

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

CIVIL ACTION NO. 1:18-cv-01565

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
TO FILE UNDER SEAL EXHIBITS A & B TO PLAINTIFFS'
OPPOSITION TO THE MOTION TO DISMISS AND REPLY IN
SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs respectfully request that Exhibits A and B to Plaintiffs' Opposition to the Motion to Dismiss and Reply in Support of their Motion for a Preliminary Injunction be filed under seal pursuant to Local Civil Rule 5. Plaintiffs will also file redacted versions of these Exhibits. In support of this request, Plaintiffs state as follows:

1. Plaintiffs have moved the Court to file under seal two declarations in support of their Opposition to the Motion to Dismiss and Reply in Support of their Motion for a Preliminary Injunction.

2. Exhibit A is a supplemental declaration by Plaintiff Richard Roe, an active duty Service member who is being discharged from the Air Force because of his HIV status. Plaintiff Roe also made a declaration in *Harrison, et al. v. Mattis, et al.*, and another supplemental declaration in connection with Plaintiffs' Motion for a Preliminary Injunction, both of which were attached as exhibits to Plaintiffs' Motion for a Preliminary Injunction. *See* (Exs. A & A1 to

Pls.' Mot. For Prelim. Inj., ECF No. 44). This declaration supplements the information provided by Plaintiff Richard Roe in those two declarations.

3. Exhibit B is a supplemental declaration by Plaintiff Victor Voe, an active duty Service member who is being discharged from the Air Force because of his HIV status and the Air Force's determination that he is less than worldwide deployable because of his HIV. Plaintiff Voe also made a declaration in connection with Plaintiffs' Motion for a Preliminary Injunction, which was attached as an exhibit to Plaintiffs' Motion for a Preliminary Injunction. *See* (Ex. B to Pls.' Mot. For Prelim. Inj., ECF No. 44). This declaration supplements the information provided by Plaintiff Victor Voe in that declaration.

4. With this Memorandum in Support of Plaintiffs' Motion to File Under Seal, Plaintiffs have also filed a Notice of Motion to File Under Seal, Motion to File Under Seal, and a Proposed Order to seal the materials pursuant to Local Rule 5.

5. Under established Fourth Circuit precedent, there are three requirements for sealing court filings: (1) public notice of the request to seal with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings supporting a decision to seal and rejecting alternatives to seal. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000).

6. Plaintiffs Roe and Voe have requested that their declarations be sealed because of the stigma and discrimination against people living with HIV. Both Roe and Voe feel that if their identities become public knowledge, they will be discriminated against or otherwise harmed because they are living with HIV.

7. This fear is a legitimate reason to seal their declarations. *See, e.g., Patient v. Corbin*, 37 F. Supp. 2d 433, 434 (E.D. Va. 1998) (Brinkema, J.) (finding proceeding

anonymously appropriate because “[b]eing HIV positive carries a significant stigma in many parts of today’s society.”); *Doe v. William Shapiro, Esquire, P.C.*, 852 F. Supp. 1256 (E.D. Pa. 1994) (sealing a motion for summary judgment involving an individual with AIDS to “preserve the privacy and dignity of the individual.”); Order Granting Pls.’ Mot. to File Under Seal Exs. F & G to Pls.’ Mem. in Support of Pls.’ Mot. to Dismiss (Dkt. 32), *Harrison, et al. v. Mattis, et al.*, No. 1:18-cv-00641 (E.D. Va. July 19, 2018). And this Court has already considered the “well-document risk of stigma and discrimination facing those living openly with HIV,” and found “good cause” to protect Plaintiffs’ identities from public knowledge. (Order Granting in Part Pls.’ Mot. to File Under Seal Exs. A & B and Supporting Docs. in Support of Pls.’ Mot. To Dismiss, ECF No. 42).

8. Less drastic measures to protect Plaintiffs’ identities are insufficient because the factual information provided in the declarations. *William Shapiro*, 852 F. Supp. at 1257 (sealing a document because it “includes a great deal of personal information which may make it more likely that a reader would recognize the plaintiff [who was diagnosed with AIDS].”).

9. Plaintiffs are requesting to file these exhibits under seal primarily so that the Court and Defendants in this matter have access to the identifying information provided in the declarations for their own use, without subjecting Plaintiffs to the very real risk of stigma and discrimination that those living openly with HIV face. Although Plaintiffs are requesting the Court’s permission to file under seal, Plaintiffs will also file redacted versions of the exhibits on the public record, so that no more information is being concealed from the public than is necessary.

10. Less drastic measures to protect Plaintiffs’ identities are not available. Filing unsealed and unredacted documents on the public record would identify Plaintiffs, who have

been granted permission to proceed in this action pseudonymously. *See* (Order Granting Pls.’ Mot. to Proceed Under Pseudonym, ECF No. 23). Filing redacted versions on the public record, along with unredacted versions under seal, is the least drastic way to protect Plaintiffs’ identities, while still affording full information to this Court and Defendants, and the greatest amount of information to the public as possible.

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing the unredacted versions of Exhibits A and B, and allowing the redacted versions of Exhibits A and B to remain on the public record.

Dated: February 1, 2019

Respectfully submitted,

/s/ Scott Schoettes
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CERTIFICATE OF SERVICE

I certify that, on the 1st day of February, 2019, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: February 1, 2019

Respectfully submitted,

Andrew R. Sommer

/s/ Andrew R. Sommer