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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Civil Action No. 2017-CP-32-00712

John Doe,Appellant,

v.

Mark Keel, Chief, State Law Enforcement
Division, and the State of South CarolinaRespondent.

MOTION TO PROCEED ANONYMOUSLY

Now comes the Defendant John Doe, by and through his undersigned counsel, who moves this Honorable Court for leave to proceed anonymously. While South Carolina Courts recognize a presumption of openness of judicial proceedings, it operates “only as a presumption and not as an absolute, unreviewable license to deny.” *See Doe v. Howe*, 362 S.C. 212, 218; 607 S.E.2d 354, 357 (S.C. Ct. App. 2005)(citing *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)). Furthermore, “[o]ur courts have long recognized the need for confidentiality in cases dealing with sensitive and personal subject matter. In cases involving the sexual abuse of children, the courts have judicially protected the names of the victims. *See Howe*, 362 S.C. at 217; 607 S.E.2d

at 356 (citing *Doe by Roe v. Orangeburg County Sch. Dist.*, 335 S.C. 556, 518 S.E.2d 259 (1999); *Doe by Doe v. Greenville Hosp. Sys.*, 323 S.C. 33, 448 S.E.2d 564 (Ct.App.1994)).

In evaluating this situation, our Courts have noted “[t]here is no litmus test in South Carolina to determine whether a litigant in a civil proceeding should be allowed to proceed anonymously. We believe that the better practice is one which avoids a rigid, formulaic approach, thereby allowing the trial courts a degree of flexibility in this fact-sensitive area.” *Id.*

The following factors have been deemed to provide the appropriate guidance:

- (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 to the requesting party or even more critically, to innocent non-parties;
- (3) the ages of the persons whose privacy interests are sought to be protected;
- (4) whether the action is against a governmental or private party; and
- (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

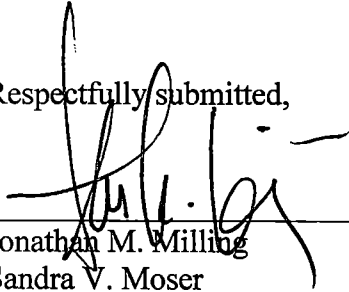
Id., 362 S.C. at 217-18, 607 S.E.2d at 356-57

This is a nonexclusive list, and recognize that on a case-by-case basis other factors may require consideration. *Id.* at Footnote 2.

In the instant matter, it is apparent that the privacy interests of the Appellant would support anonymity. The instant appeal is one challenging the Constitutionality Sex Offender Registration Act (“Act”). As noted in the briefing, the social stigma associated with Registration is of part of the legal challenge to the Act. If Doe were not allowed to proceed using a pseudonym, then his legal challenge would be stymied as the instant challenge would bring more attention to his required Registration, while his overall objective is to avoid the negative attention associated with Registration. Similarly, proceeding under his legal name would subject

Appellant to retribution and retaliation. The Respondents in this matter would face no unfairness if the appeal proceeds as presently captioned. In fact, after consultation, the Respondent has indicated they consent to doing so. In short, prohibiting Doe from proceeding under a pseudonym would negatively impact his ability to proceed with the present legal challenge because of the negative retribution he would expect to receive. His challenge is made with the goal of avoiding registration and the stigma associated therewith and proceeding under his legal name subverts that goal. Because of the nature of the instant matter, there is no risk of prejudice and the presumption of openness in judicial proceedings is not advanced by precluding Appellant's motion in this legal challenge.

Respectfully submitted,



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December 20, 2019

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CERTIFICATE OF SERVICE

I, the undersigned employee of Milling Law Firm, attorneys for John Doe, do hereby certify that, I have served all parties in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleading: Motion to Proceed Anonymously
Parties Served: Adam L. Whitsett, Esquire
General Counsel
South Carolina Law Enforcement Division
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Dec. 20, 2019