UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

JOHN DOE, Plaintiff-Appellant, v. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD, Defendant-Appellee, and UNITED STATES OF AMERICA, Defendant-Intervenor.	)	No. 24-5195

PLAINTIFF-APPELLANT'S RESPONSE TO DEFENDANT-APPELLEE'S MOTION TO GOVERN FURTHER PROCEEDINGS

PRELIMINARY STATEMENT

Plaintiff-Appellant John Doe respectfully submits this response to the motion to govern further proceedings filed by Defendant-Appellee Public Company Accounting Oversight Board (the "Board"). ECF No. 2128221 (filed July 31, 2025). Appellant Doe agrees with the Board's secondary suggestion to "set a schedule for merits briefing in the normal course," Board Motion at 17, but strongly disagrees

with the Board's antecedent request that the Court reverse course on its previous determination that summary affirmance is inappropriate in this case. This appeal—which continues to raise important issues of first impression not just for this Circuit but for the entire federal judiciary—remains particularly unsuited for truncated appellate review or summary affirmance. *See, e.g.*, D.C. Circuit Handbook of Practice and Internal Procedures at 36 ("Parties should avoid requesting summary disposition of issues of first impression for the Court.").[1]

The Court has already denied the Board's first attempt at summary affirmance in this appeal, determining that "[t]he merits of the parties' positions are not so clear as to warrant summary action." ECF No. 2094283 (Jan. 15, 2025) (citing *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam)). In its attempt to get a second bite at the same apple, the Board cites nothing new except

[1] The Board's second motion for summary affirmance is untimely in any event, coming more than eight months after the deadline the Court previously set for dispositive motions. *See* ECF No. 2071973 (Aug. 27, 2024) (setting October 11, 2024 deadline for dispositive motions); *accord* D.C. Circuit Local Rule 27(f)(1) (requiring dispositive motions to be filed "within 45 days of the docketing of the case in this court, unless the court issues a scheduling order establishing a different deadline"). The Board's suggestion (*see* Board Motion at 6 n.3) that the Court treat its second motion as a "petition for rehearing" and apply the 30-day deadline of Local Rule 40(a) is unavailing because, even assuming an appellee is *ever* permitted to petition for "rehearing" of a denial of summary affirmance, the Board is not an "agency" of the United States within the meaning of Fed. R. App. P. 40, and thus the Rule's 14-day default deadline would apply.

this Court's intervening decision in *Doe v. Hill*, 141 F.4th 291 (D.C. Cir. 2025).[2] But *Hill*, as explained below, is plainly distinguishable and not even close to dispositive of this appeal. Moreover, and especially given the absence of any Supreme Court precedent concerning pseudonymous litigation, *Hill* left plenty of unfinished business for this Court in clarifying when pseudonymous litigation is appropriate, particularly in situations where—as here—the judicial proceeding is ancillary to another proceeding over which Congress has statutorily mandated strict secrecy akin to, among other examples, the secrecy of grand jury proceedings as mandated by Rule 6(e) of the Federal Rules of Criminal Procedure.

PROCEDURAL AND STATUTORY CONTEXT

I. Procedural Context

Appellant Doe, an accountant, is the respondent in a nonpublic, in-house disciplinary proceeding currently pending before the Board.[3] Nothing else about

[2] The Board also devotes several pages to rehashing the same arguments the Court considered and rejected in denying the Board's first motion for summary affirmance. The Court need not and should not revisit those rejected arguments.

[3] The Board is a Washington, D.C.-based private, non-governmental, nonprofit corporation that was created and empowered by the Sarbanes-Oxley Act of 2002 to regulate and discipline the accountants and firms that audit the financial statements of publicly traded "issuers" and broker-dealers, ostensibly subject to SEC oversight. *See generally* 15 U.S.C. §§ 7211-7220; *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 484-87 (2010). Despite statutory text stating that "[t]he Board shall not be an agency or establishment of the United States Government" and that "[n]o member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service," 15 U.S.C. § 7211(b), the Board acknowledges that it should be considered "part of the

him—least of all his name—is of any conceivable public interest. His name has no relevance to the proper disposition of this case and is entirely unnecessary for the public to understand this case and whether justice is being done in this litigation. Neither the district court nor the Board has articulated any reason why revealing Appellant Doe's true name would enhance the public's ability to understand this case or to assess whether justice is being done. There is none.

Shortly after Appellant Doe filed this lawsuit in the Northern District of Texas challenging the constitutionality of the Board's enforcement and disciplinary processes, the Board stayed its in-house disciplinary proceeding against him and stipulated in the district court that full briefing and decision on the question of pseudonymity could wait until after the district court decided the Board's anticipated dispositive motion to dismiss the case. *See* ECF No. 13 at ¶ 4. The Texas district court initially endorsed the parties' stipulated approach, ECF No. 52 at ¶ 2, and then terminated as moot Appellant Doe's motion for leave to proceed pseudonymously without prejudice to refiling after the court's anticipated ruling on the Board's motion to dismiss. ECF No. 55. Several months later, the Texas district court transferred the case—at the Board's request and over Appellant Doe's objection—to the District of Columbia. ECF Nos. 63 and 64.

Government" for constitutional purposes, Board Motion at 8 n.5, consistent with the Supreme Court's acceptance of that assumption in *Free Enterprise Fund*, *see* 561 U.S. at 485-86.

Upon accepting transfer of the case, the Chief Judge of the U.S. District Court for the District of Columbia determined to decide the question of pseudonymity before assigning the case, and Appellant Doe refiled his pseudonymity motion accordingly. ECF No. 66. The district court ultimately denied Appellant Doe's motion to proceed pseudonymously, ECF No. 75, and this appeal followed.[4]

II. Statutory Context

By statute, the vast majority of the Board's regulatory activities are performed in strict secrecy, protected from any disclosure to the public. Most relevant here, litigated Board disciplinary proceedings like the one pending against Appellant Doe are strictly nonpublic unless, among other things, the respondent consents to a public proceeding—something that did not happen in this case and, unsurprisingly, does not appear to have ever happened since the Board was created in 2002. 15 U.S.C. § 7215(c)(2). Similarly, documents and other information prepared or received by (or specifically for) the Board and its personnel during its inspections and investigations are protected by strict confidentiality protections. *See id.* § 7215(b)(5)(A). The very existence of the Board's disciplinary proceeding, and its outcome, remains secret unless and until the five SEC-appointed Board leaders

[4] The district court also granted Appellant Doe's motion to stay the effectiveness of its order denying pseudonymity pending this Court's disposition of this interlocutory appeal, so the district court case was randomly assigned to another judge and has proceeded pseudonymously for the past year without any difficulty or public outcry.

ultimately issue a final decision in the case. Even then, secrecy is maintained unless at the conclusion of the entire process—which typically takes several years to run its full course—Board leaders impose a final disciplinary sanction against the accused respondent. *See id.* § 7215(d). Thus, if no final sanction is imposed after years of secret investigation and secret disciplinary litigation, the matter *never* becomes public, and is effectively sealed.

As Congress intended in Sarbanes-Oxley, this strict statutory secrecy protects Board respondents—that is, accounting firms and their associated accountants—from the severe professional and reputational repercussions that would likely result from premature public disclosure of as-yet unproven allegations pending before the primary federal regulator of the public auditing profession. These unproven allegations are the handiwork of non-governmental Board staff employees who are subject to *none* of the statutory and other guardrails that constrain the prosecutorial discretion and power of governmental employees and agencies, such as the Administrative Procedure Act, the Sunshine Act, the Privacy Act, the Freedom of Information Act, the Paperwork Reduction Act, and countless others. The Board has admitted in discovery that the private staff employees responsible for the unproven allegations against Appellant Doe are not even required to take an oath—similar to the one required of all governmental employees—to "support and defend

the Constitution of the United States" and to "bear true faith and allegiance to the same."

ARGUMENT

I. The Court Should (Again) Deny Summary Affirmance

The Court was correct in denying summary affirmance the first time and should do so again. Nothing has changed since the Court's first denial except for the intervening decision in *Hill*, but that case is easily distinguishable and not even close to controlling precedent for this appeal.

A. Statutorily Mandated Secrecy of Board Proceedings

Among other distinctions, the plaintiff-appellant in *Hill* could cite no federal statute that mandated strict secrecy over the prior criminal proceedings he was seeking to shield from public view through pseudonymous litigation. Here, by contrast, Appellant Doe is protected by the above-described strict secrecy of Board proceedings that Congress imposed in the Sarbanes-Oxley Act of 2002. *See* 15 U.S.C. § 7215(b)(5), (c)(2), (d).[5]

The statutorily mandated secrecy of Board proceedings bears substantial resemblance to the secrecy mandated by rule for grand jury proceedings. *See*

[5] Ironically, the Board itself has relied heavily on this statutory secrecy in refusing to produce several categories of discovery that go to the heart of Appellant Doe's constitutional claims, and the district court has thus far largely sustained the Board's objections.

generally Fed. R. Crim P. 6(e). Ancillary judicial proceedings arising from grand jury proceedings, in this Court and elsewhere, not only routinely conceal the identities of those involved but also seal significant portions of the court proceedings from public view entirely. *See generally In re Sealed Case*, 199 F.3d 522, 525-26 (D.C. Cir. 2000) ("mandatory public docketing of grand jury ancillary [court] proceedings is virtually unknown in the federal courts" and such proceedings "operate under a strong presumption of secrecy" (collecting cases)); *In re Grand Jury*, 121 F.3d 729, 757 (D.C. Cir. 1997) ("a district court can ensure that secrecy is protected by provisions for sealed, or when necessary *ex parte*, filings"); *In re Motions of Dow Jones & Co.*, 142 F.3d 496, 502-04 (D.C. Cir. 1998) (rejecting First Amendment right of access to grand jury ancillary court proceedings). In Sarbanes-Oxley, Congress made the purposeful legislative and policy choice to impose comparable secrecy in Board proceedings. So, it should be uncontroversial to allow an accountant facing wholly unproven staff accusations in an otherwise secret Board proceeding to seek judicial relief from that proceeding using a pseudonym, with everything else about his case proceeding in full public view in the normal course.

Congress made a similar secrecy choice several years later in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the identities of corporate whistleblowers to be concealed from public view. *See* 15 U.S.C. § 78u-6(h)(2). Because of this provision, SEC proceedings to assess and decide

whistleblower award claims are conducted in tight secrecy, and SEC's written decisions are redacted to conceal whistleblowers' identities, even though those whistleblowers typically seek payments of substantial sums of money from the public fisc. *See generally* Hester M. Peirce and Mark T. Uyeda, *Nothing to See; Nothing to Say: Statement on Recent Whistleblower Awards* (Sept. 19, 2024), https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-whistleblower-091924.

Even when disappointed whistleblower-claimants file ancillary *judicial* proceedings to challenge SEC's decisions, those cases are routinely litigated under pseudonyms in this Court and elsewhere, from beginning to end, without controversy and typically with the consent of all parties. *See, e.g., Doe v. SEC*, 114 F.4th 687 (D.C. Cir. 2024); *Doe v. SEC*, No. 23-1161, 2024 WL 1208353 (D.C. Cir. Mar. 21, 2024), *reh'g denied*, 2024 WL 2059561 (D.C. Cir. May 7, 2024), *cert. denied*, 145 S. Ct. 462 (2024) (mem.); *Doe v. SEC*, No. 22-mc-80301-LB, 2023 WL 2351653 (D.C. Cir. Mar. 4, 2023); *Doe v. SEC*, No. 21-2537, 2022 WL 16936098 (2d Cir. Nov. 15, 2022); *Doe v. SEC*, 28 F.4th 1306 (2022); *In re John Doe*, No. 19-1095 (D.C. Cir., June 11, 2019 Order granting leave to proceed under a pseudonym); *Doe v. SEC*, 729 F. App'x 1 (2018).[6] That is so even though some whistleblowers

[6] It is no answer to speculate that *all* these SEC whistleblowers were automatically entitled to pseudonymity simply because *some* whistleblowers *sometimes* fear retaliation if their identity is revealed. These judicial proceedings typically take

have engaged in misconduct themselves, such that information about their identities and actions may be essential to fully understand the case and whether justice was done. In one recent case, this Court's published opinion shielded not just the identity of the whistleblower but also the identities of a company and individual the SEC had already sued for fraud and obtained judgments against in a related public judicial proceeding, presumably because that information might indirectly reveal the whistleblower's identity. *Doe v. SEC*, 114 F.4th 687 (D.C. Cir. 2024).

For present purposes, this Court need not decide whether or how the pseudonymity routinely allowed in judicial proceedings ancillary to secret grand jury and whistleblower proceedings can be reconciled with the district court's denial of pseudonymity in this judicial proceeding arising from a secret Board disciplinary proceeding. It should suffice at this point to acknowledge that the question deserves full briefing and is unsuited for truncated consideration and summary disposition. Given that the Board is headquartered in this Circuit, this Court's interpretation and application of the relevant secrecy statute will carry particularly significant weight with the Board and other litigants.

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place many years after the whistleblower came forward (and in many cases years after they have left the relevant company), and the pseudonymity requests and grants in these cases are typically *pro forma*, with few if any whistleblowers required to articulate or prove any well-grounded fear of actual retaliation.

B. Other Distinctions

The importance of statutorily mandated secrecy is not the only daylight separating this case from *Hill*. In addition, the prior criminal proceedings the plaintiff-appellant in *Hill* was hoping to conceal had been a matter of open public record—"easily discoverable" by anyone "by simply entering a Google search" for the plaintiff-appellant's name—*for more than 20 years* before those proceedings were belatedly sealed. 141 F.4th at 295 (quoting *ACLU v. Dep't of Justice*, 655 F. 3d 1, 10 (D.C. Cir. 2011)). By contrast, due to the statutory secrecy mandate of Sarbanes-Oxley, the still-pending ancillary Board proceeding against Appellant Doe has *never* been searchable nor otherwise accessible to the public. *Cf. Doe v. Massachusetts Inst. Of Tech.*, 46 F.4th 61, 71-72 (1st Cir. 2022) (suits "bound up with a prior proceeding made confidential by law" may be appropriate for pseudonymity "when denying anonymity in the new suit would significantly undermine the interests served by that confidentiality").

The completed prior proceedings in *Hill* had also resulted in *criminal convictions* of the plaintiff-appellant (presumably after a public jury trial or plea allocution), *id.* at 294, whereas the pending *civil* Board proceeding against Appellant Doe involves only as-yet unproven allegations by private, non-governmental staff employees of the Board. Here, Appellant Doe has not been tried or convicted of anything, so he is still presumed innocent unless and until proved otherwise. *Cf.*

Hill, 141 F.4th at 294 n.2 ("substantially different considerations could be at play if a record were sealed because of exoneration" as opposed to a pardon). In addition, the plaintiff-appellant in *Hill* sought to litigate pseudonymously in order to secure a valuable benefit from the public in the form of a government job, *id.*, whereas Appellant Doe in this case seeks merely to stop a powerful federal regulator from persisting in what Doe credibly contends are ongoing deprivations of his constitutional liberties.

The Board seizes upon the *Hill* panel's discussion of whether the case for pseudonymity is strengthened or weakened when a plaintiff sues the government, but the Board again overlooks fundamental distinctions between *Hill* and this case. In *Hill*, the plaintiff-appellant sought to have a federal statute declared facially unconstitutional, along with a sweeping injunction that would prevent the government from enforcing the statute against anyone, anywhere, ever. He also sought unspecified punitive damages, presumably to be paid from the public fisc, and, as previously noted, his ultimate goal was to obtain a broader public benefit in the form of a government job. This, the Court explained, put the case "at the apex of public interest." 141 F.4th at 299.

Here, Appellant Doe seeks far more modest, individualized, and self-protective relief that would have no direct impact on the government or the public fisc, much less prevent the government from enforcing any statute. Specifically,

Appellant Doe's complaint seeks in relevant part only to enjoin the Board "from continuing its unlawful and unconstitutional disciplinary proceedings *against Plaintiff*," along with a declaration "that the Board's disciplinary proceedings *against Plaintiff* are unlawful and unconstitutional." ECF No. 1 at 30 (emphasis added). Unlike the plaintiff-appellant in *Hill*, Appellant Doe seeks no damages and is *not* asking the court to strike down any federal statute as unconstitutional. Moreover, the relief he seeks would impose no direct prohibition on the Board's ability to investigate and discipline other accountants and firms, especially those located outside the District of Columbia.[7] While a ruling in Appellant Doe's favor might cause other litigants to raise their own similar challenges and persuade other courts to rule similarly, that is true in any case of first impression and should not, standing alone, elevate the public interest in this particular case.

Even if Appellant Doe were to obtain all the relief he seeks in this case, the Board could continue to discipline other accountants and firms by consent settlements and defaults, which is how the Board has resolved the overwhelming majority of its enforcement matters over the past 20-plus years. Moreover, the Board could—especially in conjunction with the SEC—undoubtedly devise a lawful and constitutional alternative process for seeking penalties and other relief against the

[7] According to the Board's public website, only one of the approximately 1,500 Board-registered accounting firms is headquartered in the District of Columbia. *See* https://pcaobus.org/oversight/registration/registered-firms?firmcity=Washington.

relatively few accountants and firms who choose to defend themselves, such as referring those cases to the SEC for prosecution in federal district courts. *See* 15 U.S.C. § 78u(d) (authorizing SEC to seek injunctions, penalties, and other relief against those who violate, among other things, the rules of the Board); *id.* § 7215(b)(4)(B) (authorizing the Board to refer its investigations to SEC or others). In short, the enforcement sky will not fall due to this case, and the limited relief Appellant Doe seeks puts this case nowhere near the "apex" of public interest.

II. The Court Should Set a Merits Briefing Schedule

In its motion, the Board agrees that if the Court again denies summary affirmance, it should set a merits briefing schedule in the normal course. Board Motion at 2, 6, 16, 17. Appellant Doe fully concurs with this alternative relief requested by the Board's motion.

CONCLUSION

The Court should deny summary affirmance—again—and set a merits briefing schedule in the normal course.

Dated: August 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 11, 2025, a copy of the foregoing document was served upon all counsel of record through the court's ECF system.

/s/ Russell G. Ryan
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CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(a) because it contains few than 5200 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This response complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Office 365 in Times New Roman 14-point font.

Dated: August 11, 2025

/s/Russell G. Ryan
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