

What's in a Name? Key Disclosure Considerations for Pseudonymous Plaintiffs

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Cases with anonymous plaintiffs are rare but not unheard of when disclosure of the plaintiff's real identity might lead to reprisal. Indeed, one of the most famous cases in American history—*Roe v. Wade*—was prosecuted on behalf of the pseudonymous Jane Roe all the way to the U.S. Supreme Court. A recent decision from the U.S. Court of Appeals for the Second Circuit, however, sounds a cautionary note for plaintiffs attempting to litigate their claims anonymously.

In *Do No Harm v. Pfizer Inc.*, No. 23-15, 2024 WL 949506, — F.4th — (2d Cir. Mar. 6, 2024), Do No Harm, an advocacy group opposing racial discrimination in healthcare, appealed the dismissal without prejudice of its challenge to a Pfizer fellowship program for persons of African American/Black, Latino/Hispanic, and Native American descent. The trial court had considered Do No Harm's standing in connection with a motion for preliminary injunctive relief filed concurrently with the complaint, and it found wanting the affidavits of anonymous members that Do No Harm had submitted to support. At issue on appeal was whether the trial court applied the correct legal standard to its standing inquiry—particularly with respect to its conclusion that Do No Harm needed to identify the members supporting its associational standing *by name*. The Second Circuit affirmed the trial court on appeal. First, the court held that the trial court properly required Do No Harm to meet the same burden of proof on standing at the preliminary-injunction stage that is required at the summary-judgment stage. And second, a majority of the court held that Supreme Court precedent requires a plaintiff (or a member supporting associational standing) to be identified at least *to the court* to support standing at the preliminary-injunction or summary-judgment stage. The majority reasoned that a *name* is relevant to showing a concrete and particularized injury, especially because Do No Harm's members would have been required to identify their name to Pfizer in connection with any application. A partial dissent, however, argued that the majority had elevated procedural rules governing anonymity to constitutional requirements.

What does this ruling mean for practitioners and their clients? To start, it does *not* affect the practice of employing pseudonyms at the pleadings stage. It also does *not* address cases where evidence necessary to support standing is uniquely in the defendant's possession. And it does *not* require plaintiffs to disclose their identities or their members to the public. At bottom, what this ruling does is require plaintiffs to disclose their identities or their members to the *court* by no later than the preliminary-injunction or summary-judgment stage to support standing. This narrow requirement should be easily surmounted—but only if counsel is aware of its existence.

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