STATE OF RHODE ISLAND

PROVIDENCE Sc. **SUPERIOR COURT**

JOHN DOE, **Hearing Date to be set by Court**

Plaintiff,

v. **C.A. No. PC 2022-00466**

STATE OF RHODE ISLAND,
DIVISION OF THE STATE POLICE,
JAMES MANNI, COLONEL OF THE
STATE POLICE,
Defendants.

MOTION OF TO INTERVENE FOR THE LIMITED PURPOSE OF CHALLENGING PLAINTIFF'S USE OF A PSEUDONYM

Black Lives Matter RI PAC ("BLM RI PAC"), Direct Action for Rights and Equality ("DARE"), and the American Civil Liberties Union of Rhode Island ("ACLU RI") respectfully move under Rule 24(b) of the Superior Court Rules of Civil Procedure to intervene in this action for the limited purpose of challenging plaintiff's attempt to proceed in this case under a pseudonym.

In support of the Motion, movants state as follows:

1. Movant and proposed intervenor BLM RI PAC was formed in 2020 in support of Black lives, following the murder of George Floyd and the national summer of unrest to challenge white supremacy. BLM RI PAC is a political action committee created by young people of color in Rhode Island with the belief that representation is the best way for the government to serve the interests of its people. BLM RI PAC is dedicated to challenging systematic racism in all of its forms. A central focus of its efforts is to work toward the public

accountability of Rhode Island police departments. BLM RI PAC has fought to make police departments more transparent and has sought the release of body cam recordings held by the Providence Police Department. BLM RI PAC believes that police accountability will only exist when communities of color can trust that dangerous officers will be removed from their positions.

2. Movant and proposed intervenor DARE was founded in 1986 and its mission is "to organize low-income families living in communities of color for social, economic, and political justice." DARE Mission Statement, http://daretowin.org/about/mission.html. DARE has long been involved in the campaign for open access and disclosure of Providence Police Department records regarding civilian complaints of police misconduct. *See, e.g., Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998) and 819 A.2d 651 (R.I. 2003).

3. Movant and proposed intervenor ACLU RI, with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union ("ACLU"), a nationwide, non-profit, nonpartisan organization. ACLU RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the U.S. Constitution and related statutes. ACLU RI, directly or through its volunteer attorneys, has appeared in numerous cases in state and federal court on issues promoting government transparency under the First Amendment and the Access to Public Records Act, including access to both police and judicial records. *See, e.g., The Rake v. Gorodetsky,* 452 A.2d 1144, 1146 (R.I.1982) (ordering release of certain internal records of police misconduct) ("The United States Supreme Court has recognized that the public's right to know and have access to information is an essential part of the First Amendment."); *Rhode*

Island Affiliate, American Civil Liberties Union, Inc. v. Moran (R.I. Superior Court, C.A. No. 07-2286) (ordering release of the name of a police officer involved in the fatal shooting of a civilian); *In re Providence Journal, Inc*., 293 F.3d 1 (1st Cir. 2002) (overturning district court practice of refusing to place parties' legal memoranda in the public case file).

4. The motion to intervene is timely. As set forth in the accompanying memorandum, this motion is filed very shortly after the public, including movants, first became aware of the pendency of this action brough by pseudonym through reporting by the Boston Globe on May 19, 2022 and no party will be prejudiced by intervention for the limited purpose sought.

5. None of the existing parties adequately represents the movants' interests in transparency, public accountability of police departments, and the public's right of access to judicial proceedings. A review of the court records of this proceeding discloses that Plaintiff has proceeded by pseudonym in the absence of Court order or any showing on the record that he has met the heavy burden to proceed by pseudonym and that Defendants, although questioning the propriety in a footnote to the Answer, have taken no affirmative steps on the record to bring the issue before the Court for determination.

6. As set forth in the accompanying memorandum, intervention for this limited purpose is warranted because movants have an interest in public access to judicial proceedings and the public accountability of Rhode Island police departments, both of which would be undermined by allowing plaintiff to proceed under a pseudonym. Because movants are seeking intervention for a limited purpose, they request that the Court waive the requirement that they file a "pleading."

7. Alternatively, if the Court believes that a pleading is necessary, movants will submit an Answer that takes no position on any of the facts or law at issue in this case except the plaintiff's use of a pseudonym.

8. Movants are filing, at the same time as the within motion to intervene, as an Exhibit hereto, the [Proposed] Motion to Require Plaintiff to Proceed in His Own Name, which Movants will file if permitted to intervene. The memorandum of law accompanying the within Motion to Intervene is also filed in support of the [Proposed] Motion to Require Plaintiff to Proceed in His Own Name.

By their attorneys,

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NOTICE OF HEARING

The within Motion shall be called for hearing at a time directed by the Court.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2022:

☑ I electronically filed and served this document through the electronic filing system.

☑ The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☑ I served a copy of the document by email upon all counsel of record:
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/s/ Lynette Labinger

STATE OF RHODE ISLAND

PROVIDENCE Sc. **SUPERIOR COURT**

JOHN DOE, **C.A. No. PC 2022-00466**
Plaintiff,

v.

STATE OF RHODE ISLAND,
DIVISION OF THE STATE POLICE,
JAMES MANNI, COLONEL OF THE
STATE POLICE,
Defendants.

MEMORANDUM OF BLM RI PAC, DARE, AND ACLU RI
IN SUPPORT OF
(1) THEIR MOTION TO INTERVENE AND
(2) THEIR MOTION TO REQUIRE THE PLAINTIFF
TO LITIGATE IN HIS OWN NAME

Black Lives Matter RI PAC ("BLM RI PAC"), Direct Action for Rights and Equality ("DARE"), and American Civil Liberties Union of Rhode Island ("ACLU RI") have moved to intervene in this matter for a single limited purpose: to oppose plaintiff's attempt to litigate under a pseudonym. As organizations dedicated to public accountability, especially the accountability of Rhode Island police departments, BLM RI PAC, DARE, and ACLU RI have strong interests in asserting the public's constitutionally protected right of access to judicial proceedings, which includes a right to know the names of litigants bringing suit in Rhode Island courts. The fundamental principle that the public has a right of access to judicial proceedings applies with special force in cases like this one, which focuses on public officials and the operations of government. As Rhode Island courts have uniformly held, a litigant can proceed under a pseudonym only under exceptional circumstances, but the docket in this case shows that plaintiff

has made no submission to justify shielding his identity from the public. This Court should require that the case may proceed only if the plaintiff litigates in his own name.

I. THIS COURT SHOULD ALLOW BLM RI PAC, DARE, AND ACLU RI TO INTERVENE FOR THE LIMITED PURPOSE OF CHALLENGING THE PLAINTIFF'S ATTEMPT TO PROCEED USING A PSEUDONYM

A motion to intervene is governed by Rule 24 of the Superior Court Rules of Civil Procedure. Under that rule and its counterparts in other jurisdictions, courts have routinely granted motions to intervene for the limited purpose of challenging efforts to restrict access to judicial proceedings, including attempts to proceed pseudonymously, when intervention is sought by members of the press or by groups like BLM RI PAC, DARE, and ACLU RI that are dedicated to public accountability. As the First Circuit has explained, intervention "is an effective mechanism for third-party claims of access to information generated through judicial proceedings." *Pub. Citizen v. Liggett Grp., Inc*., 858 F.2d 775, 783 (1st Cir. 1988); *see also Flynt v. Lombardi*, 782 F.3d 963, 966 (8th Cir. 2015) ("Rule 24(b) intervention [is] an appropriate procedural vehicle for parties seeking to intervene for the purpose of obtaining judicial records."); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994) (collecting cases); *Does 1-6 v. Mills*, No. 1:21-CV-00242-JDL, 2021 WL 6197377 (D. Me. Dec. 30, 2021) (granting motion by media companies to intervene to challenge the plaintiffs' use of pseudonyms); *Doe v. Tenenbaum*, No. 8:11-CV-02958-AW, 2012 WL 12519833 (D. Md. Oct. 9, 2012) (granting motion by consumer group to intervene to challenge plaintiff's use of a pseudonym).

The motion to intervene by BLM RI PAC, DARE, and ACLU RI satisfies the requirements for intervention under Rule 24(b). That Rule provides:

> Upon timely application anyone may be permitted to intervene in an action ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the

> intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

As elaborated in Rhode Island decisions, a court should consider several factors in assessing a motion to intervene under Rule 24(b), including the intervenor's interest in the issue, whether the intervenors' interests are adequately represented by other parties, and whether granting intervention will cause delay or prejudice to the rights of the original parties. *Verizon New England Inc. v. Savage*, 267 A.3d 647, 653 (R.I. 2022).

As discussed more fully below, the motion to intervene satisfies the requirements of Rule 24(b). First, movants have a strong interest in the issue on which they seek to intervene, in that they are dedicated to government transparency, access to judicial proceedings, and the public accountability of Rhode Island police departments, which would be undermined by allowing this case to proceed with a pseudonymous plaintiff. No other party in this case represents the interest of the public in the openness of judicial proceedings. Second, the motion is timely, in that the movants have brought this motion as soon as they learned of the case proceeding pseudonymously. Moreover, the harm to the movants and to the public from shielding the plaintiff's name is ongoing.

It bears emphasis that courts addressing similar motions have ruled that the "usual requirements to establish Rule 24(b) permissive intervention . . . are more relaxed when intervention is for the limited purpose of accessing records." *CRST Expedited, Inc. v. TransAm Trucking Inc*., No. 16-CV-0052-LTS, 2018 WL 9880439, at *3 (N.D. Iowa Oct. 9, 2018). Thus, "where a party is seeking to intervene in a case for the limited purpose of unsealing judicial records, most circuits have found that 'there is no reason to require such a strong nexus of fact or law.' . . . Instead, in such cases, it is the public's interest in the confidentially of the judicial records that—in the language of Rule 24(b)(2)—[is] 'a question of law ... in common between the Parties [to the original suit] and the [would-be intervenor].'" *Flynt v. Lombardi,* 782 F.3d at 967; *see also Pansy*,

23 F.3d at 778. That principle applies here, where the movants seek to challenge the plaintiff's attempt to litigate this action without giving the public access to his identity.

A. BLM RI PAC, DARE, and ACLU RI Have an Interest in the Public Accountability of Rhode Island Police Departments, and that Interest Is Not Adequately Represented by Other Parties

BLM RI PAC, DARE, and ACLU RI have a strong and cognizable interest in the discrete issue on which they seek to intervene:

- BLM RI PAC was formed in 2020 in support of Black lives, following the murder of George Floyd and the national summer of unrest to challenge white supremacy. BLM RI PAC is a political action committee created by young people of color in Rhode Island with the belief that representation is the best way for the government to serve the interests of its people. BLM RI PAC is dedicated to challenging systematic racism in all of its forms. A central focus of its efforts is to work toward the public accountability of Rhode Island police departments. BLM RI PAC has fought to make police departments more transparent and has sought the release of body cam recordings held by the Providence Police Department. BLM RI PAC believes that police accountability will only exist when communities of color can trust that dangerous officers will be removed from their positions.
- DARE was founded in 1986 and its mission is "to organize low-income families living in communities of color for social, economic, and political justice." DARE Mission Statement, http://daretowin.org/about/mission.html. DARE has long been involved in the campaign for open access and disclosure of Providence Police Department records regarding civilian complaints of police misconduct. *See, e.g., Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998) and 819 A.2d 651 (R.I. 2003).

- ACLU RI, with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union ("ACLU"), a nationwide, non-profit, nonpartisan organization. ACLU RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the U.S. Constitution and related statutes. ACLU RI, directly or through its volunteer attorneys, has appeared in numerous cases in state and federal court on issues promoting government transparency under the First Amendment and the Access to Public Records Act, including access to both police and judicial records. *See, e.g., The Rake v. Gorodetsky,* 452 A.2d 1144, 1146 (R.I.1982) (ordering release of certain internal records of police misconduct) ("The United States Supreme Court has recognized that the public's right to know and have access to information is an essential part of the First Amendment."); *Rhode Island Affiliate, American Civil Liberties Union, Inc. v. Moran* (R.I. Superior Court, C.A. No. 07-2286) (ordering release of the name of a police officer involved in the fatal shooting of a civilian); *In re Providence Journal, Inc*., 293 F.3d 1 (1st Cir. 2002) (overturning district court practice of refusing to place parties' legal memoranda in the public case file).

The attempt by a police officer to shield his identity in a lawsuit challenging allegations of official misconduct raises issues that are central to movants' mission—access to the courts, government transparency, and public accountability of Rhode Island police departments. As is well established, "lawsuits are public events and the public has a legitimate interest in knowing the facts involved in them. Among the facts is the identity of the parties." *Doe v. U.S. Dept. of Justice*, 93 F.R.D. 483, 484 (D. Colo. 1982).

Courts have uniformly found that public interest organizations focused on transparency and public accountability, like BLM RI PAC, DARE, and ACLU RI, as well as news media and

consumer groups, may intervene to challenge orders restricting the public's right of access to information in judicial proceedings, including the identity of litigants. As the Third Circuit has declared, "third parties have standing to challenge protective orders and confidentiality orders in an effort to obtain access to information or judicial proceedings." *Pansy*, 23 F.3d at 777; *see also Doe v. Pub. Citizen*, 749 F.3d 246, 261 (4th Cir. 2014) ("[T]he presumptive right of access to judicial documents and materials under the First Amendment and common law gives [a third party consumer advocacy group] an interest in the underlying litigation" such that it had standing to appeal the district court's order denying its post-judgment motion to intervene for the limited purpose of unsealing records). Indeed, even members of the public have a right to intervene to vindicate their right of access to judicial materials. *See, e.g., Bond v. Uteras*, 585 F.3d 1061, 1072, 1074 (7th Cir. 2009) ("[T]he general right of public access to judicial records is enough to give members of the public standing to attack a protective order that seals this information from public inspection."). *In re Franklin Nat. Bank Sec. Litig*., 92 F.R.D. 468, 471 (E.D.N.Y. 1981), *aff'd sub nom*. *F.D.I.C. v. Ernst & Ernst*, 677 F.2d 230 (2d Cir. 1982).

None of the parties adequately represents the movants' interests in transparency, public accountability of police departments, and the public's right of access to judicial proceedings. *See, e.g., Schiller v. City of New York*, No. 04 CIV. 7921, 2006 WL 2788256, at *3 (S.D.N.Y. Sept. 27, 2006) (granting the New York Times' motion to intervene to challenge protective order and ruling that "there is no reason to believe that the Times' concerns are coextensive" with the parties); *Does 1-6 v. Mills*, *supra,* 2021 WL 6197377, at *2 ("Because the Media Intervenors seek to vindicate their and the public's common law and First Amendment rights of access to judicial proceedings, and that interest is not currently represented by any of the parties, this consideration weighs in favor of granting, not denying, intervention.").

B. The Motion to Intervene Is Timely

As the Rhode Island Supreme Court has ruled, the timeliness of a motion for intervention is judged by two criteria: "(1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay." *Marteg Corp. v. Zoning Bd. of Rev. of City of Warwick*, 425 A.2d 1240, 1243 (R.I. 1981). Movants first learned of this lawsuit on May 19, 2022, when the Boston Globe first reported on it. See Brian Amaral, *'John Doe' R.I. trooper who missed work because he was drunk goes to court to get job back*, Boston Globe, https://www.bostonglobe.com/2022/05/9/metro/john-doe-ri-trooper-who-missed-work-because-he-was-drunk-goes-court-get-job-back/ (May 19, 2022); see also Katie Mulvaney, *Trooper sues Rhode Island State Police over firing due to Christmas Day 'incapacitation',* Providence Journal, https://www.providencejournal.com/story/news/courts/2022/05/21/rhode-island-state-police-fired-trooper-files-lawsuit/9857953002/ (May 21, 2022). Movants filed this motion to intervene as swiftly as possible after first learning that a police officer was seeking to publicly challenge his dismissal for misconduct while simultaneously seeking to shield his identity from the public he has pledged to serve.

Because the harm is ongoing whenever the public is prevented from getting access to information in judicial proceedings, courts have allowed motions to intervene at much later stages in litigation than here. For instance, the Third Circuit has held that "a district court may properly consider a motion to intervene permissively for the limited purpose of modifying a protective order even after the underlying dispute between the parties has long been settled." *Pansy*, 23 F.3d at 779. Similarly, the Eighth Circuit held that a publisher's motion to intervene for the limited purpose of seeking to unseal court records was timely, even though the underlying case had been dismissed a year before the motion to intervene was filed. *Flynt v. Lombardi*, 782 F.3d at 966 n.2; *see Bond v.*

Utreras, 585 F.3d at 1072 (holding that a third party who has standing can intervene under Rule 24(b) for the purpose of challenging a protective order "in a case or controversy that is no longer live—as when the case has been dismissed and none of the original parties has sought this relief postjudgment").

Accordingly, movants should be allowed to intervene in this matter for the limited purpose of challenging plaintiff's use of a pseudonym. They have an interest in this issue that is not adequately represented by other parties. The motion is timely. No prejudice or harm will result to the parties from granting this motion.

C. The Court Should Exercise its Discretion to Waive the Requirement of a Separate "Pleading"

Because of the limited purpose for which movants seek intervention, this Court has discretion to waive the requirement that an intervenor submit a "pleading," as would ordinarily be required by Rule 24(c). *See Hughes v. Abell*, No. CV 09-220 (JDB), 2014 WL 12787807, at *7 (D.D.C. Feb. 10, 2014) ("Courts have excused [the pleading] requirement when intervention is sought for a limited purpose, such as to obtain confidential records."); *Sch. Bd. of City of Newport News v. T.R. Driscoll, Inc*., No. 4:11CV79, 2011 WL 3809216, at *3 (E.D. Va. July 29, 2011) ("Since General Casualty is moving to intervene for a limited purpose, which is clearly set forth in its motion and memoranda, the Court does not find it necessary to demand strict compliance with the Rule 24(c) provision requiring that the motion to intervene be accompanied by a pleading."); *Yaffa v. Sunsouth Bank*, No. 3:12CV00288/MCR/CJK, 2014 WL 11512204, at *2 (N.D. Fla. Feb. 19, 2014) (holding that the requirement of a pleading can be waived because the "ordinary principles applicable to intervention do not necessarily apply to intervention for the limited purpose of modifying a protective order to gain access to documents"); *Park v. McCabe Trotter & Beverly, P.C.*, No. 2:17-CV-657-RMG, 2018 WL 3543526, at *2 (D.S.C. July 23, 2018);

Diagnostic Devices, Inc. v. Taidoc Technology Corp., 257 F.R.D. 96, 101 (W.D.N.C. 2009). If, however, the Court concludes that a pleading is required for intervention, movants would submit an answer that takes no position on any of the facts or law at issue in this case, except to dispute the plaintiff's use of a pseudonym.

II. THIS COURT SHOULD REQUIRE PLAINTIFF TO BRING SUIT IN HIS OWN NAME

The public has a right to know the identity of litigants in this Court. Rule 10(a) of the Superior Court Rules of Civil Procedure carries out that principle and provides that "[i]n the complaint the title of the action shall include the names of all the parties." Rule 10(a) helps effectuate the fundamental principle that judicial proceedings are open to the public and protects the public's constitutional right of access to the courts. While there are rare occasions when the use of pseudonyms is justified, the Rhode Island Supreme Court has established a strong presumption against allowing a party to bring suit under a pseudonym. *Doe v. Burkland*, 808 A.2d 1090, 1096 (R.I. 2002); *Pelland v. State*, 919 A.2d 373, 376 (R.I. 2007). A party seeking to use a fictitious name can overcome that presumption only if they demonstrate that their privacy interests outweigh the public's interests in disclosure.

In this case, the plaintiff has submitted no filing that even attempts to demonstrate that he could meet the standard for using a pseudonym. That failure alone warrants an order from this court to require that the plaintiff either withdraw his complaint or amend it to litigate in his own name.

In addition, it is highly unlikely that the plaintiff could establish a right to shield his identity from the public. This case challenges the actions by a government agency responding to allegations of official misconduct by a public official acting in his official capacity. As is well-established, the public has a profound interest in monitoring the workings of its government. Although the

plaintiff may have been able to keep personnel decisions about him private, he chose instead to publicly challenge the basis for his dismissal in open court. He cannot simultaneously attempt to clear his name while also hiding his name from the public. To be sure, the case involves potentially embarrassing allegations that the plaintiff committed official misconduct, but the possibility of embarrassment does not justify shielding the identity of a public official from the public that he is sworn to serve.

A. The Public Has a Right to Know the Identity of Litigants in This Court

As the Rhode Island Supreme Court has declared, the constitutionally-protected principle of judicial openness requires that litigants ordinarily must proceed in their own names: "[T]he customary and constitutionally-embedded presumption of openness in judicial proceedings requires that litigants proceed under their own names unless an exceptional circumstance requiring anonymity exists." *Doe v. Burkland*, 808 A.2d at 1096 (internal quotations, citations omitted). This Court has specifically held that the presumption against allowing litigants to file under pseudonyms applies in cases brought by police officers under the Law Enforcement Officers' Bill of Rights ("LEOBOR"). *Doe v. Cranston Police Dept*., No. PM-14-3369, 2015 WL 631638, at *7 (R.I.Super. Feb. 10, 2015) (Gibney, P.J.). In so holding, this Court explained that the principle that litigants must bring suit in their own name "instantiates the principle that judicial proceedings, civil as well as criminal, are to be conducted in public. As such, anonymous pleading is the exception to this rule." *Id*. (internal quotations, citations omitted).

The rule that a lawsuit must be brought in the litigant's own name reflects core values of the American legal tradition. As one court put it, "lawsuits are public events and the public has a legitimate interest in knowing the facts involved in them. Among the facts is the identity of the parties." *Doe v. U.S. Dept. of Justice*, 93 F.R.D. at 484. The principles of government transparency

and judicial openness have constitutional dimensions. *See, e.g., The Rake v. Gorodetsky*, 452 A.2d at 1146 ("The United States Supreme Court has recognized that the public's right to know and have access to information is an essential part of the First Amendment."). The Supreme Court has repeatedly held that the public's right to attend criminal trials derives from the First Amendment. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 598, 602 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). The Court emphasized that the public has historically enjoyed a right of access to judicial proceedings and that public scrutiny is essential to "the functioning of the judicial process and the government as a whole." *Globe Newspaper*, 457 U.S. at 605-06. Although the public's right of access to criminal cases is not absolute, the Court held that it can be denied only if "the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Id*. at 606–07. The public's right of access to judicial proceedings extends to civil cases as well. *See, e.g., In re Providence J. Co., Inc*., 293 F.3d at 13; *Anderson v. Cryovac, Inc*., 805 F.2d 1, 7 (1st Cir. 1986).

As the Rhode Island Supreme Court explained in *Burkland*, the public's right of access to judicial proceedings includes the right to know the identities of the litigants:

> Access to the identity of the litigants is an ingredient of public scrutiny [of the judiciary]. Though not as critical as access to the proceedings, knowing the litigants' identities nevertheless tends to sharpen public scrutiny of the judicial process, to increase confidence in the administration of the law, to enhance the therapeutic value of judicial proceedings, and to serve the structural function of the first amendment by enabling informed discussion of judicial operations.

Burkland, 808 A.2d at 1097 (*quoting* Joan Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep Their Identities Confidential?*, 37 Hastings L.J. 1, 36 (1985) ("*Public Trial*").

Given the public's right of access to judicial proceedings, including the names of litigants, the Rhode Island Supreme Court has established a strong presumption against allowing a party to

proceed using a pseudonym. *Burkland*, 808 A.2d at 1096. As this Court has declared, "the use of fictitious names is disfavored." *Doe v. Cranston Police Dept., supra* at *8. Allowing a party to proceed under a pseudonym is a "rare dispensation," *Doe v. Pub. Citizen*, 749 F.3d at 273, which can only be granted under "exceptional circumstances."

A party seeking to proceed under a pseudonym bears the burden of overcoming the presumption that the public has a right to know their identity. *See Qualls v. Rumsfeld*, 228 F.R.D. 8, 13 (D.D.C. 2005) ("[I]t is the litigant seeking to proceed under pseudonym that bears the burden to demonstrate a legitimate basis for proceeding in that manner."). In *Burkland*, the Rhode Island Supreme Court explained what a party would have to demonstrate to justify shielding their identity: "For parties to litigate a case under a pseudonym, they must show that they possess a substantial privacy interest that outweighs the public's interest in disclosure. . . . In addition, there must be a strong social interest in concealing the identity of the plaintiff." 808 A.2d at 1096 (internal quotations, citations omitted). The Court has further identified a set of factors, both favoring and opposing allowing the use of a pseudonym, that courts may consider. On the one hand, courts may consider the following factors that may favor granting a request to proceed under a pseudonym:

> (1) the extent to which the identity has been kept confidential; (2) the reasons the litigant fears public disclosure; (3) the public interest in concealing the litigant's identity; (4) circumstances that create an atypically weak interest in public disclosure; and (5) the legitimacy of the motives both of the litigant seeking pseudonymity and the party seeking to force disclosure.

Pelland v. State, 919 A.2d at 377. On the other hand, courts may consider the following factors that may conflict with a request to use a pseudonym:

> On the other side of the equation, the court should evaluate the interest of the public in knowing the litigants' identities by considering: (A) "the universal level of public interest in access to the identities of litigants"; (B) "whether, because of the subject matter of the litigation, the status of the litigant as a public figure, or otherwise,

> there is a particularly strong public interest in knowing the litigants' identities, beyond the public interest that normally obtains"; and (C) "whether the opposition to pseudonymity by [the other parties], the public, or the press is illegitimately motivated."

Burkland, 808 A.2d at 1096 n.6 (*quoting* Joan Steinman, *Public Trial*) (internal citations omitted).

In this case, the plaintiff has made no submission at all (at least none that appears on the docket sheet for this case) that even attempts to justify proceeding pseudonymously. Instead, he filed his complaint under the name "John Doe" without any explanation why his identity should be shielded from the public. The situation in this case is strikingly similar to an earlier LEOBOR case, in which this Court admonished the plaintiff-police officer for filing suit under a pseudonym without first providing any justification. *Doe v. Cranston Police Dept*., *supra* 2015 WL 631638, at *7. As this Court said: "Petitioner may only proceed pseudonymously if he *first* presents some reasons convincing the Court that the *Pelland* factors weigh in favor of allowing him to do so." *Id*. (emphasis added). As with the plaintiff in that case, the plaintiff here filed his complaint under a pseudonym without first presenting any justification. As far as the docket in this case discloses, the plaintiff has made no submission to justify proceeding pseudonymously.[1]

By submitting nothing to justify shielding his identity, the plaintiff plainly has not met his burden to proceed under a pseudonym. As discussed below, it is highly unlikely that the plaintiff could meet that burden even if he did attempt to do so.

[1] A footnote in Plaintiff's memorandum in support of summary judgment obliquely asserts that the Court "has permitted the Plaintiff to proceed using a pseudonym on a preliminary basis," p.1 n.1, but nothing in any publicly available filing explains that assertion.

B. The Presumption Against Allowing a Plaintiff to Use a Pseudonym Applies Most Strongly in Cases Involving Allegations of Official Misconduct by Public Officials

This case addresses a quintessential matter of public interest: a state police officer is alleged to have committed misconduct while acting in his official capacity and that officer challenges the response to that alleged misconduct by the Rhode Island Division of the State Police. The public's right of access to judicial proceedings applies most forcefully in cases like this, which address the operations of government. Although Rhode Island law affords some protection to police personnel records, *see* Gen. Laws 1956, § 38-2-2(4)(A)(1)(b), and LEOBOR internal administrative proceedings, Gen. Laws 1956, § 42-28.6-2(12),[2] that protection does not apply when a police officer chooses to publicly challenge allegations of misconduct by filing a lawsuit in open court. Instead, the presumption against allowing a litigant to proceed under a pseudonym applies especially strongly against a public official when he chooses to file suit in court over a matter involving official misconduct and government operations.

The Rhode Island Supreme Court has made clear that the public interest in understanding the operation of government weighs strongly against allowing a case brought by a public official to proceed under a pseudonym. The Court thus said, that in deciding whether to allow a litigant to proceed under a pseudonym, a court should evaluate "whether, because of the subject matter of the litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong public interest in knowing the litigants' identities, beyond the public interest that normally obtains." *Burkland*, 808 A.2d at 1096 n.6.

[2] Even in the LEOBOR context, a restriction on public statements by police officials about alleged officer misconduct is waived "if the officer makes a public statement." Gen. Laws 1956, § 42-28.6-2(12). The plaintiff's filing of a complaint undoubtedly constitutes such a public statement.

Other courts have agreed that the use of pseudonyms is inappropriate when public officials bring suit over the operations of government. For instance, in *Doe v. United States Department of Justice*, *supra,* , the plaintiff, a state court judge, filed a Freedom of Information Act case without disclosing his name and sought to discover documents about him held in the possession of the Drug Enforcement Administration. The plaintiff argued that the use of a pseudonym was appropriate because the public revelation of his efforts to discover this information would embarrass him, prejudicially affect his privacy rights, and interfere with his ability to perform his judicial duties. The court emphatically rejected this argument, declaring that the public interest in government operations weighed strongly against allowing the plaintiff to proceed under a pseudonym: "No prolix recitation of authority should be required to establish that the public interest in the conduct of its business by public officials is of paramount importance." *Id*. at 484.

Many courts have likewise held that police officers are "public figures" and "public officers" under the principles of *New York Times Co. v Sullivan*, 376 U.S. 254 (1964). *See Henry v. Media General Operations, Inc*., 254 A.3d 822 (R.I. 2021); *see generally Who is "public figure" for purposes of defamation action?*, 19 A.L.R.5th § 60[a] (compiling cases). Due to their positions of prominence and power, police officers must expect to be subjected to public scrutiny. That is especially true here, when a police officer seeks to challenge allegations of official misconduct. In this circumstance, the Court should not protect the plaintiff from the public scrutiny that goes with his job by allowing him to litigate his claims anonymously. *See* Steinman, *Public Trial,* 37 Hastings L.J. at 19 ("When a litigant is a public figure, the public and press may be particularly inclined to scrutinize the participants' conduct, with a salutary effect upon their performances. That extra measure of community scrutiny will be absent so long as the identity and notoriety of the litigant are shielded by a pseudonym.").

C. Concerns that the Plaintiff May Have About Exposing His Identity to the Public Cannot Justify the Use of a Pseudonym

In this case, plaintiff has no reason to hide his name from the defendants, who undoubtedly know his identity and have access to his personnel files. Instead, plaintiff's only possible basis to seek anonymity is to shield his identity from the public. To justify filing under a pseudonym, however, the plaintiff must demonstrate that he "possess[es] a substantial privacy interest that outweighs the public's interest in disclosure."*Burkland,* 808 A.2d at 1096. The plaintiff has made no attempt to make that showing, and it is unlikely that he could do so.

To be sure, this case involves allegations that the plaintiff had a romantic relationship with a subordinate officer and that he got drunk and didn't show up for work, and these allegations might well be embarrassing to the plaintiff. As the Rhode Island Supreme Court has made clear, however, a "risk of embarrassment . . . [is] insufficient" to justify the use of a pseudonym. *Burkland*, 808 A.2d at 1096. As one court has explained, employment disputes frequently involve allegations of misconduct that are embarrassing to litigants but fear of embarrassment does not present a basis for shielding a plaintiff's identity:

> No doubt lots of parties would prefer to keep their disputes private. For example, a plaintiff alleging he was discriminated against by his employer when his employment was terminated typically will have to disclose the employer's reason for terminating the plaintiff's employment—a reason that the plaintiff disputes is the real reason and which is often embarrassing or even damaging to his or her reputation. But there is no suggestion that such a plaintiff may proceed under a pseudonym to protect his or her reputation.

Doe v. Milwaukee County, No. 18-cv-503, 2018 WL 3458985, at *1 (E.D. Wis. July 18, 2018).

It may also be that the plaintiff fears that disclosure of his identity may hurt his future career prospects, but that too presents no basis for proceeding under a pseudonym. *See Qualls v. Rumsfeld*, 228 F.R.D. at 12 ("[A] threat of economic harm alone does not generally permit a court to let litigants proceed[] under pseudonym.") (citation omitted); *In re Boeing 737 MAX Pilots*

Litig., 2020 WL 247404, at *3 (N.D. Ill. Jan. 16, 2020) ("The worst-case scenario for the Plaintiffs is losing their jobs. That is no small thing, but transparency is no small thing either. At most, Plaintiffs allege a potential for economic harm," which would not justify the use of a pseudonym); *Roe v. Doe*, 319 F. Supp. 3d 422, 428 (D.D.C. 2018) ("Defendant argues that a pseudonym would protect his reputation with 'employers and admissions officers as [he] applies to jobs and graduate schools after graduation.' . . . If an economic harm is to justify a pseudonym, the movant must allege more than the 'typical methods by which employers retaliate against employees who assert their legal rights,' such as 'threats of termination and blacklisting,' and must instead encompass a risk of 'extraordinary retaliation, such as deportation, arrest, and imprisonment.'") (citations omitted).

The central fact in this case is that the plaintiff himself has chosen to file this lawsuit in order to publicly dispute the allegations of official misconduct that led to his dismissal. He cannot simultaneously seek to clear his name while shielding his name from the public. As courts have noted, filing a lawsuit necessarily means that the subject of dispute will become a public matter. As one court has put it: "[B]ringing litigation can subject a plaintiff to scrutiny and criticism and can affect the way [the] plaintiff is viewed by coworkers and friends, but fears of embarrassment . . . do not permit a plaintiff to proceed under a pseudonym." *Qualls*, 228 F.R.D. at 12. As a result, courts have routinely held that employment disputes brought by public officials cannot proceed under a pseudonym: "Absent extremely unusual circumstances not present here, employment lawsuits like the one at bar, which involves serious claims of retaliation and discrimination against a public university employer, should be public. And that includes the names of the parties to the case." *Doe v. Regents of Univ. of Colorado*, No. 22-CV-00423-RM-NRN, 2022 WL 1468071, at *6 (D. Colo. May 9, 2022).

In contrast, courts have allowed parties to proceed under a pseudonym only upon a showing that they would face consequences from public disclosure that are far more consequential than mere public embarrassment, harm to reputations, and economic costs. For instance, in *Roe v. Wade*, 410 U.S. 113 (1973), the Court allowed the plaintiff to proceed under a pseudonym when she sought to obtain an abortion that was prohibited by state criminal law. Similarly, courts allowed plaintiffs to use pseudonyms when they sought to challenge the validity of state sodomy laws, *Doe v. Commonwealth's Attorney for City of Richmond*, 403 F.Supp. 1199 (E.D.Va. 1975), and when they challenged the Department of Defense's "Don't Ask Don't Tell" policy against LGBTQ service members, *see, e.g., Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 928 (C.D. Cal. 2010), *vacated as moot,* 658 F.3d 1162 (9th Cir. 2011). Reviewing such cases, one court explained: "the cases affording plaintiffs anonymity all share several characteristics . . . . The plaintiffs in those actions, at the least, divulged personal information of the utmost intimacy; many also had to admit that they either had violated state laws or government regulations or wished to engage in prohibited conduct." *Coe v. U.S. Dist. Ct. for Dist. of Colorado*, 676 F.2d 411, 416 (10th Cir. 1982).

The plaintiff in this case has made no showing that he faces any harm from disclosing his identity, let alone the kinds of extraordinary harms that would make this the exceptional case that would justify shielding his name from the public. If the plaintiff is going to publicly challenge the allegations by the State Division of Police that he engaged in official misconduct in the course of

his official duties, he must do so in his own name.[3]

CONCLUSION

For the reasons stated above, this Court should (1) grant the motion by BLM RI PAC, DARE, and ACLU RI to intervene for the limited purpose of challenging the plaintiff's use of a pseudonym, and (2) require the plaintiff to withdraw his complaint or amend it to use his own name.

By their attorneys,

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[3] Plaintiff's submissions to date suggest that he may have some concerns about divulging private medical matters, but, if valid, those concerns would be best addressed through protective orders regarding specific documents, rather than by shielding the plaintiff's identity. *See Doe v. Trustees of Indiana Univ*., No. 121CV02903JRSMJD, 2022 WL 36485, at *5 (S.D. Ind. Jan. 3, 2022) (rejecting request to proceed under a pseudonym but stating that "should a need for confidentiality arise in this case, there are alternative methods to protect the confidentiality of the plaintiff's information").