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Good Things Don't Come to Those Forced to Wait: Denial of a Litigant's Request to Proceed Anonymously Can be Appealed Prior to Final Judgment in the Wake of *Doe v. Village of Deerfield*

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GOOD THINGS DON'T COME TO THOSE FORCED TO WAIT: DENIAL OF A LITIGANT'S REQUEST TO PROCEED ANONYMOUSLY CAN BE APPEALED PRIOR TO FINAL JUDGMENT IN THE WAKE OF *DOE v. VILLAGE OF DEERFIELD*

Abstract: On April 12, 2016, in *Doe v. Village of Deerfield*, the United States Court of Appeals for the Seventh Circuit held that a denial of a motion to proceed anonymously is an immediately appealable order under the collateral order doctrine. The Seventh Circuit joined the Fourth, Fifth, Ninth, Tenth and Eleventh Circuits in holding that this type of order, examined categorically, satisfies the rigorous requirements of the collateral order doctrine. Allowing immediate review of this type of order implements a practical construction of the traditional final judgment rule that the United States Courts of Appeals can only review orders upon entry of a final judgment on the merits of a case from a United States District Court. This Comment argues that the Seventh Circuit correctly decided to join the other circuits' decisions to allow for the immediate appeal of a denial of a motion to proceed anonymously. To rule otherwise would result in a party's loss of a right that would be irremediable upon final appellate review. Additionally, the decision is likely to have an effect on the proliferation of cases dealing with the First Amendment's free speech protections and anonymous speech on the Internet.

INTRODUCTION

Imagine you are arrested for a crime as a result of someone lying to the police.[1] Despite learning of the lie, the prosecution does not dismiss the case and you are tried for something you did not do.[2] Even if the court enters a judgment on your behalf and expunges your record, you are unlikely to feel vindicated.[3] In response, you file a lawsuit against the parties who wronged

[1] *See, e.g.*, Doe v. Village of Deerfield, 819 F.3d 372, 374 (7th Cir. 2016) (stating that two individuals knowingly made false statements to a Village of Deerfield police officer in connection to Doe violating two criminal ordinances); Page Pate, *Malicious Prosecution Against Bank of America Results in $600,000 Settlement*, PATE & JOHNSON: OUR BLOG (Nov. 5 2013), https://www.pagepate.com/malicious-prosecution-bank-america-results-600000-settlement/ [https://perma.cc/MQ95-AP2H] (detailing a $600,000 malicious prosecution judgment received by a bank employee after being acquitted of theft charges brought based on testimony that was not truthful).

[2] *Village of Deerfield*, 819 F.3d at 374 (explaining that Doe believed he was arrested and prosecuted in retaliation for a previous lawsuit he had filed against another Village of Deerfield police officer).

[3] *See id.*

you.[4] For personal reasons, you file the case using a pseudonym but the court, considering the importance of judicial transparency, says you must use your legal name or the case will be dismissed.[5] Do you walk away from the case or do you move forward, providing your name?[6] When a denial to proceed anonymously has potentially disastrous effects, should a party be forced to await entry of a final judgment on the merits to appeal the denial?[7]

The U.S. Court of Appeals for the Seventh Circuit faced this question regarding the ability to proceed anonymously in 2016 in *Doe v. Village of Deerfield*.[8] Doe wished to proceed anonymously because he believed being forced to use his real name would defeat the purpose of his criminal expungement from a prior state criminal case and that having his name associated with a criminal case would embarrass him.[9] The court ultimately held that Doe could not proceed anonymously in the pending action in the U.S. District Court for the Northern District of Illinois.[10] Simultaneously, however, the court joined five other circuits in holding that an appeal arising from a denial to proceed anonymously falls within the collateral order doctrine and is thus immediately appealable.[11]

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[4] *See id.* (stating that Doe filed a complaint against the Village of Deerfield and the two individuals who made false statements against him, asserting an equal protection claim under federal law and a malicious prosecution claim under Illinois law).

[5] *Id.* at 375, 377 (declining to find Doe's reasoning for requesting anonymity, potential embarrassment and thwarting the purpose of his expunged record, as an exceptional circumstance where anonymity should be granted). If an individual is a high-profile criminal defendant, they may seek to proceed anonymously to increase their chances of receiving a fair trial by preventing potential jurors from being prejudiced by pretrial publicity. Jaime N. Morris, Note, *The Anonymous Accused: Protecting Defendants' Rights in High-Profile Criminal Cases*, 44 B.C. L. REV. 901, 903–04 (2003). Despite the public's interest in open and public judicial proceedings, citizens do have personal rights to privacy and the ability to proceed anonymously can be viewed as one such right. *See* Amit Shertzer, Note, *Plaintiff Anonymity During Civil Litigation of Childhood Sexual Abuse Cases*, 33 CARDOZO L. REV. 2199, 2206 (2012). Judicial openness and basic standards of fairness support the idea that if a plaintiff sues a defendant by name, thereby revealing the defendant to the public, the plaintiff should have to as well. Wendy M. Rosenberger, Note, *Anonymity in Civil Litigation: The "Doe" Plaintiff*, 57 NOTRE DAME LAW. 580, 583 (1982). A defendant must know who is suing them to benefit from the discovery process and to raise defenses. *Id.*

[6] *See Village of Deerfield*, 819 F.3d at 374.

[7] *See* James v. Jacobson, 6 F.3d 233, 242 (4th Cir. 1993) (noting that, if the underlying claim were proven, it would amount to a great wrong and that the district court should have granted the James' motion to proceed anonymously).

[8] *See Village of Deerfield*, 819 F.3d at 374.

[9] *Id.* at 377.

[10] *Id.* (explaining the routinely accepted standard that, in order to proceed anonymously, a plaintiff must present "exceptional" grounds that justify using a pseudonym in a civil action they voluntarily initiated).

[11] *Id.* at 376; Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1067 (9th Cir. 2000); M.M. v. Zavaras, 139 F.3d 798, 802 (10th Cir. 1998); *James*, 6 F.3d at 234; Doe v. Frank, 951 F.2d 320, 322 (11th Cir. 1992); S. Methodist Univ. Ass'n v. Wynne & Jaffe, 599 F.2d 707, 712 (5th Cir. 1979).

This Comment argues that the Seventh Circuit correctly decided the jurisdictional issue.[12] Part I of this Comment discusses the importance of the final judgment rule and appellate theory as well as anonymity in judicial proceedings.[13] Part I also reviews the factual and procedural history of *Village of Deerfield*.[14] Part II examines two non-final orders that are immediately appealable and their similarities to an order denying anonymity.[15] Part III argues and concludes that the Seventh Circuit correctly decided that an order denying permission to proceed anonymously is reviewable under the collateral order doctrine and addresses future implications of the decision in the realm of anonymous speech on the Internet.[16]

I. THE TENSION BETWEEN FINALITY AND ANONYMITY

The United States Courts of Appeals are generally limited to hearing appeals from final decisions of the district courts.[17] A small class of traditionally non-final orders, however, is deemed final and thus becomes immediately reviewable.[18] Section A examines appellate theory and the final judgment rule.[19]

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[12] *See infra* notes 99–116 and accompanying text.

[13] *See infra* notes 17–55 and accompanying text.

[14] *See infra* notes 56–63 and accompanying text.

[15] *See infra* notes 64–98 and accompanying text.

[16] *See infra* notes 99–116 and accompanying text.

[17] *See* 28 U.S.C. § 1291 (2012) (stating that courts of appeals shall have jurisdiction over all appeals from decisions of all district courts of the United States except where the Supreme Court may have jurisdiction for direct review). The nine courts of appeals were established by Congress in the Judiciary Act of 1891 in order to relieve the enormous caseload imposed on the Supreme Court by the increase in federal appeals filings from district courts. *History of the Federal Judiciary*, FED. JUDICIAL CTR., www.fjc.gov/history/home.nsf/page/courts_of_appeals.html [https://perma.cc/Q68W-6LWD]. The 1891 Act, known as the Evarts Act, gave the courts of appeals jurisdiction over the majority of appeals stemming from the district courts and circuit courts. *Id.* Subsequent acts and statutes expanded the jurisdiction of the courts of appeals. *Id.*

[18] *See* Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949) (announcing there exists a class of claims that are independent of and incidental to the underlying merits of an action and are too significant to be reviewed only upon final adjudication); Jason Kornmehl, *State Action on Appeal:* Parker *Immunity and the Collateral Order Doctrine in Antitrust Litigation*, 39 SEATTLE U. L. REV. 1, 11 (2016) (explaining that the Supreme Court has repeatedly emphasized that the requirements for collateral order review must remain strict). By imposing a strict test, only a small and narrow group of orders should be reviewable under the collateral order doctrine, thus not undermining the purposes of the final judgment rule. *See* Kornmehl, *supra*, at 11; Note, *Appealability in the Federal Courts*, 75 HARV. L REV. 351, 364–66 (1962) (explaining how different courts have interpreted the word collateral in determining whether an appeal is eligible for intermediate review under the doctrine). In taking this approach, the court of appeals can weigh a variety of factors that affect the petitioner's hardship in deciding whether to grant review under the doctrine. Note, *Appealability in the Federal Courts*, *supra*, at 366.

[19] *See infra* notes 22–44 and accompanying text.

Section B discusses the use of anonymity in judicial proceedings.[20] Section C sets out the facts and procedural history of *Village of Deerfield*.[21]

A. What Does Final Mean?: The Traditional Final Judgment Rule and the Collateral Order Doctrine

The courts of appeals are courts of limited jurisdiction.[22] The appellate courts are granted the power to review but not the power to intervene.[23] The role of the court of appeals is to review an alleged error that occurred during the trial and not to intervene during the trial and make preliminary judgments, in place of the trial court.[24] The courts of appeals are limited to reviewing cases where a final judgment has been rendered.[25] This limitation preserves the sanctity of, and respect afforded to, decisions made by both the trial and appellate courts.[26]

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[20] *See infra* notes 45–55 and accompanying text.

[21] *See infra* notes 56–63 and accompanying text.

[22] *See* Bryan Lammon, *Rules, Standards, and Experimentation in Appellate Jurisdiction*, 74 OHIO ST. L.J. 423, 428 (2013) (explaining that federal courts of appeals only have jurisdiction over final decisions by a district court, usually forcing federal litigants to wait to file an appeal until the district court has rendered a final judgment); Aaron R. Petty, *The Hidden Harmony of Appellate Jurisdiction*, 62 S.C. L. REV. 353, 354 (2011) (stating that the final judgment rule functions as the dividing line between the authority of the trial courts and the authority of appellate courts).

[23] *Cohen*, 337 U.S. at 546 (explaining that if a matter has not been conclusively decided and remains open, intervention by appeal is not available); 15A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3911, Westlaw (2d ed.). Review is distinguished from intervention based on whether the underlying merits of the case have been resolved. *See* WRIGHT ET AL., *supra*, § 3911. If a case remains open and the appeals court is asked to rule on an appeal before entry of a final judgment, to rule on the appeal would constitute intrusion as opposed to review. *See id.*

[24] *See* ANNE M. LOFASO, A PRACTITIONER'S GUIDE TO APPELLATE ADVOCACY 3–5 (2010) (explaining that the role of appellate courts is three-fold, to correct errors, to set precedent, and to do justice).

[25] 28 U.S.C. § 1291 (2012).

[26] *See* Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981) (emphasizing the deference and respect that appellate courts owe to the decisions made by the district court judge on the numerous questions of law and fact that appear prior to a final judgment); Henry v. Lake Charles American Press, L.L.C., 566 F.3d 164, 174 (5th Cir. 2009) (citing 15A WRIGHT ET AL., *supra* note 23, § 3911) (explaining that if the trial court is likely to address the challenged motion, there is minimal justification for review by the appellate court at this stage); Brief of Civil Procedure Scholars as Amicus Curiae in Support of Petitioner at 9, Microsoft Corp. v. Baker, 797 F.3d 607 (9th Cir. 2015) (No. 12-35946), *cert. granted in part*, 84 U.S.L.W. 3214 (U.S. Jan. 15, 2016) (No. 15-457) [hereinafter Brief of Civil Procedure Scholars] (noting the need to maintain the distinctive roles and relationship between the district courts and the appellate courts). Trial courts are well suited to review the facts of a case where they can see witnesses and jurors whereas appellate courts are well suited for slow and methodical review of legal issues. *See* Samuel J. Roberts, *The Trial Court: Keystone of Justice*, 53 PA. B. ASS'N Q. 165, 168 (1982) (explaining that trial courts can contribute to the quality and efficiency of the judicial system by ensuring that trial records are thorough, thereby reducing the need for frivolous appeals). This furthers two main functions of the appellate courts, to correct errors committed during trial and to further goals of the judicial system. Joseph R. Weisberger, *Appellate Courts: The Challenge of Inundation*, 31 AM. U. L. REV. 237, 239 (1982).

Appellate courts have the authority to review interlocutory appeals.[27] An interlocutory appeal stems from a ruling entered by the trial court prior to entry of a final judgment.[28] The most palpable reason to limit the jurisdiction of courts of appeals to review of final judgments is to promote judicial economy and minimize trivial and unnecessary delays in litigation.[29] For example, allowing an interlocutory appeal interferes with the trial judge's responsibilities to supervise judicial proceedings and ensure that trials proceed as expediently and efficiently as possible.[30] This type of review also frustrates the role of appellate judges, as it requires them to rule based on a deficient record.[31] Interlocutory review absent a more developed record tends to decrease the reliability of the court's pronouncement on the issue.[32] Restrictions on the cases or motions that courts of appeals can hear improve the quality of decisions that the judges are able to render by eliminating redundant review of substantive questions that serves only to consume the time of the appellate court.[33] Finally, the restriction allows the trial process to proceed unimpeded, as it may be pos-

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[27] 28 U.S.C. § 1292.

[28] *See* Johnson v. Jones, 515 U.S. 304, 309 (1995) (acknowledging that allowing appeals at this stage can create problems as to the basic functions of both the trial judge and the appellate judge, burden the litigation, and result in subpar review of the issue at hand); ERIC J. MAGNUSON & DAVID F. HERR, FEDERAL APPEALS—JURISDICTION AND PRACTICE § 2.5 (2016) (explaining that the final judgment rule preserves judicial economy and reduces delay in litigation proceedings); Tory Weigand, *Discretionary Interlocutory Appeals Under 28 U.S.C. § 1292(b): A First Circuit Survey and Review*, 19 ROGER WILLIAMS U. L. REV. 183, 183–84 (2014) (explaining that an interlocutory appeal arises when the trial court has decided an issue but not rendered a final judgment in the case and the litigant seeks review of that decision). The interlocutory appeal is an exception to the final judgment rule and seeks to resolve instances where failure to immediately grant the appeal would cause the particular litigant enormous injustice. Weigand, *supra*, at 183–84.

[29] *Johnson*, 515 U.S. at 309 (stating various forms of delay caused by traditionally premature appeals); Lloyd C. Anderson, *The Collateral Order Doctrine: A New "Serbonian Bog" and Four Proposals for Reform*, 46 DRAKE L. REV. 539, 542 (1998) (noting the final judgment rule works in the public's interest in having a legal system that resolves cases efficiently and without undue costs to the people).

[30] *See Johnson*, 515 U.S. at 309 (stating that a judge's main function is to supervise trials and that an interlocutory appeal interferes with this basic function, and noting that interlocutory appeals hinder progression through the trial and add to litigations costs); Anderson, *supra* note 29, at 542 (explaining that allowing immediate appeal of non-final orders would require appellate judges to review innumerous amounts of pretrial motions, which in turn would further add on to their already burdened docket).

[31] *See Johnson*, 515 U.S. at 309 (stating that judges cannot exercise best judgment about the issue when presented with an incomplete record of the case). The role of appellate courts is to decide questions of law, which necessitates a finding of the facts first. THOMAS E. BAKER, FED. JUDICIAL CTR., A PRIMER ON THE JURISDICTION OF THE U.S. COURTS OF APPEALS 35–36 (2009). It is the trial court's, and not the appellate court's, role to determine the facts and apply principles of law. *Id.* These determinations can then be reviewed by the expertise of appellate courts. *See id.* Without knowing all the facts of a case, an appellate court cannot properly decide whether the principles of law have been correctly applied. *See id.*

[32] Partrederiet Treasure Saga v. Joy Mfg. Co., 804 F.2d 308, 310 (5th Cir. 1986); 15A WRIGHT ET AL., *supra* note 23, § 3911.

[33] *Partrederiet Treasure Saga*, 804 F.2d at 310; 15A WRIGHT ET AL., *supra* note 23, § 3911.

sible for the case to be resolved prior to a ruling on the pending collateral appeal.[34]

Nevertheless, a small class of non-final orders has been designated as reviewable by the courts of appeals under the collateral order doctrine.[35] This class of non-final orders is carved out because the rights at issue have been deemed intrinsically significant to the disposition of the case and therefore immediately appealable.[36] Denying an immediate appeal of an order that falls in this class would result in the moving party irreparably losing their asserted right(s).[37] For example, if immediate appealability was unavailable in a situation where an individual had immunity to stand trial, his or her right to avoid trial would be immediately forfeited and no sufficient remedy exists that could be given upon appeal of a final judgment on the merits of the case.[38]

In order to show that an order is reviewable under the collateral order doctrine, the party seeking review must demonstrate that the district court or-

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[34] *See Johnson*, 515 U.S. at 310 (recognizing that delayed review of appeals until final judgment allows the case to proceed in a timely manner and that the underlying action might be decidable prior to a ruling on the pending appeal); 15A WRIGHT ET AL., *supra* note 23, § 3911 (explaining that the limited jurisdiction helps avoid unnecessary and duplicative examination of the same issues by the court of appeals).

[35] *See* 28 U.S.C. § 1292(a) (2012) (listing exceptions to customary jurisdiction of appellate courts). This statutory provision describes several instances where an exception to the final judgment rule, embodied in § 1291, can be made. *See Cohen*, 337 U.S. at 546 (noting that the appeal at issue is reviewable under the collateral order doctrine because the claim of right asserted in the appeal is truly independent from the claim of right asserted in the underlying action); Robert J. Martineau, *Defining Finality and Appealability by Court Rule: Right Problem, Wrong Solution*, 54 U. PITT. L REV. 717, 729 (1993). The doctrine emerged in this case when the court held that orders which "finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen*, 337 U.S. at 546. *See generally* Carleton M. Crick, *The Final Judgment as a Basis for Appeal*, 41 YALE L.J. 539 (1932) (discussing the evolution of the appeals process in England and the United States and the rationales supporting the final judgment rule); Gerald T. Wetherington, *Appellate Review of Final and Non-Final Orders in Florida Civil Cases—An Overview*, 47 LAW & CONTEMP. PROBS. 61, 63–64 (1984) (covering policies that support the final judgment rule).

[36] *See Cohen*, 337 U.S. at 546 (explaining that the rights asserted are too important to be denied appellate review until final judgment on the merits has been entered). To date, the only kind of order the Court has granted collateral order review to is an order that involves a right that would be permanently forfeited without immediate review. Martineau, *supra* note 35, at 742.

[37] 4 AM. JUR. 2D *Appellate Review* § 105 (2017); *see* Price v. Georgia, 398 U.S. 323, 326 (1970) (explaining that if a party were denied immediate appeal of a double jeopardy claim, his Fifth Amendment rights would be violated by forcing him to stand trial again and bear the personal burden and public shame that would follow).

[38] *See* James D. Gordon III, *Double Jeopardy and Appeal of Dismissals: A Before-and-After Approach*, 69 CAL. L. REV. 863, 865–67 (1981) (explaining that not only does the double jeopardy clause protect the defendant from undergoing the tribulations of a trial for a second time, but also protects him from the increased likelihood of being found guilty in a second trial and his interest in jury nullification, all which cannot be repaired upon delayed appellate review). The loss of the right to avoid trial cannot be vindicated after a person has stood trial. *See id.*

der is (1) conclusive on the issue, (2) resolves an important question that is severable from the merits of the case, and (3) renders the question "effectively unreviewable" on an appeal from a final judgment in the underlying action.[39] The requirements are intentionally "stringent," reinforcing the bias against a piecemeal approach to litigation.[40] When considering whether a given order is reviewable under the collateral order doctrine, the courts of appeals do not scrutinize the individual denial but rather examine the category to which the claim belongs as a whole.[41]

The collateral order doctrine is not considered an exception to the final judgment rule, but rather a practical construction of the rule.[42] By construing the doctrine as a practical construction of the final judgment rule, a collateral order is itself a final order on a specific issue in a case that is severable from the underlying merits of the action.[43] It can thus be ruled on prior to the final judgment in a case and remain faithful to the purposes of the final judgment rule.[44]

B. Use of Anonymity in the Judicial System

The ability of a party to proceed anonymously in judicial proceedings is strongly disfavored because of the shield and veil it creates between the court

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[39] Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978); United States v. MacDonald, 435 U.S. 850, 855 (1978); Abney v. United States, 431 U.S. 651, 658 (1977). The Supreme Court first articulated this test in 1949 in *Cohen v. Beneficial Industries Loan Corp.*, drawing on previous reasoning from prior decisions. 337 U.S. at 546–47.

[40] *See* Dig. Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 872 (1994) (recognizing the importance of judicial efficiency while also acknowledging the importance of rights that may be "irretrievably lost" if some orders are not immediately appealable); Herx v. Diocese of Fort Wayne-South Bend, Inc., 772 F.3d 1085, 1088–89 (7th Cir. 2014) (explaining that the requirements to trigger collateral order doctrine review must be strict in order not to override the "finality interests" served by § 1291).

[41] Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100, 107 (2009) (explaining that if a particular class of claims can be appropriately addressed after adjudication of the case, a denial of review prior to final judgment does no irreparable injustice); *Dig. Equip. Corp.*, 511 U.S. at 868.

[42] *Dig. Equip. Corp.*, 511 U.S. at 867; *see Cohen*, 337 U.S. at 546–47 (explaining that the Supreme Court has long given the provisions in § 1291 a practical construction); United States v. River Rouge Improvement Co., 269 U.S. 411, 414 (1926) (acknowledging that the rule has been functionally interpreted to allow immediate review of a final decision on an issue that is distinct from the main issue). *See generally* William M. Lukens, Comment, *The Collateral Order Doctrine in California*, 15 HASTINGS L.J. 105, 105–06 (1964) (explaining that if final order meant last order there could be only one final order in a case and thus only one appeal). As a result, the word final has been used to refer to resolution of parties' rights on a specific issue. Lukens, *supra*, at 105–06. Therefore, there may be multiple final judgments in an action because there are likely to be several contested issues that require a judgment. *Id.*

[43] *See Dig. Equip. Corp.*, 511 U.S. at 867 (announcing that a practical construction of the statute allows the term "final order" to encompass orders that do not necessarily end the litigation by entry of a final judgment on the merits). Under this construction, a small class of traditionally non-final orders must be considered final in the interests of upholding a functioning judicial system. *See id.*

[44] *Id.* at 867–68.

and the public.[45] A strong common law tradition in favor of transparent judicial proceedings dates back to 15th century England.[46] Today, U.S. courts routinely accept this tradition of openness to the public.[47] The Supreme Court has, however, acknowledged that there are instances in which certain interests outweigh the preference for judicial openness, but has noted that these instances are rare.[48] Anonymity of parties, which creates a blemish on judicial transparency, is thus vigorously discouraged.[49] Moreover, the Federal Rules of Civil Procedure not only disfavor anonymity, they do not allow it.[50]

There are, however, certain types of cases where a party electing to proceed anonymously is the norm.[51] Anonymity is almost always granted in cases

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[45] *See Village of Deerfield*, 819 F.3d at 376–77 (stating that the public has a right to know the names of litigants who take up time, space, and money in the court system that the public is paying for); *Zavaras*, 139 F.3d at 800 (stating that the court systems are inherently public because they exist to serve the needs of the public and that even a cursory review of judicial history forces one to accept that a secretive judicial system is not in harmony with the existence of a free society); Tom Isler, *White Paper: Anonymous Civil Litigants*, REPS. COMMITTEE FOR FREEDOM PRESS, http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-fall-2015/white-paper-anonymous-civil-l [https://perma.cc/V3UM-6386]. Party anonymity in the court system is a form of court closure by cutting off the public's access to possibly valuable information concerning the pending litigation. Isler*, supra*. The benefits of a transparent judicial system are undercut when the public is restricted from knowing who is making use of the court system. *Id.* When party anonymity is allowed, other secrecy tools are often concomitantly employed, further reducing litigation transparency. *Id.*

[46] David C. Scileppi, Note, *Anonymous Corporate Defamation Plaintiffs: Trampling the First Amendment or Protecting the Rights of Litigants?*, 54 FLA. L. REV. 333, 337–38 (2002).

[47] *See* Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597–98 (1978) (acknowledging the public's right to review and copy public documents). The courts in the United States acknowledge that the public has the right to view public documents, which includes judicial records. *See id.* An individual does not need to have a personal stake in the matter of which they wish to view documents; it is enough for an individual to want to "keep a watchful eye" on the operation of public agencies and the government. *See id.*; Craig v. Harney, 331 U.S. 367, 374 (1947) (stating that, because trials are open proceedings, the events that take place in a court room are "public property"); Luckett v. Beaudet, 21 F. Supp. 2d 1029, 1029 (D. Minn. 1998) (explaining that identification of parties in a case is integral in supporting the First Amendment interest in public proceedings); A.B.C. v. X.Y.Z. Corp., 660 A.2d 1199, 1201 (N.J. Super. Ct. App. Div. 1995) (pointing out that requiring identity of parties decreases the likelihood of another party mistakenly being associated with the case).

[48] *See* Globe Newspaper Co. v. Superior Court for Norfolk Cty., 457 U.S. 596, 606–07 (1982) (stating that the circumstances under which proceedings in a criminal trial should not be shared with the public are limited).

[49] *See Frank*, 951 F.2d at 324 (holding that lawsuits are public events and that a party should only be allowed to proceed anonymously in exceptional cases involving highly sensitive and personal issues).

[50] FED. R. CIV. P. 10(a) (requiring that all parties to a civil action be named in the complaint).

[51] *See* Doe v. City of Chicago, 360 F.3d 667, 669 (7th Cir. 2004) (adding that a party's fear of retaliation as a response for instituting a litigation can be a compelling reason for the court to allow the party to proceed anonymously); Doe v. Blue Cross & Blue Shield United of Wis., 112 F.3d 869, 872 (7th Cir. 1997) (giving examples of types of cases, such as those that require privacy protections, rape victims and other vulnerable parties, that warrant a party to a litigation to proceed anonymously).

that involve sexual assault in order to protect the privacy of the victim.[52] It is also commonly allowed in cases involving minors.[53] Outside of these, and a few other, specifically defined situations, in deciding if a party should proceed anonymously, the court must balance the relevant competing interests.[54] This balancing test takes into consideration the party's reasons for desiring anonymity versus the prejudice anonymity causes to the opposing party and the public.[55]

C. Northern District of Illinois Denies Motion to Proceed Anonymously Due to Lack of Meritorious Circumstances

In August 2012, John Doe was arrested and prosecuted for violating two criminal ordinances in Deerfield, Illinois.[56] Doe was arrested based on statements of two witnesses.[57] Ultimately, Doe was found not guilty in this criminal

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[52] *See, e.g.*, Roe v. Borup, 500 F. Supp. 127, 130 (E.D. Wis. 1980) (allowing anonymity in a case involving false claims of child sexual abuse to curb plaintiff's future psychological harm); Doe v. Howe, 607 S.E.2d 354, 357 (S.C. Ct. App. 2004) (allowing plaintiff who was sexually abused by a school employee to use a pseudonym); Radhika Sanghani, *Every Rape Accuser Deserves Anonymity—It's the Least We Can Do*, THE TELEGRAPH (Jan. 14, 2016), http://www.telegraph.co.uk/women/life/every-rape-accuser-deserves-anonymity---its-the-least-we-can-do/ [https://perma.cc/S5SB-SYTU] (explaining that allowing plaintiffs in a rape case to proceed anonymously is a minute concession when considering the plaintiff is brave enough to press charges and live through the incredibly invasive process that constitutes a rape trial).

[53] Plaintiff B v. Francis, 631 F.3d 1310, 1315 (11th Cir. 2011) (vacating and remanding district court's decision denying plaintiffs', who engaged in sexually explicit conduct as minors in *Girls Gone Wild* videos, motion to proceed anonymously); Doe v. Stegall, 653 F.2d 180, 186 (5th Cir. 1981) (allowing anonymity for plaintiffs who challenged constitutionality of prayer and bible readings in a public school because of real threatened violence and retaliation against their children); *see* Lisa M. Jones et al., *Protecting Victims' Identities in Press Coverage of Child Victimization*, 11 JOURNALISM 347, 349 (2010) (explaining that the United States' enhanced privacy provisions for minors in the judicial system stems from the idea that stigma is especially detrimental to a child's development and that it impedes the child's ability to move on and grow from bad circumstances in their past).

[54] *See Zavaras*, 139 F.3d at 801 (explaining that use of anonymity in court proceedings is limited to instances where privacy interests are extremely high or there is a threat of physical harm if identity is revealed and that potential economic or professional harm, alone, do not fall under those categories); *Stegall*, 653 F.2d at 186 (announcing that there is no "hard and fast formula" in deciding when a party may proceed anonymously but the decision calls for a balancing of the parties' interests); Isler, *supra* note 45 (explaining that three to four factors are routinely used to balance the interests of the parties but that some courts have looked beyond these, including the Third Circuit, which has identified nine factors).

[55] *See Blue Cross*, 112 F.3d at 872 (stating that because the case involves a medical issue is not enough of an exceptional circumstance warranting anonymity that outweighs the public's interest and right to know who is using their courts). *But see James*, 6 F.3d at 237 (reversing the district court's denial of plaintiffs' motion to proceed anonymously in a case involving a medical issue).

[56] *Village of Deerfield*, 819 F.3d at 374 (explaining that John Doe claimed this initial arrest and prosecution were done for retaliatory reasons stemming from a previous lawsuit that he had filed against a police officer from the Village of Deerfield).

[57] *Id.* During trial, the prosecution learned that the statements underlying Doe's arrest were false but continued with prosecuting Doe. *Id.* The facts reviewed from the complaint are taken as true. *Id.*

case.[58] On September 23, 2014, Doe, using a pseudonym, filed a complaint in the U.S. District Court for the Northern District of Illinois against the Village of Deerfield and the two witnesses who provided false statements.[59] In January and February 2015, the three defendants filed individual motions to dismiss the case for Doe's failure to comply with procedural requirements regarding identification of the parties to an action.[60]

On May 5, 2015, the court denied Doe's motion to proceed anonymously and granted defendants' motions to dismiss without prejudice.[61] On June 1, 2015, Doe filed a motion to stay the district court proceedings pending the result of his appeal for interlocutory review to the Seventh Circuit Court of Appeals.[62] The district court granted the stay and a panel of the Seventh Circuit reviewed the appeal.[63]

II. COLLATERAL ORDER DOCTRINE: WHAT ORDERS MEET THE STRICT REQUIREMENTS FOR IMMEDIATE APPELLATE REVIEW?

The United States Supreme Court and various United States Courts of Appeals have granted collaterally appealable status to a variety of orders in both criminal and civil contexts.[64] Examples include orders rejecting a public official's claim of absolute or qualified immunity, orders rejecting a state's claim of Eleventh Amendment immunity, and orders denying a criminal defendant's claim of double jeopardy.[65] Section A analyzes denial of class certifi-

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[58] *See* Brief for Defendant at 2, Doe v. Village of Deerfield, 819 F.3d 372 (7th Cir. 2016) (No. 15-2069), 2015 WL 7689569, at *2 [hereinafter Brief for Defendant] (stating that the ordinance violations, which were the basis for the arrest and subsequent prosecution, were resolved in Doe's favor and that an order was entered to expunge Doe's record of both the arrest and prosecution).

[59] *Village of Deerfield*, 819 F.3d at 374. The complaint asserted two separate grounds for filing the suit. *Id.* The first was a federal claim under the equal protections clause of the U.S. Constitution under § 1983. *Id.* The second was a malicious prosecution claim under Illinois state law. *Id.*

[60] *Id.* Rule 10(a) of the Federal Rules of Civil Procedure stipulates that the complaint must contain the names of all parties in an action. FED. R. CIV. P. 10(a).

[61] *Village of Deerfield*, 819 F.3d at 377. The district court reasoned that potential embarrassment or further retaliation for the suit were not sufficiently compelling reasons to allow anonymity in a suit that was commenced on Doe's own initiative. *Id.* The court simultaneously granted Doe leave to file an amended complaint by May 15, 2015, identifying himself by name. Brief for Defendant, *supra* note 58, at 3.

[62] Brief for Defendant, *supra* note 58, at 1.

[63] *Id.*

[64] *See* Herx v. Diocese of Fort Wayne-South Bend, Inc., 772 F.3d 1085, 1089 (7th Cir. 2014) (listing different examples of classes of claims that have been deemed reviewable under the collateral order doctrine).

[65] Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144–45 (1993) (stating that a state or its agent's motion to dismiss on grounds of Eleventh Amendment immunity implicates a constitutional protection and therefore is immediately appealable); Mitchell v. Forsyth, 472 U.S. 511, 525 (1985) (stating that a denial of absolute immunity is an order that falls within the collateral order doctrine because the very purpose of the immunity is that the immune individual does not have to answer for his conduct in an action for civil damages); Nixon v. Fitzgerald, 457 U.S. 731,

cation and double jeopardy orders.[66] Section B compares the orders discussed in Section A with motions to proceed anonymously.[67] Section C discusses the Seventh Circuit's application of the collateral order to the facts of *Doe v. Village of Deerfield*.[68]

A. Application of Collateral Order Doctrine to Denial of Class Certification and Denial of a Motion to Dismiss Under Double Jeopardy

Denial of class certification is an example of a non-final order that has been carved out as an exception to the final judgment rule.[69] Class certification is a determination that must be made in the preliminary stages of a lawsuit in order to assess whether it is appropriate for the suit to proceed as a class action.[70] The decision to deny or grant class certification is by definition interlocutory.[71] Some district court judges, however, have opined that a denial of a class certification should be considered final under § 1291.[72]

Initially, some courts adhered to the "death knell doctrine," which held that denial of class certification, if not immediately appealable, would likely

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743 (1982) (explaining that an appeal that arises out of claims alleging a threatened breach of presidential powers are immediately appealable); Abney v. United States, 431 U.S. 651, 660–61 (1977) (explaining the protection afforded by the double jeopardy clause includes a guarantee not to be put to trial twice for the same offense, therefore interlocutory review of a denial of a double jeopardy claim must be granted to avoid irreparable harm to the defendant).

[66] *See infra* notes 69–81 and accompanying text.

[67] *See infra* notes 82–91 and accompanying text.

[68] See *infra* notes 92–98 and accompanying text.

[69] *See* Michael E. Solimine & Christine Oliver Hines, *Deciding to Decide: Class Action Certification and Interlocutory Review by the United States Courts of Appeals Under Rule 23(f)*, 41 WM. & MARY L. REV. 1531, 1534–36 (2000) (explaining that because denial or grant of class certification has important ramifications for both plaintiff and defendant, interlocutory appeals of these orders are common by the party adversely affected by them). Because class certification is not a final order, it was difficult for parties to get interlocutory review of these decisions and it was recognized that some mechanism had to be implemented to ease the constraints imposed on parties by the final judgment rule. *See id.*

[70] FED. R. CIV. P. 23(c)(1); *see* Tobias Barrington Wolff, *Discretion in Class Certification*, 162 U. PA. L. REV.1897, 1916 (2014) (explaining that Rule 23 of the Federal Rules of Civil Procedure requires the court to make an early assessment on the workability of a class action trial).

[71] *See* Coopers & Lybrand v. Livesay, 437 U.S. 463, 470 (1978) (explaining that class certification is inherently interlocutory because the certification will determine whether the case moves forward and this decision is not based on the underlying merits of the case).

[72] 28 U.S.C § 1291 (2012); *see* FED. R. CIV. P. 23 advisory committee's note to 1996 amendment. The note postured that judges were aware and sensitive to the fact that if a denial of class certification were not immediately appealable, the litigation may be prematurely terminated. *See* FED. R. CIV. P. 23 advisory committee's note to 1996 amendment. Whether the litigation proceeded would be directly correlated to the denial and therefore judges believed that denial of class certification should be considered final for appeal under § 1291. *See id.*

preclude many plaintiffs from prosecuting their claims.[73] This doctrine, however, did not remain in force for long because it conflicted with the final judgment rule's core purposes of promoting judicial efficiency and maintaining the respective roles of the district and appellate courts.[74] Following rejection of the death knell doctrine, concerns about the adequacy of the remedies available for a denial of class certification resurfaced.[75] Congress was not content with the available remedies for a denial of class certification.[76] As a result, Rule 23 of the Federal Rules of Civil Procedure was amended to allow a denial of class certification to be immediately appealable despite not being a final order.[77]

Interlocutory appeals are less likely to be accepted in criminal than in civil cases because a criminal interlocutory appeal is more likely to require review of some portion of the merits of the underlying action.[78] A class of criminal

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[73] *See Livesay*, 437 U.S at 469 (explaining that if an appeal denying class certification was denied review until the entry of final judgment two things were likely to happen: (1) if each person in the class had a small individual stake in the litigation, the case would likely end with denial of class certification; and (2) if the parties who made up the class did not pursue the litigation individually upon denial of class certification, neither the underlying claim nor the decision to deny class certification would ever receive appellate review); Eisen v. Carlisle & Jacquelin, 370 F.2d 119, 120 (2d Cir. 1996) (acknowledging that if the denial of class certification were not immediately appealable then the underlying claims would not likely be adjudicated given that most lawyers would not pursue an individual claim worth $70); Brief of Civil Procedure Scholars, *supra* note 26, at 8 (stating that a decreased likelihood of group recovery is likely to diminish any incentive to continue the litigation). Moreover, the Court noted that delayed review would not allow the court to decide if the class action were acceptable under the newly reformulated Rule 23 of the Federal Rules of Civil Procedure. *Livesay*, 437 U.S at 469.

[74] *See Livesay*, 437 U.S at 476–77 (outlining how the death knell doctrine disrupted a cornerstone of the final judgment rule by upsetting the relationship between district courts and appellate courts by allowing piecemeal litigation and drawing out the trial process); Brief of Civil Procedure Scholars, *supra* note 26, at 10 (demonstrating how the death knell doctrine would create a never ending cycle of appeals that the appellate courts would have to review, further going against the policies underlying the final judgment rule); *see also supra* notes 28–34 and accompanying text (outlining the reasons supporting restricted appellate jurisdiction).

[75] *See* Brief of Civil Procedure Scholars, *supra* note 26, at 11 (describing the only hopes those who wished for immediate review of a denial of class certification had after *Livesay*'s rejection of the death knell doctrine). The first is a discretionary appeal under § 1292(b), which requires approval from both the district court and the appellate court for immediate review. *Id.* The second, and more extreme, option was to file a writ of mandamus, which would allow the appellate court to review the denial on normal jurisdictional grounds. *Id.*

[76] *Id.* Congress created two new rulemaking powers to address these concerns. *Id.*; *see* 28 U.S.C. § 2072(c) (2012) (granting the Supreme Court the power to prescribe rules for the district courts defining when an order was final for purposes of appeal under § 1291); 28 U.S.C. § 1292(e) (stating that the Supreme Court can create rules that allow for an immediate appeal of an interlocutory decision that is not otherwise covered by this section); Brief of Civil Procedure Scholars, *supra* note 26, at 11.

[77] FED. R. CIV. P. 23(f) (stating that a court of appeals has jurisdiction to hear an appeal from an order denying class certification so long as it is filed within fourteen days of the district court's order being entered).

[78] *See* Richardson v. United States, 468 U.S. 317, 321 (1984) (explaining the government's position that an evaluation of a double jeopardy claim almost inevitably requires the court to review the evidence that was presented at the first trial). In order to dispose of a double jeopardy claim, the court

orders, nevertheless, has been deemed reviewable under the collateral order doctrine.[79] One common immediately appealable non-final order is denial of a defendant's pre-trial motion to dismiss an indictment under double jeopardy.[80] A delayed review of a motion to dismiss under double jeopardy would irreparably imperil the defendant's right to not stand trial twice for the crime because there is no way to remedy standing trial for a trial you ought not to have stood except through money damages and, therefore, the court has determined that immediate review is necessary.[81]

B. Denial to Proceed Anonymously Raises the Same Issues if Interlocutory Review Is Not Granted

The adverse consequences of denying an immediate appeal of a denial of a motion to proceed anonymously are similar to those resulting from the denial of class certification and the denial requesting dismissal of an indictment under double jeopardy.[82] In the cases of both class certification and anonymity, the incentive to continue litigation may be removed.[83] Denial of class certification

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would have to review the evidence introduced at trial and come to a conclusion that the evidence was insufficient to convict the petitioner as a matter of law on those facts. *Id.* This review is indistinguishable from the review an appellate court would have to do for an appeal that was filed after a judgment on the merits was entered. *Id.*; Di Bella v. United States, 369 U.S. 121, 126 (1962) (stating that the Sixth Amendment guarantees a right to a speedy trial for criminal cases and that Rule 2 of the Federal Rules of Criminal Procedure advises that the rules should be construed so as to produce a trial that is simple in procedure and avoids undue expense and delay). *But see* 15A WRIGHT ET AL., *supra* note 23, § 3911 (acknowledging that some rights are so significant that review under the collateral order doctrine is acceptable even if the review requires a fair amount of discussion regarding the underlying merits).

[79] *See, e.g.*, *Richardson*, 468 U.S. at 320 (announcing that certiorari was granted because of the implications on the efficient administration of criminal proceedings); Cobbledick v. United States, 309 U.S. 323, 324 (1940) (stating that a motion to quash a subpoena requiring a witness to appear before a grand jury is inherently intertwined with assuring efficient administration of federal criminal law).

[80] *See Abney*, 431 U.S. at 662 (explaining that the guaranteed protections under the Fifth Amendment would be irreparably forfeited if a party seeking pre-trial dismissal on double jeopardy grounds were forced to stand trial for the same crime a second time).

[81] *See id.* In order for a criminal defendant to receive the full protection guarantees of the Double Jeopardy Clause, his or her challenge to the indictment, under the clause, must be effectively reviewed prior to any exposure of a possible new trial. *See id.*

[82] *See id.* at 661 (stating that the protective rights under the Double Jeopardy Clause would be rendered moot if appellate review of such claims was barred prior to entry of final judgment); Doe v. Village of Deerfield, 819 F.3d 372, 376 (7th Cir. 2016) (concluding that requiring parties to use their real names in a case and leaving review of a denial to proceed anonymously until the case is fully litigated renders the final review useless and provides no remedy).

[83] *Compare* James v. Jacobson, 6 F.3d 233, 236 (4th Cir. 1993) (explaining that plaintiffs were so concerned with protecting their identity as well as those of their children that they wrote to the court in support of their motion that if anonymity were not granted, they would voluntarily dismiss the action), *with* Brief of Civil Procedure Scholars, *supra* note 26, at 8 (explaining that if denial of class certification renders an individual plaintiff's claim too small the case is unlikely to continue).

may end the litigation because it may not be financially feasible or wise for the plaintiffs to pursue their claims on an individual basis.[84] Denial of a motion to proceed anonymously may end the litigation because the potential shame, embarrassment or fear of retaliation may be so overwhelming that the party abandons their claim.[85] In both of these cases, allowing only a delayed review may deny those with justifiable claims their day in court.[86]

An incurable harm results from precluding an immediate appeal of a denial of a motion to dismiss for double jeopardy and a denial of a motion to proceed anonymously.[87] A defendant forced to stand trial twice for the same crime cannot be given an adequate remedy upon final appellate review.[88] No adequate remedy exists for the loss of time and privacy, emotional distress and public humiliation experienced from having to stand trial when the defendant should not have had to do so.[89] Similarly, a party forced to proceed using their given name cannot be given satisfactory redress upon final appellate review

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[84] *Livesay*, 437 U.S. at 469–70; Brief of Civil Procedure Scholars, *supra* note 26, at 8.

[85] *See* Meg Garvin et al., *Protecting Victims' Privacy Rights: The Use of Pseudonyms in Civil Lawsuits*, VIOLENCE AGAINST WOMEN BULL., July 2011, at 1 (noting that requiring plaintiffs to file a lawsuit using their real name in turn allows the general public to access the most intimate details not only of the case but of the plaintiffs' personal lives through a simple Google search). Refusing to allow plaintiffs, particularly those who are victims of sexual crimes, to proceed anonymously is a form of re-victimization. Andrea A. Curcio, *Rule 412 Laid Bare: A Procedural Rule That Cannot Adequately Protect Sexual Harassment Plaintiffs from Embarrassing Exposure*, 67 U. CIN. L. REV. 125, 155–56 (1998) (explaining that childhood sexual abuse is one of the most personal and private issues and forcing a plaintiff to have this abusive past exposed has the potential to be irreparably damaging); Garvin et al., *supra*, at 1.

[86] *See Eisen*, 370 F.2d at 120 (explaining that if the appeal is dismissed, the merits of the case will never be reviewed).

[87] *See* Green v. United States, 355 U.S. 184, 187–88 (1957) (explaining that forcing an individual to stand trial anew for the same crime contributes to feelings of anxiety, embarrassment, living in a state of uncertainty, and also enhances the likelihood of the defendant being found guilty, regardless of whether that is actually the truth); *see also* S. Methodist Univ. Ass'n v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979) (recognizing that party anonymity is more likely to be granted in cases where people have to divulge very personal and intimate information or admit that they have broken a law or wished to engage in prohibited conduct). It is also more likely to be granted when the party may be vulnerable to retaliation from current and future employers, economic harm or damage to their reputation. *See S. Methodist Univ. Ass'n*, 599 F.2d at 713; Gomez v. Buckeye Sugars, 60 F.R.D. 106, 107 (N.D. Ohio 1973) (granting plaintiffs' motion to proceed using pseudonyms to protect them from potential reprisals by their employers in response to filing the underlying action).

[88] *See Richardson*, 468 U.S. at 328 (concluding that declaration of a mistrial ends one judicial proceeding and forcing someone to stand trial again on the same indictment would unquestionably subject the defendant to the harms that the Double Jeopardy Clause was intended to protect him from).

[89] *See id.* (describing the supporting policy rationales of the Double Jeopardy Clause, which aim to protect defendants from unnecessary embarrassment, additional expenses, and living in a constant state of anxiety); United States v. MacDonald, 435 U.S. 850, 859 (1978) (stating that an acquittal in a retrial stemming from a denial of motion to dismiss under Double Jeopardy grounds would not negate the defendant's extreme hardship in standing trial twice); *Abney*, 431 U.S. at 661–62 (explaining that the Fifth Amendments provides for protection against embarrassment, expense, and being compelled to live in anxiety and fear and that the protection would be wholly worthless if the defendant were forced to stand trial a second time before his appeal could be heard).

because once a name, and its associated litigation, is made available to the public, it cannot be taken back.[90] Finally, beyond raising similar outcome issues if an immediate appeal is not available, all three motions give rise to an appeal where a decision on the issue will conclusively determine the issue and the issue is clearly collateral to the merits of the case.[91]

C. Seventh Circuit Allows Collateral Review of Denial of Anonymity

The question of immediate appealability of a denial of a motion to proceed anonymously was a matter of first impression for the circuit.[92] The court joined five other circuits in finding that a motion to proceed anonymously is immediately appealable under the collateral doctrine.[93] First, it reasoned that ruling on the motion conclusively resolves the issue presented.[94] Second, the issue of party anonymity is completely separate from the underlying merits of the case.[95] Third, persuaded by a decision from the U.S. Court of Appeals for the Ninth Circuit, only allowing review of the appeal after final judgment would serve no purpose to the petitioner.[96] On application of their holding, the court found that Doe was not entitled to anonymity in this case, and affirmed the district court.[97]

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[90] *See* Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1066 (9th Cir. 2000) (stating that requiring the plaintiffs to amend their complaint and litigate their claims using their real names will render the issue of anonymity moot upon final appellate review); *James*, 6 F.3d at 237 (noting that both parties agree that the consequences of the anonymity order cannot be effectively redressed on final appellate review); Jane Roes 1-2 v. SFBSC Mgmt., LLC., 77 F. Supp. 3d 990, 995 (N.D. Cal. 2015) (explaining that because exotic dancers are in a unique circumstance, with respect to consequences from disclosure of their real names, only allowing review of a denial to proceed under a pseudonym at final appellate review subjects the women to a higher likelihood of uncorrectable harm).

[91] *Abney*, 431 U.S. at 659–60; *Village of Deerfield*, 819 F.3d at 376; *see* FED. R. CIV. P. 23(f) advisory committee's note to 1998 amendment (acknowledging the court of appeals' discretion in deciding to grant or deny an appeal stemming from a denial of class certification and that they can consider any issues they find persuasive).

[92] *Village of Deerfield*, 819 F.3d at 375; Lukens, *supra* note 42, at 105–06 (explaining that if final order meant last order there could be only one final order in a case and thus only one appeal would be allowed).

[93] *Village of Deerfield*, 819 F.3d at 376.

[94] *Id.*; *see also* Lukens, *supra* note 42, at 105–06 (arguing that multiple issues in a single case may be decided conclusively at different moments, and finality should be measured according to the particular issue).

[95] *Village of Deerfield*, 819 F.3d at 376. The decision to allow a party to proceed through trial using a fictitious name will have no material effect on the litigation process and final judgment. *See id.*

[96] *Id.* If a party was required to use their given name throughout a trial and only allowed to appeal after a final judgment had been entered, the appeal would be moot because his or her name would already be a part of the public record. *See id.*

[97] *Id.*

The case is currently pending on the merits of plaintiff's claims in the Northern District of Illinois.[98]

III. Village of Deerfield and Similar Cases Set the Stage for Future Lawsuits Involving First Amendment and Privacy Concerns on the Internet

In 2016, in *Doe v. Village of Deerfield*, the U.S. Court of Appeals for the Seventh Circuit correctly decided that a denial of a motion to proceed anonymously could be immediately reviewed prior to final judgment from the district court.[99] The court also correctly decided that Doe's situation was not one that warranted party anonymity.[100] The case clearly did not fall into the category of cases where anonymity is virtually expected and accepted.[101] Additionally, Doe's stated interests were not sufficiently compelling when weighed against the public's and parties' rights to know the identities of parties to an action.[102] The ability to proceed anonymously must continue to be reserved for cases where the party's personal interest for anonymity is very high.[103]

The ability to proceed anonymously and appeal a denial to proceed anonymously will become increasingly important as social media and online fo-

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[98] Second Amended Complaint at 1, Neiman v. Village of Deerfield, No. 14-cv-07423 (N.D. Ill. Dec. 2, 2016). John Doe filed a notice regarding his motion to join defendants on July 27, 2016, this time giving his real name, Kenneth Neiman. Motion to Join Defendants at 1, Neiman v. Village of Deerfield, No. 14-cv-07423 (N.D. Ill. July 27, 2016).

[99] Doe v. Village of Deerfield, 819 F.3d 372, 376 (7th Cir. 2016).

[100] *See id.* at 377 (relying on the district court's comprehensive and judicious analysis of the anonymity issue).

[101] *See* Rosenberger, *supra* note 5, at 584 (dividing cases into two groups where circumstances implicate the necessity of anonymity: (1) where concealing identity of the plaintiff decreases the likelihood of a threatened harm coming to fruition; and (2) where concealing identity serves to protect the plaintiff's private life from public scrutiny in cases containing extremely intimate facts).

[102] *Compare Village of Deerfield*, 819 F.3d at 377 (stating that embarrassment and connection to a criminal record that had been expunged are not exceptional circumstances worthy of anonymity), *with* Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555, 580 n.17 (1980) (noting that traditionally civil and criminal trials have been accepted as open proceedings), *and* Rosenberger, *supra* note 5, at 583 (noting that the plaintiff's identity is crucial to allowing the defendant to fully utilize the discovery process and allow the defendant to determine effective defenses).

[103] *See* Doe v. Megless, 654 F.3d 404, 409 (3d Cir. 2011) (stating that the Third Circuit has regularly referred to a list of factors enunciated in *Doe v. Provident Life and Accident Insurance Co.* in determining whether anonymity should be granted). Some of these additional factors include: deciphering whether the party seeking anonymity has improper ulterior motives behind the request, deciding that, based on the nature of the case, the public has a fairly weak interest in knowing the identities of the parties and whether the status of the party as a public figure would increase the public's interest in knowing the names of the litigants. Doe v. Provident Life & Accident Ins. Co., 176 F.R.D. 464, 467–68 (E.D. Pa. 1997). This is not an exhaustive list and courts should look to the specific circumstances of a case to determine if other factors should be considered. *See id.* at 468; Rosenberger, *supra* note 5, at 595 (explaining that "justiciability, discovery, the enforceability of relief, and the public interest in knowing the plaintiff's identity" are factors the court should take into account in determining the consequences of granting or denying anonymity).

rums continue to expand.[104] The U.S. Supreme Court has established that the First Amendment protects individuals who wish to anonymously distribute leaflets and campaign literature.[105] In this day and age, similar literature and leaflets are often disseminated online through websites, blogs, and online forums, where the potential audience is potentially at its greatest.[106] With this technological evolution, it would be natural for the First Amendment's protection to be extended to those individuals posting similar anonymous content on the Internet.[107]

With the advent of Internet anonymity, people are more comfortable in widely disseminating provocative opinions or negative views about people or institutions knowing they are unlikely to be held accountable.[108] The screen provides a shield of anonymity.[109] It would be a natural progression to extend the Court's First Amendment free speech protections to anonymous speech on the Internet as the Internet is the modern day version of someone handing out leaflets on the street.[110] As a result, when an individual posts anonymous

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[104] *See* Jason M. Shepard & Genelle Belmas, *Anonymity, Disclosure and First Amendment Balancing in the Internet Era: Developments in Libel, Copyright, and Election Speech*, 15 YALE J.L. & TECH. 92, 94 (2012) (stating that the unique characteristics of the Internet and online speech have induced a slew of lawsuits over anonymous speech rights online); Allison Stiles, *Everyone's a Critic: Defamation and Anonymity on the Internet*, 2002 DUKE L. & TECH. REV. 4, 4 (stating that over the past few years online libel suits focusing on anonymous posting have been increasingly prevalent across the United States).

[105] *See* McIntyre v. Ohio Election Comm'n, 514 U.S. 334, 357 (1995) (holding that Ohio's statute forbidding the dissemination of anonymous campaign literature is a violation of the First Amendment).

[106] *See* Lee Tien, *Who's Afraid of Anonymous Speech?* McIntyre *and the Internet*, 75 OR. L. REV. 117, 136–37 (1996) (explaining how the Internet "amplifies" speech because it gives an online poster a very cheap platform to reach the masses, as compared with traditional paper announcements).

[107] *See id.* at 137 (stating that the decision in *McIntyre* should extend to speech on the Internet).

[108] *See* Matthew Mazzotta, Note, *Balancing Act: Finding Consensus on Standards for Unmasking Anonymous Internet Speakers*, 51 B.C. L. REV. 833, 841–42 (2010) (explaining that lawsuits against anonymous online posters cover various types of speech). The author explains that the subject matter can cover any topic imaginable, may involve issues of public importance or private matters, and the speech may contain elements that are arguably fact or opinion. *Id.*; *see* Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 69–71 (2009) (describing various types of cyber assaults that people engage in, such as death threats, rape threats, statements that damage individuals' reputations, and statements that affect individuals' employment prospects); Shepard & Belmas, *supra* note 104, at 96 (explaining that the computer screen not only shields people from being accountable for their speech on the Internet but it can also undermine government authority and security and undermine business interests).

[109] *See* P.H., *Anonymous Social Networking, Secrets and Lies*, THE ECONOMIST (Mar. 22, 2014), http://www.economist.com/blogs/schumpeter/2014/03/anonymous-social-networking [https://perma.cc/8LHK-MGT3] (explaining that the expansion of technology and social media enables children to bully their victims from afar instead of in person).

[110] *See* Scileppi, *supra* note 46, at 335 (explaining that the Supreme Court has already given wide First Amendment protections to speech on the Internet). This extension would naturally only go so far as to protect speech that is not considered defamation, obscenity, fighting words, or other regularly prohibited forms of speech. Laura Rogal, *Anonymity in Social Media*, 7 PHX. L. REV. 61, 67 (2013).

speech on the Internet and he or she is subsequently sued, he or she should be allowed to proceed anonymously.[111]

When a plaintiff brings a lawsuit against an online poster, it is natural for them to want to expose the identity of the individual who has injured them so that the defendant may, in turn, be subject to ridicule or otherwise suffer the consequences of having their conduct exposed to the public.[112] The online poster would probably prefer to remain anonymous in any judicial proceeding so that their name is not publicly associated with their alleged conduct.[113] If the court denies the online poster's motion to proceed anonymously and requires use of their given name, interlocutory review of a denial of a motion to proceed anonymously is appropriate under the collateral order doctrine.[114] As a result of the holding in *Village of Deerfield*, the court of appeals would have the requisite jurisdiction to hear this appeal before a judgment on the merits was entered.[115] If the court decides to hear the appeal, it will have to use the same balancing test applied in *Village of Deerfield* and weigh the poster's First Amendment interest, if any, against the public's interest in an open judicial system and the adversary's interest in knowing the identity of the defendant.[116]

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[111] *See* Tien, *supra* note 106, at 121 (proclaiming that anonymous speech on the Internet is deserving of First Amendment protections).

[112] *See* Samuel J. Morley, *Unmasking Anonymous Internet Posters: Can Civil Procedure Rules Adequately Protect Online Speech?*, 30 COMMC. LAW., Nov. 2013, *available at* http://www.americanbar.org/publications/communications_lawyer/2013/november/unmasking_anonymous_internet_posters_can_civil_procedure_rules_protect_online_speech.html [https://perma.cc/45E2-YCSV] (explaining that a plaintiff may want to identify the anonymous poster not only to pursue any legal claim but also to publicly expose the person who might be a competitor or discontent former employee); *see also* Ken Paulson, *Online Anonymity No Sure Thing in Libel Cases*, FIRST AMEND. CTR. (Sept. 5, 2012), http://www.firstamendmentcenter.org/online-anonymity-no-sure-thing-in-libel-cases [https://perma.cc/F9TF-C8N9] (explaining that, recently, numerous judges have upheld subpoenas from plaintiffs in libel suits demanding the identity of those who have posted negative things about them on the Internet).

[113] *See* Stiles, *supra* note 104, at 1 (explaining that defendants in Internet defamation lawsuits claim that it is not necessary to reveal their identity and that requiring them to reveal their identity would be a violation of their First Amendment rights).

[114] *See Village of Deerfield*, 819 F.3d at 376 (announcing that a denial of a motion to proceed anonymously meets the strict requirements of the collateral order doctrine and is therefore immediately appealable). The order definitively prevents the party from proceeding anonymously. *Id.* Whether a party to a case uses their real name or a pseudonym has no effect on the underlying merits being litigated. *Id.* If a party was required to litigate a case until a final judgment was entered using their real name, review of the motion at that stage would be pointless. *Id.*

[115] *See id.* (announcing that, as a class, denials of motions to proceed anonymously are immediately appealable).

[116] *See id.* at 377 (stating that the district court correctly balanced Doe's reasons for requesting anonymity against the defendants' and public's rights to know the identity of parties to a case and any potential prejudice that may affect the other party in making a determination on the motion); Rosenberger, *supra* note 5, at 592 (citing *Doe v. Stegall* to explain the lack of "hard and fast formula" of a balancing test and suggesting how courts should conduct the balancing test).

CONCLUSION

In 2016, in *Doe v. Village of Deerfield*, the U.S. Court of Appeals for the Seventh Circuit correctly decided, in accord with other Circuits, that, as a class, appeals from a denial of a motion to proceed anonymously are immediately appealable under the collateral order doctrine. The decision does not imperil the value of the final judgment rule, as the requirements of collateral order review remain demanding and it is unlikely that many other orders will be able to meet the requirements, if attempted in the future. The ruling is likely to have important implications when a case involving speech and anonymity on the Internet arises. The courts will then have to make a decision that could have far reaching consequences for First Amendment protections.

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