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12  
13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**  
15

16 DOE PUBLIUS and DEREK HOSKINS,  
17 Plaintiffs,  
18 v.  
19 DIANE F. BOYER-VINE, in her official  
capacity as Legislative Counsel of California,  
20  
21 Defendant.

Case No.: 1:16-CV-01152-LJO-SKO

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF REQUEST FOR  
PERMISSION TO ALLOW PLAINTIFF  
DOE PUBLIUS TO PROCEED  
PSEUDONYMOUSLY**

Hearing Date: April 27, 2017  
Hearing Time: 8:30 a.m.  
Judge: Hon. Lawrence J. O'Neill  
Courtroom 4, Seventh Floor  
Action Filed: Aug. 5, 2016

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I.

**INTRODUCTION**

This motion to allow Publius to continue prosecuting this case anonymously appears to be necessary because of the State’s frustration at losing the preliminary injunction motion. The State had four months’ notice that Publius would file a motion for preliminary injunction in December 2016, which the State would have to oppose in January 2017. The State never once claimed that it would be prejudiced in defending that motion without knowing Publius’ identity. Nor could it, given that the material factual issues here are not in dispute. The only questions are whether Government Code section 6254.21(c) is unconstitutional on its face and as applied to plaintiffs; Publius’ identity does not bear on either of those questions. Now, after the Court has found that Publius and co-Plaintiff Derek Hoskins are likely to prevail because section 6254.21(c) is unconstitutional as applied to them, the State objects to Publius’ anonymity.

A party may proceed anonymously if its need for anonymity outweighs (1) prejudice to the opposing party and (2) the public’s interest in knowing the party’s identity. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). As shown below, the circumstances of this case strongly favor Publius’ anonymity. In particular:

- Publius brings this First Amendment challenge with an established history of anonymous political blogging, and Publius has taken multiple steps to preserve anonymity in that context. The courts have long recognized the importance of anonymity in political speech, and they have likewise recognized that First Amendment plaintiffs should not have to choose between surrendering their anonymity and vindicating their First Amendment interests in litigation.

- The “public interest” in knowing the identity of parties drops dramatically when, as here, the government is a party defending government action. Moreover, the “public interest” analysis focuses on whether anonymity obstructs the public’s ability to follow the issues in the case. Where, as here, the case turns on legal issues applied to undisputed facts, the public’s ability to follow the litigation is not hindered in the least. As detailed further below, it appears that the State is interested in identifying Publius so his or her name can be dragged through the mud. That is precisely contrary to the public interest, which is served by encouraging persons expressing

1 minority viewpoints to vindicate their First Amendment rights.

2 • The State is not prejudiced by Publius’ anonymity. That the State litigated the  
3 preliminary injunction motion without ever arguing it needed to know Publius’ identity  
4 demonstrates that Publius’ continuing anonymity is not prejudicial: the issues at the permanent  
5 injunction stage remain exactly the same as they were at the preliminary injunction stage. In the  
6 wake of the preliminary injunction ruling, the State has failed to identify any discovery it needs  
7 that requires Publius’ identification.

8 The motion should be granted.

9 **II.**

10 **FACTUAL AND PROCEDURAL BACKGROUND**

11 **A. Publius Blogs Anonymously About California Politics On A Site With A Growing**  
12 **Audience.**

13 Plaintiff Doe Publius maintains a political blog on the Internet under the alias “The Real  
14 Write Winger.” Publius started blogging at therealwritewinger.wordpress.com in May 2016. The  
15 blog focuses on California politics, with a particular emphasis on criminal law, civil rights and  
16 liberties, and the right to keep and bear arms secured by the Second Amendment to the U.S.  
17 Constitution. Publius Decl., ¶ 2.

18 As the Supreme Court predicted in the early days of the Internet, bloggers like Publius “can  
19 become a town crier with a voice that resonates farther than it could from any soapbox.” *Reno v.*  
20 *Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997). Publius has developed a substantial  
21 following. In the ten months since starting the blog, more than 69,000 unique users have visited  
22 the site, yielding more than 90,000 page views. Publius’ posts have been accessed by online  
23 readers in 89 different countries. Publius Decl., ¶ 2.

24 In order to focus readers on the message—and out of fear of reprisal for being an  
25 outspoken advocate for Second Amendment rights, given the current environment in California—  
26 Publius has taken multiple steps to preserve anonymity. Publius has refrained from ever posting  
27 anything at therealwritewinger.wordpress.com site that reveals his or her personal identity.  
28 Publius uses a separate email address for blog-related business, with “Write Winger” appearing as

1 Publius’ name in the “to” or “from” lines. Publius has used the “Write Winger” name in all  
2 dealings with Wordpress, the web hosting service. *Id.* ¶ 3.

3 Finally, Publius makes no money from operating the blog. The site has no advertising and  
4 charges no fees of any kind. *Id.* ¶ 4.

5  
6 **B. The State Issued Multiple Demands That Publius’ “Tyrant Registry” Post Be  
Removed From The Internet.**

7 In July 2016, Publius posted a blog entry criticizing the California Legislature for passing  
8 several laws that Publius believes undermine the rights of California gun owners, including a law  
9 establishing a registry tracking all ammunition purchases and transfers. Publius characterized state  
10 lawmakers as “tyrants” and announced the establishment of a “tyrant registry” that listed the home  
11 addresses and telephone numbers of 40 legislators who voted to pass the bills Publius was  
12 protesting.

13 In response to the post, the California Legislative Counsel sent a written demand to  
14 WordPress.com (the Internet hosting service for Publius’ blog), threatening to pursue a lawsuit if  
15 WordPress did not remove the post pursuant to California Government Code section 6254.21(c).  
16 In response to the State’s demand and threat of litigation, WordPress disabled Publius’ post and  
17 removed it from the Internet. As detailed in the preliminary injunction papers, the State issued  
18 multiple similar demands to individuals who reposted some or all of the information on different  
19 Internet sites, including one demand sent to Plaintiff Derek Hoskins in New England. Plaintiffs  
20 filed a complaint for declaratory and injunctive relief alleging that Section 6254.21(c) is  
21 unconstitutional, and on December 15, 2016, Plaintiffs filed for a preliminary injunction. Dkt. 19.

22 On February 27, 2017, this Court issued an order granting Plaintiffs’ motion for a  
23 preliminary injunction, finding that Plaintiffs are likely to succeed on their claim that the statute is  
24 unconstitutional as applied to them. Dkt. 24. In doing so, the Court recognized that Plaintiffs’  
25 speech is “political protest, which is ‘core political speech,’ with First Amendment protection ‘at  
26 its zenith.’” Dkt. 24, 16:12–13 (quoting *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186–87  
27 (1996)).

28 ///

1 **C. The State Now Demands That The Court “Out” Publius.**

2 In its opposition to the preliminary injunction motion, the State complained that Publius  
3 had not already been unmasked and argued that Publius’ anonymity precluded *any* relief being  
4 granted. *See* Dkt. 20, Opp. to Mot. For Prelim. Inj., 6 n.6. But the State did not claim it was  
5 prejudiced by Publius’ anonymity. When asked to explain why it needed Publius’ identity in order  
6 to defend the case now, after vigorously defending the preliminary injunction, the State’s lawyer  
7 said the State wanted to know, for example, whether Publius had “multiple felonies” or  
8 “assassination attempts.” Duvernay Decl., ¶ 3. The State also claims Publius should be deposed to  
9 probe his or her background and “credibility,” *id.*, Ex. 2, while failing to identify any disputed  
10 facts where such background and credibility could make a difference in the outcome.

11 **III.**  
12 **ARGUMENT**

13 Publius should be permitted to prosecute this case anonymously. The Ninth Circuit has  
14 stated that “a party may preserve his or her anonymity in judicial proceedings in special  
15 circumstances when the party’s need for anonymity outweighs [1] prejudice to the opposing party  
16 and [2] the public’s interest in knowing the party’s identity.” *Advanced Textile*, 214 F.3d at 1068.<sup>1</sup>  
17 In the context of a First Amendment claim against the government that turns on the application of  
18 a statute to a public writing, the test is not difficult to pass.

19 **A. Publius Has A Compelling Need For Anonymity.**

20 Speaking out against the government, and against the government’s popular policies, is  
21 often fraught with the risk of social and economic retaliation, and of governmental harassment.  
22 Such risk of “harassment, injury, ridicule or personal embarrassment” is sufficient to justify  
23 allowing plaintiffs to proceed anonymously. *Advanced Textile*, 214 F.3d at 1068. Publius’  
24

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25 <sup>1</sup> *Advanced Textile* added that, “where pseudonyms are used to shield the anonymous party from  
26 retaliation, the district court should determine the need for anonymity by evaluating” the following  
27 factors: (1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s  
28 fears, and (3) the anonymous party’s vulnerability to such retaliation.” *Id.*; *see also Doe v.*  
*Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010) (combining  
*Advanced Textile* formulation into five factors).

1 blogging has already led to messages from third parties that suggest that revelation of his identity  
 2 could lead to such retaliation. *See* Publius Decl. at ¶ 5<sup>2</sup>; *Doe v. Stegall*, 653 F.2d 180, 183 n.6 (5th  
 3 Cir. 1981) (allowing plaintiffs to proceed anonymously, based in part on public statements made at  
 4 a school board meeting, including “God is fixing to come back. He’ll show them [plaintiffs],” and  
 5 “We have got to band together and whop this evil thing, . . . God says we can.”); *Advanced Textile*,  
 6 214 F.3d at 1062 (allowing foreign workers bringing Fair Labor Standards Act claim to proceed  
 7 anonymously, based on their fear of losing jobs and being deported back to China). Publius works  
 8 as an employee for a large, publicly-traded company. Based on Publius’ knowledge of this  
 9 employer’s political sensitivities, Publius believes his or her employment would be terminated if  
 10 persons opposed to Publius’ lawsuit were to publicly criticize the employer for its association with  
 11 Publius. Publius Decl., ¶ 6.

12 Moreover, plaintiffs are often entitled to proceed anonymously when they are challenging  
 13 the constitutionality of a law, and the challenge discloses that they might have violated that law or  
 14 were intending to do so. *See, e.g., Advanced Textile*, 214 F.3d at 1068 (citing challenge to then-  
 15 existing ban on homosexual conduct); *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004); *Southern*  
 16 *Methodist Univ. Ass’n v. Wynne & Jaffe*, 559 F.2d 707, 713 (5th Cir. 1979) (citing noted  
 17 anonymous litigant cases involving abortion rights, homosexual conduct, and then-criminal  
 18 fornication). Publius would prefer *not* to violate the law, which is the reason for filing this  
 19 challenge now, rather than waiting to be sued. But the State itself has argued against this course of  
 20 action, claiming (wrongly, in our view) that Publius lacks standing *until* he or she is sued for  
 21 violating the law. Now, the State not only wants to throw out Publius’ current challenge, but to  
 22 force Publius’ identity to be revealed, so that it could more effectively penalize Publius (via  
 23 potentially tens of thousands of dollars in attorney fees) in the event that it prevails against a later

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24 <sup>2</sup> These have included:

- 25 • “Why don’t you post your real name and address you fucking coward?”
- 26 • “Because you’re a scared lil bitch. Internet warrior.”
- 27 • “Stop being an asshole. And stop hiding behind a pseudonym like a coward. What’s your  
address?”
- 28 • “Or you could post yours, I want to come over and talk.”

Publius Decl., ¶ 5 and Ex. 1.



1 challenge. That cannot be right.

2 Judge Mukasey’s opinion in *Free Speech v. Reno*, 1999 WL 47310 (S.D.N.Y. 1999), is  
3 instructive here. Plaintiffs engaged in unlicensed radio broadcasts by an operation named “Steal  
4 This Radio.” They brought a facial and as-applied challenge to FCC licensing regulations and  
5 sought permission to proceed anonymously under their broadcast names rather than their personal  
6 names. To deny plaintiffs “permission to proceed by pseudonym would either expose plaintiffs to  
7 further penalties and prosecution or, more likely than not, *discourage them from pursuing their*  
8 *constitutional challenge.*” *Id.* \*3 (emphasis added). “[S]uch exposure is not required,” the court  
9 concluded, when “the public interest in knowing the facts does not demand otherwise.” *Id.*

10 The courts also regularly allow plaintiffs to proceed anonymously in the Establishment  
11 Clause setting, because many such plaintiffs, merely “by filing suit, [have] made revelations about  
12 their personal beliefs and practices that are shown to have invited an opprobrium analogous to the  
13 infamy associated with criminal behavior.” *Stegall*, 653 F.2d at 186; *Doe v. Porter*, 370 F.3d at  
14 560 (citing *Stegall* language in Establishment Clause claim); *Doe v. Madison Sch. Dist. No. 321*,  
15 147 F.3d 832, 833 n.1 (9th Cir. 1998) (plaintiff bringing Establishment Clause claim “feared  
16 retaliation by the community”), *vacated on other grounds*, 177 F.3d 789 (9th Cir. 1999) (en banc),  
17 *favorably cited by Advanced Textile Corp.*, 214 F.3d at 1067 (citing panel decision’s language as  
18 an example of when the Ninth Circuit “allow[s] parties to use pseudonyms”).

19 In the context of political speech, of course, the First Amendment *already* protects Publius’  
20 right to speak anonymously when criticizing the government. As the Supreme Court explained in  
21 *McIntyre v. Ohio Elections Commission*, there is a “respected tradition of anonymity in the  
22 advocacy of political causes.” 514 U.S. 334, 343 (1995). “Under our Constitution, anonymous  
23 [political advocacy] is not a pernicious, fraudulent practice, but an honorable tradition of advocacy  
24 and of dissent. Anonymity is a shield from the tyranny of the majority.” *Id.* at 357.

25 “[F]rom time to time throughout history,” persecuted groups “have been able to criticize  
26 oppressive practices and laws either anonymously or not at all.” *Id.* at 342 (quoting *Talley v.*  
27 *California*, 362 U.S. 60, 64 (1960)). Such anonymous political speech “exemplifies the purpose  
28 behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular

1 individuals from retaliation—and their ideas from suppression—at the hand of an intolerant  
2 society.”<sup>3</sup> *Id.* at 357. Accordingly, “an author’s decision to remain anonymous, like other  
3 decisions concerning omissions or additions to the content of a publication, is an aspect of the  
4 freedom of speech protected by the First Amendment.” *Id.* at 342.

5 This freedom extends to speech published on the Internet. “Although the Internet is the  
6 latest platform for anonymous speech, online speech stands on the same footing as other speech—  
7 there is ‘no basis for qualifying the level of First Amendment scrutiny that should be applied’ to  
8 online speech. As with other forms of expression, the ability to speak anonymously on the Internet  
9 promotes the robust exchange of ideas and allows individuals to express themselves freely without  
10 ‘fear of economic or official retaliation . . . [or] concern about social ostracism.’” *In re*  
11 *Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (citations omitted).

12 That Publius has taken steps to protect his or her anonymity—far beyond proceeding  
13 anonymously here—further weighs in favor of allowing Publius to maintain that anonymity. *See*  
14 *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008) (“whether the plaintiff’s  
15 identity has thus far been kept confidential” is a factor) (citing *Doe v. Del Rio*, 241 F.R.D. 154,  
16 157 (S.D.N.Y. 2006)); *Free Speech*, 1999 WL 47310 \*2 (“[s]ome additional factors that courts  
17 have found persuasive deciding whether to allow plaintiffs to proceed pseudonymously include the  
18 ‘extent to which the identity of the litigant has been kept confidential’”) (citing *Doe v. Provident*  
19 *Life and Acc. Ins. Co.*, 176 F.R.D. 464, 467 (E.D Penn. 1997)). Publius has kept his or her  
20 *personal* identity entirely separate from the “Write Winger’s” expressive identity.

21 Being forced to publicly disclose Publius’ identity would eliminate Publius’ right to  
22 *continue* engaging in anonymous political speech. That may be the most compelling threat here.

23 \_\_\_\_\_  
24 <sup>3</sup> The right to remain anonymous is not dependent on the threat of persecution or retaliation. In  
25 *McIntyre*, the Supreme Court explained that speakers may choose anonymity for any number of  
26 reasons: “On occasion, quite apart from any threat of persecution, an advocate may believe her  
27 ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby  
28 provides a way for a writer who may be personally unpopular to ensure that readers will not  
prejudge her message simply because they do not like its proponent. Thus, even in the field of  
political rhetoric, where ‘the identity of the speaker is an important component of many attempts to  
persuade,’ the most effective advocates have sometimes opted for anonymity.” 514 U.S. at 342–  
43 (citation omitted).

1 Indeed, one commenter to an online *San Francisco Chronicle* story about the case summarized the  
2 dilemma perfectly: “Why don’t they just publish this guy’s home address and personal data?  
3 Seems like a good way to stop that.” Comments, Bob Egelko, *Court sides with gun blogger who*  
4 *posted officials’ contact info*, S.F. Chronicle, Feb. 27, 2017, Duvernay Decl., Ex. 3 at p. 3.<sup>4</sup> (This  
5 opponent of Publius’ anonymous First Amendment activity identified himself (or herself) only as  
6 “Ranting\_\_Reader.”) Yet cases such as *McIntyre* and *Advanced Textile* make clear that the  
7 government cannot try “to stop that”—to stop people from exercising their rights—by demanding  
8 that they identify themselves and face harassment for exercising those rights.

9 Finally, Publius does not operate the “Real Write Winger” blog for commercial gain (even  
10 though anonymity is available even in actions related to commercial activity, *cf. Advanced Textile*,  
11 214 F.3d at 1062–65 (allowing anonymous workers to proceed with collective action under Fair  
12 Labor Standards Act on behalf of similarly-situated workers and other workers were also allowed  
13 to opt into class under seal)). Rather, Publius blogs to speak out about California politics and  
14 policy—that is, solely to exercise First Amendment speech rights.

15 **B. The Public Interest Strongly Favors Allowing Publius To Proceed Anonymously.**

16 The presumption that parties must use their real names in litigation arises out of the “right  
17 of *private individuals* to confront their accusers.” *Kamehameha*, 596 F.3d at 1042 (emphasis  
18 added). That interest does not exist here, as the State is the only defendant: Ms. Boyer-Vine is  
19 named in her official capacity as the Legislative Counsel. As Judge Mukasey recognized in *Free*  
20 *Speech*, 1999 WL 47310, \*2, “[t]he fact that the defendants are government entities rather than  
21 private defendants is significant because governmental bodies do not share the concerns about  
22 ‘reputation’ that private persons have when they are publicly charged with wrongdoing.” Indeed,  
23 multiple decisions demonstrate that challenging the constitutionality of government activity is  
24 itself a factor that cuts in favor of preserving a litigant’s anonymity. In *Doe v. Stegall*, which the  
25 Ninth Circuit cited repeatedly in *Advanced Textile*, 214 F.3d at 1067–69, the Sixth Circuit said that  
26 one of the primary factors to consider is whether “plaintiffs seeking anonymity were suing to

27 \_\_\_\_\_  
28 <sup>4</sup> The “Comments” page can be accessed online at <http://bit.ly/2mQjefl>.

1 challenge governmental activity.” *Stegall*, 653 F.2d at 185; *Doe v. Porter*, 370 F.3d at 560 (same);  
2 *Sealed Plaintiff*, 537 F.3d at 190 (same).

3 No doubt, this case has attracted media scrutiny and curiosity, perhaps in part because of  
4 the very fact that Publius is anonymous. But curiosity is not the “public interest” that matters here.  
5 The question is whether disguising Publius’ identity will “obstruct public scrutiny of the important  
6 issues in the case.” *Advanced Textile*, 214 F.3d at 1072.

7 And the answer is that Publius’ identity is not relevant to the issues in this case, which are  
8 legal questions about the constitutionality of a statute as applied to undisputed facts. Courts have  
9 recognized in other cases that, “because of the purely legal nature of the issues presented . . . , there  
10 is an atypically weak public interest in knowing the litigants’ identities.” *Sealed Plaintiff*, 537  
11 F.3d at 190; *Free Speech*, 1999 WL 47310 \*2 (same); *Advanced Textile*, 214 F.3d at 1068–69  
12 (allowing anonymity when “[p]arty anonymity does not obstruct the public’s view of the issues  
13 joined or the court’s performance in resolving them”) (citation omitted). Thus here, as in the *Free*  
14 *Speech* case, “because the particular plaintiffs in this constitutional challenge are essentially  
15 interchangeable with similarly situated persons” who might want to engage in similar speech—or,  
16 as with Hoskins and others, simply to repost some or all of Publius’ post—“there appears little  
17 public interest in which particular persons have actually sued” and the “public need not learn  
18 plaintiffs’ legal names in order to be fully alerted to the legal issues before the court.” *Id.* at \*3.

19 In fact, the controversial nature of Publius’ political speech cuts in favor of anonymity in  
20 the “public interest” balance: “the public may have a strong interest in protecting the privacy of  
21 plaintiffs in controversial cases so that these plaintiffs are not discouraged from asserting their  
22 claims.” *Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 467 (E.D. Pa. 1997). Indulging  
23 the State’s apparent desire to drag Publius through the mud will not only distract attention from the  
24 actual legal issues before the Court—it will also deter other speakers with minority viewpoints  
25 from standing up for their First Amendment rights.

26 The procedural posture of the case also favors Publius’ anonymity in the “public interest”  
27 balance. The Court has already found that Publius is likely to prevail on the merits of the case.  
28 Just as the preliminary injunction context recognizes there is no public interest in enforcing an

1 unconstitutional law, *see* Preliminary Injunction Oder at 37, so too there is no public interest in  
2 hampering the vindication of constitutional rights that are likely being violated. As in *Advanced*  
3 *Textile*, where anonymity was granted to allow plaintiffs to vindicate statutory rights, allowing  
4 Publius to use a pseudonym will affirmatively serve the public interest by enabling Publius’ claim  
5 to go forward and be resolved on the merits. *See Advanced Textile*, 214 F.3d at 1073 (“fear of . . .  
6 reprisals will frequently chill [litigants’] willingness to challenge . . . violations of their rights”).

7 **C. Publius’ Anonymity Does Not Prejudice The State’s Defense.**

8 “The court must also determine the precise prejudice at each stage of the proceedings to the  
9 opposing party, and whether proceedings may be structured so as to mitigate that prejudice.”  
10 *Advanced Textile*, 214 F.3d at 1068. Here, the State will suffer no prejudice if Publius proceeds  
11 anonymously. The State had months to prepare for the preliminary injunction motion it knew was  
12 coming,<sup>5</sup> yet it never once argued that it needed to know Publius’ identity in order to oppose the  
13 preliminary injunction, whether on the merits of the claims or otherwise.

14 That is because the merits here do not turn on Publius’ identity or anything personal to  
15 Publius. When the State signed on to the Joint Scheduling Report in December 2016, it agreed  
16 that “[t]he basic factual issues are uncontested.” Dkt. No. 25. Indeed, whether the application of  
17 Section 6254.21(c) to Publius’ “Tyrant Registry” post is constitutional does not change based on  
18 any facts that require Publius’ identity. Setting aside the troubling implications of the State’s  
19 surmising about whether Publius has “multiple felony convictions” or “assassination attempts,”  
20 Publius’ personal history does not impact the merits. (While Publius would not surrender First  
21 Amendment rights to speak out even if he/she had a criminal record, Publius affirms in the  
22 declaration accompanying this motion that he/she has no criminal record. Publius Decl., ¶ 8. And,  
23 if the Court finds it necessary or worthwhile, Publius would disclose his/her identity to the Court  
24 under seal so that the Court may verify this fact.)

25 Publius also claims no harm other than the constitutional violation that the Court has  
26 already considered. In short, the State can point to no “individualized accusations” that may

27 <sup>5</sup> The parties started discussing scheduling in August 2016. Duvernay Decl., ¶ 2.  
28

1 justify unmasking Publius. *Cf. Advanced Textile*, 214 F.3d at 1072 (leaving open possibility of  
2 identifying plaintiffs later in proceedings if “necessary” to “refute individualized accusations of  
3 FLSA violations”).

4 When the Court asked the parties to report on how they wished to proceed following the  
5 preliminary injunction ruling, Plaintiffs’ counsel sought to engage the State’s counsel on why this  
6 case could not go straight to summary judgment. The State’s counsel said the State may seek  
7 third-party discovery of Wordpress in furtherance of the State’s argument that, contrary to the  
8 evidence submitted at the preliminary injunction motion, Wordpress did not take down Publius’  
9 post in response to the State’s demand, and therefore (the theory goes) Publius does not have  
10 standing. But no personal facts about Publius will affect that standing argument.<sup>6</sup>

11 The State’s counsel said it may want to inquire further into how Publius obtained the  
12 legislators’ home addresses, but that does not require disclosure of Publius’ identity. (It is also  
13 entirely unclear how the method by which Publius obtained the addresses matters, given that the  
14 Legislators’ home address information is indisputably publicly available, and indeed must be  
15 available as a matter of law for “political purposes.” Cal. Elec. Code § 2194(a)(3).)

16 When Plaintiffs’ counsel asked the State to confirm what other discovery it thinks it needs,  
17 the State’s counsel claimed that it needed to depose Publius. Counsel noted that the State was not  
18 interested only in whether he or she has a criminal record, but also to “inquire about Publius’s  
19 background and credibility more generally.” Duvernay Decl., Ex. 2. In other words, the State  
20 hopes to discredit Publius as a person, despite the absence of any dispute about the facts that form  
21 the basis for the constitutional analysis here—at least as they relate to Publius’ personal identity.  
22 Thus the need for this motion.

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25 <sup>6</sup> This case thus contrasts with the Establishment Clause cases, where, for instance, anonymous  
26 parties challenge a school district’s practices and the district seeks to confirm that the families  
27 actually live in the district. Such concerns justify partial disclosure, while still shielding plaintiffs’  
28 identity from the general public. *See, e.g., Madison Sch. Dist.*, 147 F.3d at 834 n.1 (“district court  
judge met in chambers with Doe, without defense counsel present, to determine whether she had  
standing”); *Porter*, 370 F.3d at 561 (allowing disclosure of names and addresses to defense  
counsel to confirm enrollment status).

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**IV.**  
**CONCLUSION**

At the preliminary injunction stage, the State revealed its contempt for Publius’ anonymous speech rights when it lamented the supposed “irony if not the hypocrisy, in Publius’s insistence that no harm can befall the legislators from his publicly posting their home addresses and telephone numbers on the internet at the same time that he refuses to disclose even his *name* for fear of retribution.” Dkt. 20, Opp. to Prelim. Inj. Motion, at 6 n.6 (emphasis in original). But an attempt to resist the forced disclosure of identity is entirely consistent with an attempt to resist forced suppression of speech—both are attempts to preserve the rights of private individuals to speak out, without fear of harassment, retaliation, or (under § 6254.21) having to pay tens of thousands of dollars in attorney fees. California law seeks to coercively suppress speech; and there is no hypocrisy in resisting such speech suppression while trying to preserve one’s anonymity. All the factors point in favor of Publius’ desire to petition for redress of grievances anonymously, which is entirely consistent with his desire to speak freely.

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