

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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ORLANDO DIVISION

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND JACK  
DOE,

Plaintiff,

Civ. Action No.

6:18-cv-102-ORL-

Judge \_\_\_\_\_

37-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**MOTION TO PROCEED UNDER PSEUDONYMS**

Plaintiff John Doe is a fifteen-year-old transgender boy who is suing his school for discrimination through his parents as next friends. John Doe, through his parents and next friends, Susan and Jack Doe, seeks to proceed anonymously in this case due to the highly sensitive and private nature of the facts involved, as well as the risk of stigma and retaliation he and his family face if his identity is made public. Susan and Jack Doe also seek to proceed anonymously to prevent indirect disclosure of John’s identity and further protect John’s privacy as well as the privacy of his three siblings, two of whom are minors. Proceeding under the pseudonyms of “John Doe” and “Susan and Jack Doe” will protect Plaintiff and his family’s privacy as well as his mental and physical well-being. Use of the pseudonyms will not in any way interfere with Defendant’s ability to defend itself and no public interest is served by knowing the true identities of John or his parents.

## LEGAL ARGUMENT

Minor litigants have a “special status and vulnerability” that entitles them to “heightened privacy protections.” *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981); *D.L. ex rel. Phan L. v. Bateman*, No. 3:12-CV-208-J-32JBT, 2012 WL 1565419, at \*2 (M.D. Fla. May 2, 2012). Federal Rule of Civil Procedure 5.2(a)(3) protects minors involved in litigation by requiring redaction from any court filing of “the name of an individual known to be a minor” and the use instead of only “the minor’s initials.” As such, in ratifying Rule 5.2, Congress determined that even if there is no particular threat to a juvenile’s safety or well-being, a minor’s privacy interest is paramount to any interest the public might have in learning his name.

Here, because of John Doe’s particular vulnerability, and the heightened risk of retaliation he and his family face if his community learns that he is transgender, John seeks the additional protection of using a pseudonym for himself and his parents. *See, e.g., Santa Fe Indep. Sch. Dist v. Doe*, 530 U.S. 290, 294 (2000) (noting the District Court’s decision to allow high school-aged plaintiffs *and their mothers* “to litigate anonymously to protect them from intimidation or harassment” in controversial case regarding school prayer); *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1012 (9th Cir. 2010) (child plaintiff proceeding as “Roe Child” and parent proceeding as “Jan Roe”). If John were to receive only the protections of Rule 5.2, his initials and his parents’ full names would be disclosed in the public record. This information would be enough to identify John and his family to individuals, which could in turn expose them to stigma and retaliation by members of their community. The use of pseudonyms is therefore necessary to protect John’s and his family’s privacy interests.

In order to proceed anonymously, a party must show that he “has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness

in judicial proceedings.” *Plaintiff B v. Francis*, 631 F.3d 1310, 1315–16 (11th Cir. 2011) (citing *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992)) (internal quotations omitted). Courts look to the following three factors: “First, [is] the plaintiff[] seeking anonymity challenging governmental activity? Second, will [plaintiff] be required to disclose information of the utmost intimacy? Third, will the plaintiff[] be compelled to admit [his] intention to engage in illegal conduct and thus risk criminal prosecution?” *Francis*, 631 F.3d at 1315–16. These three factors are “only the first step” of consideration and no one factor is dispositive; instead, courts are required to evaluate “all the circumstances of a given case.” *Id.* at 1316; *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (internal citation omitted).

Other factors courts may consider include whether the plaintiffs are minors, whether proceeding in their own names poses a threat of violence or physical harm, and whether allowing plaintiffs to proceed anonymously poses “a unique threat of fundamental unfairness” to the defendants. *Francis*, 631 F.3d at 1316 (internal citations omitted); *see also Florida Action Comm., Inc. v. Seminole Cty.*, No. 615CV1525ORL40GJK, 2016 WL 6080988, at \*2 (M.D. Fla. Oct. 18, 2016); *Freedom From Religion Found., Inc. v. Emanuel Cty. Sch. Sys.*, 109 F. Supp. 3d 1353, 1357 (S.D. Ga. 2015). “The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the ‘customary and constitutionally-embedded presumption of openness in judicial proceedings.’” *Frank*, 951 F.2d at 323 (quoting *Stegall*, 653 F.2d at 186).

The first two factors of the three-factor test, as well as the special consideration given to the privacy of minors, strongly favor Plaintiff and his parents here. In this case, an order permitting Plaintiff to proceed anonymously is necessary to protect John’s privacy interest as a transgender child in his sensitive and highly personal medical information, as well as to protect

John and his family from the likely threats and harassment they could experience if his community learns that he is transgender. Such an order will not prejudice Defendant, a governmental entity, in any way and, as Congress has already recognized by enacting Rule 5.2(a)(3), a minor's privacy interest outweighs any public interest in knowing John's real name.

**I. SPECIAL CIRCUMSTANCES ARE PRESENT THAT JUSTIFY ANONYMITY.**

**A. As a transgender child, John Doe has a strong privacy interest in protecting his sensitive and highly personal medical information.**

All minor plaintiffs are granted heightened legal protection of their privacy. The notion that juveniles' identities are protected during litigation is reflected not only in Rule 5.2(a)(3), but also in federal cases from across the country. *See, e.g., Stegall*, 653 F.2d at 186 (emphasizing "the special status and vulnerability of the child-litigants"); *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004) (fact that plaintiffs are children is one consideration in the determination of whether a plaintiff's privacy interests outweighs presumption of open judicial proceedings).

In addition, courts have also recognized transgender individuals as a class of plaintiffs that should be permitted to proceed anonymously. *See, e.g., Frank*, 951 F.2d at 324 (recognizing that transgender plaintiffs have been permitted to proceed anonymously because the social stigma attached to the disclosure overcomes any presumption in favor of open court proceedings) (citing *Doe v. McConn*, 489 F. Supp. 76 (S.D. Tex. 1980)); *Doe v. United States*, 16-CV-0640, 2016 WL 3476313, at \*1 (S.D. Ill. June 27, 2016); *Doe v. Blue Cross & Blue Shield of R.I.*, 794 F. Supp. 72, 72-73 (D.R.I. 1992); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at \*5 (S.D. Ohio Aug. 15, 2016) (granting Doe status due to "compelling reasons to protect [a transgender student's] privacy and shield her from discrimination and harassment"); *Doe v. Rostker*, 89

F.R.D. 158, 161 (N.D. Cal. 1981) (“the most common instances” in which plaintiffs are permitted to proceed anonymously include “cases involving . . . transsexuality”).<sup>1</sup> In *Doe v. Blue Cross & Blue Shield of R.I.*, for instance, a transgender plaintiff sued an insurance provider under a fictitious name to avoid public identification as a transgender person, protect his privacy, and insulate himself from social stigmatization and harassment. 794 F. Supp. at 72-73. The court found that often, “transsexual litigants were permitted to proceed under fictitious names,” and that “transsexuality” is a frequent exception to the “general rule requiring plaintiffs to include the names of all parties in their complaints.” *Id.* at 73-74. Indeed, the “social stigma” that is still associated with having a cross-gender identity makes a transgender litigant’s “privacy interest . . . both precious and fragile.” *Id.* at 74 (internal quotations omitted).

Here, John Doe seeks to proceed anonymously to preserve his privacy in a matter that involves sensitive and highly personal information, including medical information. John is a high school student who has been diagnosed with gender dysphoria and has an extensive medical history regarding his gender identity. Unlike most cases involving medical conditions, the underlying symptoms, diagnosis and treatment options in this case are even more sensitive and personal in nature given the fact that they revolve around a juvenile’s gender transition and the impact it has on his mental health. *See Doe v. Univ. of Conn.*, 2013 WL 4504299, at \*28 (D. Conn. Aug. 22, 2013) (“no doubt” that case involving plaintiff with a history of emotional conditions involves matters that are highly sensitive and of a personal nature).

Because this case involves intimate details about “the most intimate parts of one’s life,” including Plaintiff’s genitalia, pubertal development, medical history, mental health, and gender

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<sup>1</sup> The terms “transsexual” and “transsexuality” have fallen out of favor, but were used to describe a status synonymous with being transgender: having a gender identity different than one’s birth sex.

identity, proceeding anonymously is particularly warranted. *Blue Cross & Blue Shield of R.I.*, 794 F. Supp. at 74.

**B. Revealing John Doe's initials and his parents' identities would create a threat of stigma and mental harm.**

Given the stigma and bias that many people have against transgender people, John is at particular risk of harm if his identity is revealed through this lawsuit. If John and his parents are not allowed to proceed anonymously, the fact that he is a transgender youth will become public knowledge to everyone at his school and in his community. John's transgender status is highly personal medical information that, if disclosed, will create a real and unacceptable risk of bullying and harassment. This, in turn, could affect John's mental health and his ability to participate in school and obtain his education.

The need for anonymity is particularly acute given the fact that John is only fifteen years old. "The gravity of the danger posed . . . must also be assessed in light of the special vulnerability of th[e] child-plaintiff[]." *Stegall*, 653 F.2d at 186. Studies have found that transgender youth are particularly at risk for depression and suicidal ideation and attempts, but that these risks are lessened by a safe and supportive school environment. Arnold H. Grossman and Anthony R. D'Augelli, *Transgender Youth and Life-Threatening Behaviors*, 37 *Suicide & Life-Threatening Behavior* 527-37 (2007); Ctrs. for Disease Control & Prevention, *Lesbian, Gay, Bisexual and Transgender Health*, <http://www.cdc.gov/lgbthealth/youth.htm> (last accessed January 7, 2018). Allowing a child and his or her parents to proceed anonymously in court proceedings is appropriate, in light of the very real risks of harassment transgender youth face. *See Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 603 (Me. 2013) (lawsuit on behalf of transgender minor student seeking equal access school facilities prosecuted by "John and Jane Doe, parents of Susan Doe").

**II. PROTECTING JOHN DOE'S ANONYMITY WILL NOT PREJUDICE DEFENDANT AT THIS OR ANY OTHER STAGE OF THE LITIGATION.**

Defendant suffers no prejudice by allowing John and his parents to proceed in this litigation under pseudonyms. *See e.g., Blue Cross & Blue Shield of R. I.*, 794 F. Supp. at 74-75 (transgender plaintiff who was denied insurance coverage had a substantial privacy interest at stake, no significant harm would come to the defendants, and there was no overriding public interest in disclosing plaintiff's identity); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at \*5 (finding "no apparent prejudice to the other parties in this suit" and allowing transgender minor to proceed pseudonymously). Defendant is already aware of John's and his parents' identities. Moreover, John's identity is not necessary to any defense Defendant may assert. To the extent that Defendant may need to file a document in Court that identifies John, it can redact the document or file it under seal. *See* Local Rule 1.09. Indeed, Fed R. Civ. P. 5.2 already requires parties to redact from publicly filed documents personal information like social security numbers and names of minors.

**III. THE SPECIAL CIRCUMSTANCES IN FAVOR OF PROTECTING JOHN AND HIS PARENTS' ANONYMITY OUTWEIGH THE PUBLIC'S INTEREST IN KNOWING THEIR IDENTITIES.**

Additionally, the need to allow John and his parents to proceed anonymously outweighs the public's interest in knowing their identities. There is no way in which "disguising plaintiff[s] identity will obstruct public scrutiny of the important issues in this case." *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072 (9th Cir. 2000). Indeed, although "the question whether there is a constitutional right to abortion is of immense public interest, . . . the public did not suffer by not knowing the plaintiff's true name in *Roe v. Wade*." *Id.* at 1072, n.15.

## CONCLUSION

For all of the reasons stated in this motion, Plaintiffs respectfully request that this Court grant their Motion for Leave to Proceed Under Pseudonyms. Anonymity for John and his parents is both necessary to preserve privacy in a matter of a sensitive and highly personal nature and to prevent stigmatization and harassment of John and his family. This lawsuit necessarily touches on some of the most intimate and private facts about John's life. Further, Plaintiff is a juvenile who could face abuse and harassment if his transgender status is known in his community. A full vetting of the legal issues surrounding his right to be free from discrimination at school does not require John to reveal the highly private and confidential information at issue in this case.

### Rule 3.01(g) Certification

Pursuant to Local Rule 3.01(g), counsel for the Plaintiff will confer with defense counsel upon said counsel's entry of an appearance in this matter. Immediately after the occurrence of such conference, Plaintiff's counsel will supplement this motion to advise the Court of defense counsel's position regarding the relief requested herein.

Dated: January 19, 2018

Respectfully submitted,

  
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