

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

██████ L. ██████,

Plaintiff-Appellee,

v.

Ghislaine Maxwell,

Defendant-Appellee,

v.

Sharon Church, Jeffrey Epstein,

Respondents,

Julie Brown, Miami Herald Media Company,

Intervenors-Appellants

Docket No. 18-2868

**INTERVENORS-APPELLANTS JULIE BROWN AND MIAMI HERALD
MEDIA COMPANY'S RESPONSE TO THE COURT'S ORDER TO SHOW
CAUSE**

Intervenors-Appellants Julie Brown and Miami Herald Media Company (“Miami Herald”, and together with Julie Brown “Intervenors-Appellants”) hereby respond in opposition to the redactions proposed by Defendant-Appellee Ghislaine Maxwell and proposed Amicus Curiae John Doe and in support of the limited redactions proposed by Plaintiff-Appellee [REDACTED] [REDACTED].

ARGUMENT

I. INTERVENORS-APPELLANTS SUPPORT PLAINTIFF-APPELLEE [REDACTED] [REDACTED] RESPONSE TO THIS COURT’S ORDER TO SHOW CAUSE

Intervenors-Appellants agree with the arguments and authorities cited by Plaintiff-Appellee [REDACTED] [REDACTED] in her response to this Court’s Order to Show Cause. The proposed redactions set forth in Appendix A to her response are sufficient to protect the personal identifying information of the alleged victims and their relations without encroaching on the public’s First Amendment and common law right to access the majority of the material on the docket. (*see* Doc. No. 147, pp. 11-17.) Redactions for such limited purposes are permitted by courts in this Circuit. *See, e.g. Inklan v. New York Hosp. Grp., Inc.*, 95 F. Supp. 3d 490, 512 (S.D.N.Y. 2015) (permitting limited redaction of home addresses and social security numbers); *Prescient Acquisition Grp., Inc. v. MJ Pub. Tr.*, 487 F. Supp. 2d 374, 375-76 (S.D.N.Y. 2007) (ordering unsealing of deposition transcripts submitted on motion for summary judgment but permitting sealing of exhibit

showing copies of two bank checks); *United States v. Madoff*, 626 F. Supp. 2d 420, 427 (S.D.N.Y. 2009) (authorizing redaction of emails to withhold personal identifying information of victims of financial crimes and noting that “the substance of the emails has been made public”). Ms. Giuffres’s proposed redactions accomplish this goal by limiting redactions to, variously, social security numbers, the names of minors, alleged victims and their relations, and other personal identifying information (addresses, dates of birth, phone numbers) of the same.

These limited redactions conform with the law of the Circuit, and, as detailed below stand in stark contrast to the vague, conclusory statements of Defendant-Appellee Ghislaine Maxwell and proposed Amicus Curiae John Doe regarding potential reputational harm. Such generalizations are insufficient to overcome the presumption of access under the common law and the First Amendment to the United States Constitution.

II. THE ARGUMENTS OF PROPOSED AMICUS CURIAE JOHN DOE SHOULD BE REJECTED

As a preliminary matter, John Doe’s proposed amicus brief is an improper vehicle by which to submit his arguments. *See United States v. Gotti*, 755 F. Supp. 1157, 1158 (E.D.N.Y. 1991) (noting that the “phrase amicus curiae means, literally, ‘friend of the court,’” and ‘serv[es] for the benefit of the court and for the purpose of assisting the court in cases of general public interest”); *Long Island*

Soundkeeper Fund, Inc. v. New York Athletic Club of City of New York, No. 94 CIV. 0436 (RPP), 1995 WL 358777, at *1 (S.D.N.Y. June 14, 1995) (“Denial of leave to appear as amicus in a situation such as this, in which the applicant appears to have its own particular interests in the outcome of the litigation, is far from unprecedented”); *S.E.C. v. Bear, Stearns & Co. Inc.*, No. 03 CIV.2937 WHP, 2003 WL 22000340, at *6 (S.D.N.Y. Aug. 25, 2003) (“Conferring *amicus* status on such partisan interests is inappropriate” where the “Court does not believe that [the petitioners] are seeking to assist the Court in clarifying the issues as an objective, neutral, dispassionate friend of the court.”) (internal quotation marks and citation omitted). John Doe is admittedly self-interested in seeking closure: “The release of unredacted Summary Judgment Materials may well substantially infringe the privacy and reputational interests of many third persons, *potentially including Amicus. . .*”. (Doc No. 153-1, at p. 5.) And, John Doe’s anonymity due to personal privacy concerns confirms the same. Therefore, proposed Amicus Curiae John Doe’s motion for leave to file an amicus brief should be denied.¹

Should the Court accept his amicus brief, the Court should reject the generalized, conclusory statements purporting to justify redactions, as the law requires specific reasons for each requested redactions, sufficient to justify the

¹ Intervenors-Appellants note that proposed Amicus Curiae John Doe has also filed a motion to intervene (Doc. No. 152), however John Doe has not submitted a brief in support of this motion.

appropriate findings by a judge. *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, No. 14-CV-6867 (VEC), 2016 WL 1071107, at *10 (S.D.N.Y. Mar. 18, 2016), *aff'd*, 814 F.3d 132 (2d Cir. 2016). Similar to Defendant-Appellee Ghislaine Maxwell, John Doe merely makes generalized allusions to “reputational interests” (Doc. No. 153-2, at 13) to support his attempt to seal information and in no way attempts to satisfy the standards imposed by *United States v. Amodeo*, 44 F.3d 141 (2d Cir. 1995) (“Amodeo I”); *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995) (“Amodeo II”); *Lugosch v. Pyramid Co, if Onondaga*, 435 F.3d 110 (2d Cir. 2016) and their progeny. Indeed, proposed Amicus Curiae “admittedly lacks any specific knowledge of the contents of the sealed ‘Summary Judgment Materials’” (Doc. 153-2, at p. 6) and thus cannot make the requisite factual showing that any of the material should be redacted.

III. DEFENDANT-APPELLEE GHISLAINE MAXWELL’S VAGUE PRIVACY ASSERTIONS SHOULD BE REJECTED

The privacy arguments proffered by Defendant-Appellee Maxwell are the same as those presented at oral argument: speculation and conclusions without any factual or evidentiary basis regarding possible reasons for redaction, and misrepresentations of the law. If a party seeks closure, the law requires a document-by-document, and in some cases line-by-line, analysis to determine whether there are reasons for closure compelling enough to overcome the presumption of access under the common law and the First Amendment. *See*

Bernstein 2016 WL 1071107, at *10 (“Accordingly, determining whether the ethical concerns raised by providing public access to a judicial document outweigh the public’s constitutional right of access must be done on a case-by-case basis”); *United States v. Smith*, 985 F. Supp. 2d 506, 528 (S.D.N.Y. 2013) (“Rather, the courts should evaluate the extent of the harm to public officials caused by the discovery materials on a case-by-case basis, taking into consideration the nature of the information in the discovery materials, as well as the public officials at issue”). Instead of making this demonstration, Ms. Maxwell has asserted – incorrectly and in contravention to the law of this Circuit – that many of the summary judgment documents are not “judicial documents” and has otherwise proposed redaction or wholesale sealing of documents without any particularized showing of a compelling privacy interest.

IV. THE SUMMARY JUDGMENT DOCUMENTS ARE JUDICIAL DOCUMENTS

Finally, it bears emphasis that the summary judgment documents, including the District Court’s summary judgment decision, Defendant Ghislaine Maxwell’s motion for summary judgment, Plaintiff ██████████ ██████████ response in opposition to the motion for summary judgment, Maxwell’s reply, and the materials filed in connection with the motion, opposition, and reply are judicial documents subject to the presumption of access. *Lugoscha*, 435 F.3d at 121. Notwithstanding this finding, Defendant-Appellee Ghislaine Maxwell has asserted that a majority of

these documents are “not [] judicial document[s]” because they were “not relied upon by the Court.” (Doc. No. 149 at pp. 5-10.) This position misstates the law. As recognized by this Circuit “a document is judicial not only if the judge actually relied upon it, but also if ‘the judge *should* have considered or relied upon [it], but did not.’” *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, n. 3 (2d Cir. 2016) (quoting *Lugosch* 435 F.3d at 123). This rule is in keeping with the purpose of the presumption of access, which is, in part, to “allow the public an opportunity to assess the correctness of the judge’s decision.” *Lugosch*, 814 F.3d at 123 (citation omitted).

Here, the summary judgment motion, opposition, reply, and their supporting documentation were submitted to influence the judicial determination of the merits of the underlying defamation action. The public has a right to know how the District Court treated this information, whether it found the documents compelling or not. *See, e.g. Prescient Acquisition Grp., Inc.*, 487 F. Supp. 2d at 375-76 (finding that deposition transcripts submitted on a motion for summary judgment document were judicial documents because “once submitted, [the documents], *could be* relied upon by either party or the court”) (emphasis supplied).

CONCLUSION

For the foregoing reasons, the proposed redactions of Defendant-Appellee Ghislaine Maxwell and proposed Amicus Curiae John Doe should be rejected and

the summary judgment documents should be unsealed subject to the redactions proposed by Plaintiff-Appellee [REDACTED] [REDACTED]. Intervenors-Appellants further urge the court, after making the summary judgment papers public because there has been no showing of good cause not to do so, to remand the remainder of the case to the district court to conduct an *in camera* hearing to determine whether any documents should be redacted, with instructions to permit Intervenors-Appellants, as the public's surrogate, to present argument regarding redaction along with the original parties.

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Respectfully submitted,

/s/ Sanford L. Bohrer

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