. *Id.*

The D.C. Circuit's reasoning cannot be squared with the statutory text, much less with what Congress designed and what regulators and regulated parties have long understood the statute to mean. The name of a person the Board has investigated and charged falls squarely within the ordinary understanding

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the disciplinary action it took against Reinhart, presumably because the Board's proceeding ultimately resulted in no sanction.

(and, as the D.C. Circuit acknowledged, the "dictionary definition") of "information" that is "prepared or received by or specifically for the Board," as well as within the "deliberations of the Board and its employees and agents, in connection with … an investigation." 15 U.S.C. § 7215(b)(5)(A).

The accountant's name is an essential piece of that information and those deliberations—perhaps the single most important piece. The only reason the Board knows and cares about that name, and decides to initiate disciplinary proceedings against the person known by that name, is because that name is presented to the Board through nonpublic memoranda and other related "documents" and "information" that are "received by" the Board and "prepared" by Board staff "specifically for the Board" to summarize the staff's investigation and recommend the charges. And the person's name is invariably an essential part of the Board's internal deliberations about the matter. Finally, the Board's operative charging document—the order instituting its disciplinary proceeding—and all interim and final Board decisions, will invariably state the respondent's name in the caption and typically throughout the body of the document. *Cf. Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 331 F.3d 918, 925-26 (D.C. Cir. 2003) (names of detainees under criminal investigation, and of their lawyers, held "easily" covered by FOIA exemption protecting "records or information compiled for law enforcement purposes").

Because a Board-accused accountant's name falls so squarely within the literal text and plain meaning of the statute, as well as its obvious purpose, the D.C.

Circuit's resort to a three-word subheading—which begins with a word that appears nowhere in the actual text ("use") and omits a critical word that does appear ("information")—was unnecessary and improper. Such headings are "but a short-hand reference to the general subject matter involved," and courts should therefore follow "the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947); *accord Lawson v. FMR LLC*, 571 U.S. 429, 446 (2014) ("under-inclusiveness" of statutory headings elsewhere in Sarbanes-Oxley was "apparent").

Moreover, the explicit mention of protecting whistleblower identities in a different statute enacted eight years after Sarbanes-Oxley is neither surprising nor probative, and in any event cannot override the plain text and meaning of Sarbanes-Oxley itself. Besides, the comparable grand jury secrecy provisions of Rule 6(e) of the Federal Rules of Criminal Procedure likewise make no express mention of protecting the names of targets, subjects, or witnesses, yet no one would suggest that prosecutors can publicly disclose those names so long as they reveal nothing else. Ditto for the statutory confidentiality provisions governing nonpublic Federal Election Commission investigations, *see, e.g., In re Sealed Case*, 237 F.3d 657, 663-68 (D.C. Cir. 2001), and nonpublic judicial disciplinary proceedings, *see* 28 U.S.C. § 360.

In sum, the D.C. Circuit's interpretation of Sarbanes-Oxley is not only novel and unorthodox but also atextual and implausible. Yet, if the Court leaves

the decision below undisturbed, the D.C. Circuit's view will likely prevail as the most authoritative judicial interpretation of these confidentiality provisions.

Note that the issue will never arise in cases on judicial review from SEC final orders that affirm Board disciplinary sanctions, because by that point in the process the name of the sanctioned accountant will already be public. And few if any future Board respondents are likely to file preemptive lawsuits challenging the validity of their nonpublic Board disciplinary proceedings knowing they will need to prematurely forfeit their statutorily protected anonymity to do so. Finally, because the Board has thus far successfully convinced district courts outside the D.C. Circuit to transfer all such cases originally filed elsewhere to the district court in Washington, D.C. (including this one and its consolidated companion case in the district court), a circuit split on the proper interpretation of these precise provisions is especially unlikely to emerge.

## III. THE D.C. CIRCUIT ABUSED ITS DISCRETION BY VIOLATING THE PARTY-PRESENTATION PRINCIPLE

Given the universally accepted understanding that the names of Board-accused accountants fall squarely within the "documents and information" protected by the confidentiality provisions of Sarbanes-Oxley, it is unsurprising that the Board never argued that Petitioner Doe's name was not protected in the first place. Both in the district court and on appeal, the Board argued only that Doe, by suing the Board in court, triggered a statutory exception that allows for

disclosure of otherwise confidential documents and information if any when "presented in connection with a public proceeding." 15 U.S.C. § 7215(b)(5)(A). *See* Board C.A. Br. at 31-33. Doe responded that the Board's capacious interpretation of this exception was atextual, illogical, and contrary to positions the Board took in successfully resisting Doe's discovery requests in the district court. *See* Doe C.A. Reply Br. at 3–12. The scope of this *exception* was the issue briefed and submitted to the D.C. Circuit for resolution.

But that was not the issue the D.C. Circuit decided, because the court did not accept the parties' shared starting premise that the names of auditors facing nonpublic Board disciplinary charges *are* covered by the Sarbanes-Oxley confidentiality protections "in the first place." App.11a. The court's erroneous reading of the statute could easily have been avoided had the court complied with the party-presentation principle rather than decide this non-jurisdictional question, *sua sponte*, which was neither argued, disputed, nor presented by the parties.

Under the party-presentation principle, "points not argued will not be considered." *Margolin*, 608 U.S. at 342 (quoting *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring in judgment)). "Because courts are 'essentially passive instruments of government,' [they] rely on the parties to 'frame the issues for decision' and decide 'only the questions presented.'" *Id.* (quoting *Sineneng-Smith*, 590 U.S. at 375–76). "To put it plainly, courts 'call balls and strikes'; they don't get a turn at bat." *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (quoting *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 599 (2020)).

Twice in the past year—in *Clark* and in *Margolin*—this Court has summarily reversed and admonished the Fourth Circuit for materially similar violations of this principle. In *Clark*, the Court reversed the Fourth Circuit for granting habeas relief "on a claim that [the petitioner] never asserted and that the State never had the chance to address," criticizing the lower court for adopting a "radical transformation" of the petitioner's argument that "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." *Clark*, 607 U.S. at 10 (quoting *Sineneng-Smith*, 590 U.S. at 380, 375). Likewise, in *Margolin*, the Court again found abuse of discretion when the Fourth Circuit decided an appeal on grounds neither party presented or argued, especially because "the court did so without giving either side a chance to address its theory." 308 U.S. at 343.

So too here. The D.C. Circuit should have accepted the parties' shared understanding—supported by the plain text of widely understood meaning of the statute—that absent Petitioner Doe's consent or an applicable exception, Sarbanes-Oxley strictly prohibited public disclosure of Doe's name "in the first place." The court should therefore have decided only whether the Board's proffered exception applied. *Cf. Free Enter. Fund*, 561 U.S. at 486 (accepting parties' agreement "that the Board is 'part of the Government' for constitutional purposes" despite contrary statutory text) (quoting *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 397 (2010)); *id.* at 487 (assuming, based on parties' agreement, that the President can fire SEC commissioners only for cause—likely incorrect in light of *Trump v. Slaughter*, 609 U.S. 422 (2026)); *Tr. of*

*IAM Nat'l Pension Fund v. M & K Emp. Sols., LLC*, 181 F.4th 112, 122-123 (D.C. Cir. 2026) (citing party-presentation principle and "assum[ing] without deciding" correctness of parties' shared assumption that NLRB test applied despite "doubts about whether the NLRB test is the right one here" and contrary court decisions); *Ctr. for Biological Diversity v. Zeldin*, 171 F.4th 356, 369 n.2 (D.C. Cir. 2026) (declining to address "potentially dispositive" threshold question because no party argued it, thus assuming without deciding parties' shared framing of issues); *Nat'l Ass'n of Realtors v. United States*, 97 F.4th 951, 956-57 & n.5 (D.C. Cir. 2024) (accepting parties' shared framing of contract-interpretation issue despite serious doubts about contract's enforceability).

In the alternative, and at a minimum, the court below should have invited supplemental briefing or aired its narrow views about the scope of the statute during oral argument. Either option would have given the parties a timely opportunity to explain why the court's unprecedented reading of the statute was erroneous and contrary to the universal consensus among stakeholders (a point the Board may have even conceded). But the court did not request supplemental briefing, and it cancelled oral argument, thus preventing itself from hearing the parties' views on the matter. *Cf. Sineneng-Smith*, 590 U.S. at 380 (vacating and remanding for violation of party-presentation principle where court below invited and considered supplemental briefing from *amici* and the parties before deciding the case on grounds not previously raised). The court then forfeited its last-chance opportunity by denying Doe's rehearing petition.

## IV. THIS CASE PROVIDES A CLEAN VEHICLE FOR INTERPRETING A KEY STATUTE AND PROVIDING CRITICALLY NEEDED GUIDANCE REGARDING PSEUDONYMITY REQUESTS

Although many litigants are permitted to proceed pseudonymously from filing their complaints through all appeals, *see, e.g., Roe v. Wade*, 410 U.S. 113 (1973), this Court has never issued substantive guidance on when pseudonymity is appropriate. *See* Scholars Brief, *supra*, at 16.[12] As a result, despite the importance of the pseudonymity decision in any given case, courts remain "chaotically split" on how to make those decisions. *Id.*

Pseudonymity scholars identify a three-way split at the circuit level, with the largest faction employing a range of different multi-factor balancing tests and reviewing district court decisions only for abuse of discretion. *Id.* at 17. Even where factors overlap among the circuit courts' various tests, courts disagree on how to weigh and otherwise apply those factors. *See id.* at 17-23. Like many judicially devised, "throw-it-in-a-blender" multi-factor balancing tests, *cf. Axon Enter., Inc. v. FTC*, 598 U.S. 175, 212 (2023) (Gorsuch, J., concurring in judgment), the various tests used for pseudonymity introduce substantial risk of

[12] At least three cases decided during this Court's October 2025 term involved pseudonymous litigants—*Mullin v. Doe*, No. 25-1083 (June 25, 2026), slip op. 1, *Cisco Systems, Inc. v. Doe*, No. 24-856 (June 23, 2026), slip op. 1, and *Doe v. Dynamic Physical Therapy, LLC*, 25-180 (Dec. 8, 2025) (per curiam)—but none addressed why pseudonymity was allowed.

inconsistent and reverse-engineered outcomes, subject only to abuse-of-discretion appellate review.[13]

None of the multi-factor balancing tests for pseudonymity expressly addresses how (or even whether) the analysis should be swayed by relevant statutory confidentiality protections like those in Sarbanes-Oxley. The First Circuit in *MIT* eschewed these "elaborate multi-factor tests" and instead adopted a more generic, totality-of-circumstances approach that directs courts to weigh such statutory confidentiality protections "heavily." 46 F.4th at 69, 76 (quoting *Metlife*, 865 F.3d at 675). This case provides an excellent vehicle for this Court to provide clear guidance to ensure that a legislative policy judgment mandating strict confidentiality in specified nonjudicial proceedings is accorded substantial—if not controlling—weight in favor of allowing pseudonymity in ancillary judicial litigation that arises directly from those same confidential proceedings.

Beyond the lower courts' overall disarray in applying their various multi-factor tests is a more fundamental disconnect between their heavy presumption against pseudonymity and their routine use of sealing and redactions in other contexts. Many courts and scholars agree that, along the continuum of tools that courts use to conceal information from public view, merely allowing a plaintiff to litigate

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[13] This concern is elevated in the D.C. Circuit because there is only one district court, the local rules of which assign all pseudonymity decisions to the chief judge. *See* D.D.C. LCvR 40.7. A single judge therefore has uniquely outsized influence in shaping the law governing pseudonymity for the entire circuit.

under a pseudonym is typically the least extreme and most benign alternative available. *See, e.g., James v. Jacobson*, 6 F.3d 233, 241-42 (4th Cir. 1993); *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981); Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 Hastings L.J. 1353, 1369 (2022) ("pseudonymity is less of a burden on public access than is sealing, or even redaction[,]" and is "sometimes offered as a less public-access-restrictive alternative.") (citing *Stegall*, 653 F.2d at 185)); Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 U. Kan. L. Rev. 195, 219 (2004) ("the public loses nothing when a plaintiff is allowed to proceed pseudonymously but all the other facts and circumstances of the case remain in view," and "public confidence in the judicial system need not suffer"). That is especially true where, as here, there is no evident (or conceivable) public interest in the plaintiff's name and no prejudice to the defendant, yet concealing plaintiff's name protects his strong privacy interests without inhibiting the court's or the public's ability to understand the case.

## CONCLUSION

The petition should be granted for the reasons stated herein. Alternatively, the Court should summarily reverse the decision below for failing to adhere to the party-presentation principle.

Respectfully submitted,

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November 9, 2026

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# APPENDIX A

## United States Court of Appeals
## FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 24-5195** **September Term, 2025**
FILED ON: JUNE 9, 2026

JOHN DOE,
APPELLANT

v.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD AND UNITED STATES OF AMERICA,
APPELLEES

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Appeal from the United States District Court for the District of Columbia
(No. 1:24-cv-00780)

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Before: HENDERSON, WALKER, and GARCIA, *Circuit Judges*

## **J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties. *See* D.C. CIR. R. 34(j). The court has afforded the issues full consideration and has determined that they do not

warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

**ORDERED** and **ADJUDGED** that the district court's order be **AFFIRMED**.

* * *

Plaintiff John Doe—an accountant facing disciplinary proceedings before the Public Company Accounting Oversight Board—brought suit in district court, raising wide-ranging challenges to the Board's structure and operations. As part of that action, Doe sought leave to proceed under a pseudonym. The district court denied the motion. We affirm.

## I

Congress "established" the Board "to oversee the audit of companies that are subject to the securities laws." 15 U.S.C. § 7211(a). "Every accounting firm—both foreign and domestic—that participates in auditing public companies under the securities laws must register with the Board, pay it an annual fee, and comply with its rules and oversight." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 485 (2010). The Board promulgates accounting standards, initiates investigations, conducts disciplinary adjudications, and issues sanctions. *See id.* But the Board is not a typical agency: Although it is "Government-created" and subject to "the SEC's oversight," the Board is organized as a private nonprofit corporation. *Id.* at 484–86.

Doe is an accountant who worked for a firm registered with the Board. In the late 2010s, the

Board began an investigation of the firm. The Board contacted Doe and demanded that he "cooperate" with the investigation or risk "disciplinary proceedings against him." Compl. ¶ 54. Doe refused, and in December 2022 the Board initiated the promised disciplinary proceedings, which remain ongoing.

In January 2023, Doe filed suit in the Northern District of Texas, raising constitutional challenges related to the Board's funding scheme, the appointments of and removal protections for its officers, and its adjudicative system. Doe requested an injunction prohibiting the Board from continuing the proceedings against him and a declaration that those proceedings are unlawful. Alongside his complaint, Doe moved for leave to litigate under a pseudonym.

The district court in Texas found that it lacked personal jurisdiction and accordingly transferred Doe's case to the District of Columbia. Doe then renewed his motion to proceed under a pseudonym, which the district court below denied. Doe timely appealed.

## II

We have jurisdiction to review "an order denying a motion to proceed anonymously" under the collateral order doctrine. *In re Sealed Case*, 931 F.3d 92, 95 (D.C. Cir. 2019) (*Sealed Case I*). "[W]e review de novo the criteria used by a district court to decide whether to grant" such a motion, and "we review a court's application of those criteria only for an abuse of discretion." *Id.* at 96. "The abuse-of-discretion standard includes review to determine that the

discretion was not guided by erroneous legal conclusions." *Koon v. United States*, 518 U.S. 81, 100 (1996). If legal questions arise in our review of a district court's exercise of discretion, we "need not defer to the district court's resolution of" them. *Id.*

When a party moves to proceed under a pseudonym, the district court must "balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure." *Sealed Case I*, 931 F.3d at 96. There is a "strong presumption against pseudonymous litigation," *Doe v. Hill*, 141 F.4th 291, 292 (D.C. Cir. 2025), so "[t]he moving party bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name," *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020) (*Sealed Case II*). A district court "ought to begin" the pseudonymity inquiry by looking to five non-exhaustive factors: (1) "whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature"; (2) "whether identification poses a risk of retaliatory physical or mental harm"; (3) "the ages of the persons whose privacy interests are sought to be protected"; (4) "whether the action is against a governmental or private party"; and (5) "the risk of unfairness to the opposing party." *Sealed Case I*, 931 F.3d at 97.

**A**

Doe first argues that the district court abused its discretion in applying the standard five-factor test.

We disagree.

The first factor considers "the strength and sensitivity of the privacy interests at stake." *Hill*, 141 F.4th at 293. Doe asserts a privacy interest in the fact that he is the subject of a Board disciplinary proceeding because disclosure of that fact would harm his professional reputation by "brand[ing] him an outlier—'damaged goods'—among accounting professionals." Appellant's Brief 32. Doe's privacy concerns are different in kind from those that "traditionally warrant pseudonymity," which typically involve "'intimate issues such as sexual activities, reproductive rights, bodily autonomy, medical concerns, or the identity of abused minors.'" *Hill*, 141 F.4th at 296 (quoting *Sealed Case II*, 971 F.3d at 327). The district court still treated Doe's privacy concerns as "relevant to the first factor," but found that this factor weighs against Doe because he had failed to substantiate those concerns. *Doe v. Pub. Co. Acct. Oversight Bd.*, 2024 WL 3954189, at *2 (D.D.C. Aug. 2, 2024). As the district court explained, Doe relied only on general statements about the potential harms of public charges, and he did not submit any declarations to support those claims. *Id.* The district court's approach is consistent with our precedents, which underscore that movants must make a "colorable showing of injury to a privacy interest" by offering something "concrete to establish that revealing [their] identity would cause" some "cognizable harm." *Sealed Case II*, 971 F.3d at 327. That showing could take the form, for instance, of a declaration explaining the "substantial risk" that a "privacy injury" "*would* occur." *Id.* The district court reasonably concluded that Doe's motion was

insufficient on this front, as Doe "merely asserted" he would suffer a privacy injury without "specifically explain[ing] why harm was likely to result." *Doe*, 2024 WL 3954189, at *2; *see also id.* (describing Doe's motion as "wanting" compared to successful pseudonym motions).

The second and third factors focus on "the risk of retaliation against a named plaintiff" and "the sensitivity of the party's age," respectively. *Hill*, 141 F.4th at 293. Doe concedes that neither factor weighs in his favor. Still, he argues that the district court abused its discretion by stating that these factors "add further weight to the scale supporting disclosure," *Doe*, 2024 WL 3954189, at *3, instead of treating the factors as neutral. *See* Appellant's Brief 27–28. As we have previously noted, there is "no support in this court's case law" for the proposition "that only those factors that support a party's request should be considered." *Doe Corp. 1 v. Inter-Am. Dev. Bank*, 2025 WL 3485682, at *1 (D.C. Cir. Dec. 4, 2025) (per curiam). In any event, in the very next sentence the district court explained that whether it viewed these factors as "inapplicable" or "weighing in favor of disclosure" made no material difference; either way, these factors rendered Doe's motion "less compelling." *Doe*, 2024 WL 3954189, at *3 (cleaned up). We see no basis to question that analysis.

The fourth factor "looks to the identity of the opposing party"—whether the defendant is a private or governmental actor—"as a tool for measuring the public interest in transparent litigation." *Hill*, 141 F.4th at 298. Both sides agree that the Board should be considered a governmental actor for purposes of

the pseudonymity analysis, and the district court in turn found this factor to cut against Doe because the presence of a governmental defendant "favor[s] pseudonymity only when plaintiffs request individualized relief." *Doe*, 2024 WL 3954189, at *3. Doe contends that he seeks only "modest, individualized, and self-protective relief" because he requests an injunction preventing the Board from proceeding against him. Appellant's Brief 36. The district court correctly explained, however, that Doe's arguments would clearly apply beyond this case: Doe raises sweeping challenges to the Board's operations and existence that are "not grounded in his specific circumstances." *Doe*, 2024 WL 3954189, at *3. As we explained in *Sealed Case II*, pseudonymity is less likely to be appropriate where "the party asking to proceed anonymously seeks to alter the operation of public law both as applied to it and, by virtue of the legal arguments presented, to other parties going forward." 971 F.3d at 329. The district court therefore did not err in finding that the public interest in this case is significant and weighs against pseudonymity.[1]

The fifth factor considers "the risk of unfairness

[1] Also under the fourth factor, Doe argues that pseudonymity is proper because disclosure of his identity could "chill or discourage people from exercising their core First Amendment rights" to challenge government actions in court. Appellant's Brief 41. The district court reasonably rejected that argument, as it would "make just about any plaintiff entitled to pseudonym status." *Doe*, 2024 WL 3954189, at *3 (internal quotation marks omitted). We have similarly not been swayed by suggestions that the fourth factor should favor pseudonymity where disclosure could "chill litigants from suing the government for constitutional violations." *Hill*, 141 F.4th at 300.

to the opposing party." *Hill*, 141 F.4th at 293. The Board concedes that this factor supports Doe because the Board is already aware of Doe's identity. But that alone does not justify pseudonymity, so the district court did not abuse its discretion in finding that, on balance, the standard five factors do not justify granting Doe's motion. *See Sealed Case II*, 971 F.3d at 326 n.1 (denying pseudonymity motion even though the governmental defendant was "aware of the [plaintiff's] identity").

**B**

Next, Doe argues that the district court erred in declining to weigh his likelihood of success on the merits in the pseudonymity analysis. Appellant's Brief 43–44. The district court rejected that argument. *Doe*, 2024 WL 3954189, at *5. So do we. Our published opinions on the subject have never suggested that merits questions are relevant to the pseudonymity issue. Privacy concerns—not the underlying merits—drive the pseudonymity analysis, and requiring courts to delve into the merits to resolve a pseudonymity motion would be exceedingly burdensome.

**C**

Finally, Doe points to provisions of the Board's organic statute that, in his view, guarantee the confidentiality of Board investigations and disciplinary proceedings. On Doe's theory, those provisions "weigh heavily in favor" of pseudonymity because they reflect a congressional judgment that the subjects of Board adjudications face "irreparable

reputational and career damage" if their identities are publicly disclosed. Appellant's Brief 21; *see Doe v. MIT*, 46 F.4th 61, 71 (1st Cir. 2022) (observing that pseudonymity is "ordinarily" appropriate in "suits that are bound up with a prior proceeding made confidential by law").

Several provisions of 15 U.S.C. § 7215—which governs Board investigations and adjudications—address confidentiality. Section 7215(c)(2) provides that "[h]earings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing." Section 7215(b)(5)(A) further directs that

> all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with . . . an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under [FOIA], or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

Last, Section 7215(d)(1) explains that if the Board "imposes a disciplinary sanction," it "shall report the sanction to" "the public."[2]

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[2] If the target of a Board proceeding seeks SEC review, the

We conclude, however, that these provisions do not cover the identities of subjects of Board proceedings but instead the documents and information generated in the Board's investigations and the contents of Board hearings. As noted, Section 7215(c)(2) makes Board "[h]earings" presumptively confidential, while Section 7215(b)(5)(A) extends confidentiality protections to certain "documents and information." It is hardly natural to regard a person's name and the fact of a Board proceeding against him as "documents and information prepared or received by or specifically for the Board." And although in the abstract a name might fall within the "dictionary definition" of "information," "the context"—Section 7215(b)(5)(A)'s focus on information "prepared or received by" the Board "in connection with . . . an investigation"—"tugs strongly in favor of a narrower reading." *Yates v. United States*, 574 U.S. 528, 539 (2015) (plurality opinion). The title of Section 7215(b)(5)—"Use of documents"—also fits that narrower reading. And our conclusion is reinforced by the contrast between Section 7215(b)(5)(A) and other statutory confidentiality protections—such as those in the SEC whistleblower scheme, which Doe suggests is analogous—that explicitly refer to protecting individual identities. *See* 15 U.S.C. § 78u-6(h)(2)(A) (providing that "the Commission shall not disclose any information . . . which could reasonably be expected to reveal the identity of a whistleblower"); *see also John Doe Corp. v. Pub. Co. Acct. Oversight*

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sanction is automatically stayed, so there is no public disclosure of the sanction unless and until the SEC affirms the Board's decision. *See* 15 U.S.C. § 7215(d)(1)(C), (e)(1).

*Bd.*, 2024 WL 5275034, at *2 (S.D. Tex. June 10, 2024) (reasoning that Section 7215(b)(5)(A) does not "cover[] the identity of a company suing the [Board] over unhappiness with a [Board] investigation," but rather "documents and information prepared or received by or for the [Board] in connection with an investigation").

The text and context of Section 7215 thus demonstrate that parties like Doe do not enjoy a statutory right to pseudonymity. Because we conclude that Section 7215(b)(5)(A)'s confidentiality protection was not triggered in the first place, we need not resolve the parties' debate over whether an exception to that protection applies.

* * *

For the foregoing reasons, the district court's order is affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

**Per Curiam**

**FOR THE COURT:**
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

## APPENDIX B

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| **JOHN DOE,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD,**<br><br>**Defendant.** | **Civil Action No. 24-780 (JEB)**<br><br>August 2, 2024 |

**MEMORANDUM OPINION AND ORDER**

Plaintiff John Doe has filed this lawsuit against the Public Company Accounting Oversight Board, raising challenges under Articles I and II of the Constitution, as well as the Fifth and Seventh Amendments. See ECF No. 1 (Complaint), ¶¶ 59–85. PCAOB instituted disciplinary proceedings against Plaintiff, an auditor at an accounting firm, for failure to cooperate with the Board's investigation of an audit. Id., ¶¶ 3, 57. In response, Doe alleges that PCAOB's funding, appointments, and disciplinary process violate the Constitution. Id., ¶¶ 59–85. Concerned that revealing that he is the "subject of the Board's otherwise nonpublic disciplinary

process" would render Plaintiff "unable to work in his chosen profession given the resulting stigma," Doe now moves to proceed under a pseudonym. See ECF No. 66 (Motion) at 4. Defendant, which has notice of the case, has opposed. See ECF No. 69 (Opp.). As Plaintiff has not made the detailed showing required to overcome the presumption in favor of disclosure, the Court will deny the Motion. See LCvR 40.7(f) (providing that Chief Judge shall "hear and determine . . . motion[s] to file a pseudonymous complaint").

## I. Legal Standard

Generally, a complaint must identify the plaintiff. See Fed. R. Civ. P. 10(a); LCvR 5.1(c)(1). This identification requirement reflects the "presumption in favor of disclosure [of litigants' identities], which stems from the 'general public interest in the openness of governmental processes,' and, more specifically, from the tradition of open judicial proceedings." In re Sealed Case, 931 F.3d 92, 96 (D.C. Cir. 2019) (quoting Wash. Legal Found. v. U.S. Sent'g Comm'n, 89 F.3d 897, 899 (D.C. Cir. 1996)). A party moving to proceed pseudonymously thus "bears the weighty burden of both demonstrating a concrete need for such secrecy[] and identifying the consequences that would likely befall it if forced to proceed in its own name." In re Sealed Case, 971 F.3d 324, 326 (D.C. Cir. 2020). As a result, the court must "'balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure'" by applying a "flexible and fact driven" balancing test. Id. (quoting In re Sealed Case, 931 F.3d at 96). That test assesses "five non-exhaustive

factors":

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

Id. at 326–27 (quoting In re Sealed Case, 931 F.3d at 97) (first alteration in original).

## II. Analysis

Plaintiff has not met his burden to show that his privacy interests outweigh the public's presumptive and substantial interest in learning his identity. The Court will address each of the five factors in turn before moving to Doe's extracurricular arguments.

### A. Factor 1

First, disclosure of Plaintiff's identity will not reveal any information of a "sensitive [or] highly personal nature." Id. at 326 (quoting In re Sealed

Case, 931 F.3d at 97). The Complaint reveals no "intimate or sensitive personal information" of the kind "traditionally recognized under this factor, such as sexual activities, reproductive rights, [and] bodily autonomy." Doe v. Rogers, 2023 WL 1470007, at *2 (D.D.C. Feb. 2, 2023) (quoting Doe v. Bogan, 542 F. Supp. 3d 19, 23 (D.D.C. 2021)).

Although the harm Plaintiff alleges does not fall into this category, he nonetheless maintains that he can satisfy Factor 1 because disclosure would threaten his future employment opportunities. These concerns are certainly relevant to the first factor. See Doe v. Lieberman, 2020 WL 13260569, at *3 (D.D.C. Aug. 5, 2020) (weighing whether disclosure of allegations of professional misconduct against plaintiff would limit her ability to practice medicine). But they cannot be mere "speculative and unsubstantiated claims of harm." John Doe Co. No. 1 v. CFPB, 195 F. Supp. 3d 9, 22 (D.D.C. 2016) (citation omitted). To be sure, courts have varied in how much detail they require, and the spectrum is generally as follows: at one end are completely conclusory allegations, which must be rejected. See, e.g., Doe v. Power, No. 23-2637, ECF No. 4, at 3–4 (D.D.C. Sept. 14, 2023) (rejecting as conclusory plaintiff's assertion that "[r]etaliatory actions related to this case have . . . impacted [her] career . . . [and] financial opportunities"). At the other end are detailed declarations supported by the prior experiences of the plaintiffs or others. See Bird v. Barr, 2019 WL 2870234, at *5 (D.D.C. July 3, 2019) (deeming most plaintiffs' declarations sufficiently substantiated but rejecting one plaintiff's claims for

being "too speculative," unlike concerns arising from a different plaintiff's "prior experience").

Plaintiff's allegations fall somewhere in the middle. He provides two quotes concerning the potential professional consequences of publicly disclosing that an auditor is the subject of disciplinary proceedings. See ECF No. 74 (Reply) at 5–6. One is from a former president and CEO of the American Institute of Certified Public Accountants in a statement before Congress, claiming that "auditors belong to a profession in which a good reputation is essential and publication of unproven charges may end an individual auditor's career or audit firm's existence." Id. at 5 (citation omitted). The other comes from an August 3, 2022, Reuters news article: "The accounting and auditing profession believes that having a good reputation is crucial. But when the PCAOB publicly pursues unproven charges, it may end careers or audit firms' existence." Id. at 5–6 (citation omitted).

The Court, however, still finds these statements wanting. Consider, by comparison, the allegations of harm at issue in John Doe Co. No. 1. There, plaintiffs provided two sworn declarations. See 195 F. Supp. 3d at 21. The court found that the first was sufficiently specific: it attested that the declarant's industry was extremely competitive and required access to capital, and that being publicly identified as an investigation target would cause private investors and banks to "withdraw their capital access." Id. at 21–22. This conclusion was buttressed throughout with concrete examples, like colleagues losing credit lines after being charged with regulatory violations or minor crimes, or the

plaintiff's own experience losing credit access after being improperly named in a civil lawsuit. Id. at 22. The second declaration, which the court found insufficient, mirrors what Plaintiff provided here. Id. It merely asserted that disclosure of the ongoing investigation could fracture the plaintiffs' business relationships, which "could lead to substantial economic harm." Id. Like Doe's assertions, the declaration loosely identified the mechanism for potential damage but did not more specifically explain why harm was likely to result. Id. ("Assertions . . . about what 'could' happen, without any elaboration, explanation, or support, are inherently speculative.").

Having addressed the issues at the heart of Factor 1, the Court now turns to an argument that Plaintiff situates outside the five-factor test, but that is also properly addressed here because it concerns whether the "justification" for the Motion is "merely to avoid the annoyance and criticism that may attend any litigation." In re Sealed Case, 931 F.3d at 97. Preventing him from proceeding pseudonymously, Plaintiff claims, will discourage future lawsuits against PCAOB. See Mot. at 7. He argues that the odds are already stacked against potential PCAOB challengers, citing the procedural obstacles that must be surmounted before disputing the Board's finding in a federal court of appeals and the dearth of challenges via both that avenue and collateral attacks like this one (although he admits that two other such attacks are currently pending). See id. at 7 & n.1, 8. Denying his motion to proceed pseudonymously would ostensibly further deter would-be litigants. Id. at 8–9.

This claim, however, is pure speculation. Had he shown instead that auditors were filing suit against PCAOB and then dropping them after pseudonymous motions were denied or that potential plaintiffs would have sued were it not for the requirement to proceed publicly, the analysis might be different. Cf. Doe v. Princeton Univ., 2020 WL 3962268, at *5 (D.N.J. July 13, 2020) (finding no persuasive evidence of chilling effect where "several similarly situated plaintiffs have chosen to bring suits in their own names"). Yet this level of specificity is entirely lacking and is especially necessary here because Doe's reasoning would otherwise "make just about any plaintiff entitled to pseudonym status." Opp. at 17. Doe's argument about a potential chilling effect thus falls short.

In sum, the first factor supports disclosure of Plaintiff's identity.

B. Factors 2–5

The second and third factors add further weight to the scale supporting disclosure because, as Plaintiff concedes, he "is an adult and is not in fear of retaliation from the Board." Mot. at 5. Whether these factors are thereby framed as "inapplicable," Doe v. Merrill Lynch, 2016 WL 10844617, at *1 (D.D.C. Apr. 28, 2016), or weighing "in favor of disclosure," id., their disposition makes Plaintiff's Motion less compelling insofar as they fail to support the use of a pseudonym.

The fourth factor is no different. As a threshold matter, both parties agree that PCAOB is part of the Government for purposes of this litigation. See Opp. at 9. This Court recently shifted its approach to this

factor to focus on the "nature of the relief sought," favoring pseudonymity only when plaintiffs request individualized relief against a government defendant — *e.g.*, where a plaintiff seeks to vindicate only his individual right to a Free and Appropriate Public Education under the Individuals with Disabilities Education Act. Doe v. Blinken, No. 24-1629, ECF No. 3, at 5 (D.D.C. June 11, 2024) (collecting cases). But Plaintiff's challenge is not grounded in his specific circumstances or limited to individualized relief; "the only relevant fact about [him] is that he, like hundreds of other accountants before him and sure to follow him, is an accused respondent in a Board disciplinary proceeding." Mot. at 10. Plaintiff's action, rather, is exactly the kind that "intensifie[s]" "public interest" because his constitutional claims may "alter the operation of public law both as applied to [him] and, by virtue of the legal arguments presented, to other parties going forward." In re Sealed Case, 971 F.3d at 329; see also Doe v. McKernan, 2024 WL 1143932, at *3 (D.D.C. Feb. 23, 2024). That he requests an injunction and declaratory judgment only for himself, see Reply at 8, is insufficient to clear this hurdle; the petitioner in In re Sealed Case also requested relief for itself, but the court nonetheless rejected pseudonymity because its arguments would clearly apply beyond its case. Id.

While Doe demonstrates that not everyone agrees with this approach, it is the only one consonant with D.C. Circuit precedent. See Reply at 7–8. His citations to John Doe Corp. v. PCAOB, No. 24-1103, ECF No. 7, at 5 (S.D. Tex. June 10, 2024), and Professor Eugene Volokh's recent law review article

thus miss the mark. See Reply at 7–8 (citing Eugene Volokh, The Law of Pseudonymous Litigation, 73 Hastings L. J. 1353, 1378, 1393 (2022)). Per In re Sealed Case, "There is a heightened public interest when an individual or entity files a suit against the government" that disfavors pseudonymity. See 971 F.3d at 329. By contrast, for both Volokh and the Fifth Circuit, a challenge to government action weighs in favor of pseudonymity. See Reply at 7–8; Doe Corp., No. 24-1103, ECF No. 7, at 5.

The parties agree that the fifth factor lends support to Plaintiff since Defendant is aware of his identity. See Reply at 4.

C. Other Arguments

Doe's additional arguments falling outside of the five-factor test do not move the needle. His primary contention is that his ongoing disciplinary proceeding before PCAOB — and the fact that he is the subject of such a proceeding — is confidential under the Sarbanes-Oxley Act. See Mot. at 4. The relevant statutory provision reads as follows:

> Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or

> administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. [§] 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

15 U.S.C. § 7215(b)(5)(A) (emphasis added). Subsection (c), in turn, authorizes the Board to conduct disciplinary proceedings to determine whether sanctions are warranted — setting out the nature of the sanctions available and procedures in accordance with which they may be imposed. Notably, it states that "[h]earings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing." Id. § 7215(c)(2). Once a sanction has been imposed, subsection (d) requires that it (along with the name of the sanctioned individual) be reported to "the public (once any stay on the imposition of such sanction has been lifted)." Id. § 7215(d)(1)(C).

Doe reads these provisions in concert to suggest that the above-referenced "documents and information" lose their confidential status only if presented in connection with "a Board disciplinary proceeding in which all parties had consented to its being conducted in public (see id. § 7215(c)(2)) or a statutory appellate review proceeding before SEC that a Board respondent may pursue after the Board completes its otherwise strictly confidential disciplinary proceeding and issues a final sanctions

order (see id. § 7217(c))." Reply at 11. Because neither has occurred here, he maintains, the fact that he is the subject of disciplinary proceedings is still privileged and confidential information.

The Board offers a different exegesis — that the "public proceeding" at which protected documents and information may be disclosed, as mentioned in the last clause of § 7215(b)(5)(A), includes federal judicial proceedings, and that it may therefore disclose otherwise confidential information (such as Plaintiff's name) in this case. See Opp. at 13–14 ("That provision thus supports making Doe's identity public in this public proceeding in which the Board opposes Doe's motion to proceed under a pseudonym — *i.e.*, in this 'public proceeding' in which the Board seeks to 'present' Doe's name.").

The Board has the better of the argument. Another district court rejected precisely the interpretation that Doe espouses, and this Court is persuaded by its reasoning. See SEC v. Goldstone, 301 F.R.D. 593, 671 (D.N.M. 2014). To state the obvious, as that court observed, § 7215(b)(5)(A) refers to the presentation of confidential material in a "public proceeding" not a "public hearing" under subsection (c), id. — and the plain meaning of the former would embrace this proceeding in federal district court. More fatally, "the disjunctive 'or' [in the last clause of § 7215(b)(5)(A)] demonstrates that public proceedings are different from the disciplinary procedures in subsection (c)." Id. To avoid rendering the public-proceeding exception superfluous, then, the Board must be able to present the information in some forum other than a public disciplinary proceeding, and Plaintiff has not convinced the

Court that a proceeding like this one does not count. Cf. id. at 671–72 (holding that the state- and federal-court proceedings referenced in the sentence are the public proceedings where PCAOB information may be presented). That the confidentiality of PCAOB proceedings does not extend to appellate proceedings before the SEC, as Plaintiff acknowledges, see Mot. at 8, or to subsequent judicial review, see 15 U.S.C. § 78y(a), further suggests that "Doe is not statutorily entitled to confidentiality in this Court." Opp. at 14. The Court need not pin down exactly how this statute must be interpreted, but it agrees with Defendant that it does not mandate or even encourage confidentiality in this proceeding.

Plaintiff retorts that this reading would render the confidentiality provision "circular and self-contradictory" because Congress had earlier in that provision insulated the at-issue information from "subpoena or other discovery in 'any' federal court proceedings." Reply at 11. But these two clauses are readily reconcilable: the Board and the targets of its investigations are not required to divulge such information, but either can choose to do so by presenting it. See Goldstone, 301 F.R.D. at 674 (finding that SEC could "present" PCAOB documents, which PCAOB had shared with it under 15 U.S.C. § 7215(b)(5)(B), by incorporating that information into a pleading or relying on it as source in federal-court proceeding); cf. Bennett v. Sprint Nextel Corp., 2012 WL 4829312, at *2 (W.D. Mo. Oct. 10, 2012) (finding privilege in two circumstances: discovery requests directed to Board or to targets of its investigations).

Doe's final arguments are tenuous. First, he emphasizes that the only other court to have ruled on a pseudonymity motion in a case against this Defendant based on similar underlying constitutional challenges allowed the corporate plaintiff to proceed pseudonymously. See Reply at 7; Doe Corp., No. 24-1103, ECF No. 1 (Doe Corp. Compl.) at 1; id., ECF No. 7, at 5. Because Plaintiff is a "natural person, not a corporation," he insists that his case for pseudonymity is even stronger. See Reply at 7 n.5. As the Board rightly observes, however, the court's decision was an interim ruling based on the "unique" — *i.e.*, uncontested — "position of the suit," pending a full hearing whenever defendant entered an appearance. See Doe Corp., No. 24-1103, ECF No. 7, at 5. The Court also rejects for lack of support Plaintiff's novel suggestion that his likelihood of success favors pseudonymity. See Reply at 3 n.2.

* * *

On balance, although the fifth factor favors Plaintiff, the first through fourth tip the scales toward disclosure. The Court therefore finds that Doe has not met "the weighty burden" of "demonstrating a concrete need" for pseudonymity in this lawsuit. In re Sealed Case, 971 F.3d at 326.

## III. Conclusion

The Court accordingly ORDERS that:

1. Plaintiff's [66] Motion to Proceed Under Pseudonym is DENIED; and

2. Within fourteen days of the Court's Order, Plaintiff shall advise the Clerk of the Court whether he wishes to proceed with filing the Complaint on the public docket using his real name, and, if so, file such Motion on the public docket.

/s/ *James E. Boasberg*
JAMES E. BOASBERG
Chief Judge

Date: August 2, 2024

**APPENDIX C**

**United States Court of Appeals**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 24-5195** **September Term, 2025**

**1:24-cv-00780-UNA**

**Filed On:** August 26, 2026

John Doe,

Appellant

v.

Public Company Accounting Oversight Board
and United States of America,

Appellees

**BEFORE:** Henderson, Walker, and Garcia, Circuit Judges

**O R D E R**

Upon consideration of appellant's petition for panel rehearing filed on August 10, 2026, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**
Clifton B. Cislak, Clerk

BY: /s/
Ellie F. Kemper
Deputy Clerk

## APPENDIX D

**United States Court of Appeals**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 24-5195** **September Term, 2025**

**1:24-cv-00780-UNA**

**Filed On:** August 26, 2026

John Doe,

Appellant

v.

Public Company Accounting Oversight Board
and United States of America,

Appellees

**BEFORE:** Srinivasan, Chief Judge; and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

**O R D E R**

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**
Clifton B. Cislak, Clerk

BY: /s/
Ellie F. Kemper
Deputy Clerk

# APPENDIX E

## 15 U.S.C. § 7215

### § 7215. Investigations and disciplinary proceedings

#### (a) In general

The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

#### (b) Investigations

##### (1) Authority

In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

##### (2) Testimony and document production

In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

**(3) Noncooperation with investigations**

**(A) In general**

If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

**(B) Procedure**

Any action taken by the Board under this paragraph shall be subject to the terms of section 7217(c) of this title.

**(4) Coordination and referral of investigations**

**(A) Coordination**

The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as

necessary to protect an ongoing Commission investigation.

**(B) Referral**

The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;

(iii) to any other Federal functional regulator (as defined in section 6809 of this title), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iv) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

**(5) Use of documents**

**(A) Confidentiality**

Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and

deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a),[1] or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

**(B) Availability to Government agencies**

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 6809 of this title), other than the Commission,

and the Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation;

(IV) any appropriate State regulatory authority; and

(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,

each of which shall maintain such information as confidential and privileged.

**(C) Availability to foreign oversight authorities**

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

(ii) the foreign auditor oversight authority provides—

(I) such assurances of confidentiality as the Board may request;

(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(iii) the Board determines that it is appropriate to share such information.

**(6) Immunity**

Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

**(c) Disciplinary procedures**

**(1) Notification; recordkeeping**

The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

**(2) Public hearings**

Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

**(3) Supporting statement**

A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

**(4) Sanctions**

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions

of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this subchapter;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

**(5) Intentional or other knowing conduct**

The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

**(6) Failure to supervise**

**(A) In general**

The Board may impose sanctions under this section on a registered accounting firm or upon any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit

reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

**(B) Rule of construction**

No current or former supervisory person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any associated person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

**(7) Effect of suspension**

**(A) Association with a public accounting firm**

It shall be unlawful for any person that is suspended or barred from being associated

with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

**(B) Association with an issuer, broker, or dealer**

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

**(d) Reporting of sanctions**

**(1) Recipients**

If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

**(2) Contents**

The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

**(e) Stay of sanctions**

**(1) In general**

Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

**(2) Expedited procedures**

The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

## APPENDIX F

**United States Court of Appeals**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 24-5195** **September Term, 2025**

**1:24-cv-00780-UNA**

**Filed On: April 30, 2026**
**[2171326]**

John Doe,

Appellant

v.

Public Company Accounting Oversight Board
and United States of America,

Appellees

**BEFORE:** Henderson, Walker, and Garcia, Circuit Judges

**O R D E R**

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the record and the presentations in the briefs. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j).

**Per Curiam**

**FOR THE COURT:**
Clifton B. Cislak, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk