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* *Pro hac vice* motion to be filed

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et al.,

Defendants.

Case No.:

**PLAINTIFFS' MOTION FOR
MINOR AND HER NEXT
FRIENDS TO PROCEED
UNDER PSEUDONYMS**

Plaintiffs Lindsay Hecox and Jane Doe, by and through her next friends and parents Jean Doe and John Doe, (together, the “Plaintiffs”), by their attorneys, hereby move for permission for Plaintiff Jane Doe and her next friends and parents, Jean Doe and John Doe, to proceed under pseudonyms. The grounds for this Motion are set forth in a supporting brief.

Dated: April 15, 2020

Respectfully submitted,

/s/ Richard Eppink

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Attorneys for Plaintiffs

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FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et al.,

Defendants.

Case No.:

**PLAINTIFFS' BRIEF IN
SUPPORT OF MOTION FOR
MINOR AND HER NEXT
FRIENDS TO PROCEED
UNDER PSEUDONYMS**

Plaintiffs respectfully request that the Court allow Plaintiff Jane Doe, a minor child, and her parents, Jean Doe and John Doe, to proceed under pseudonyms to protect their privacy and ensure their safety. Although, as a general rule, Federal Rule of Civil Procedure 10(a) requires the names of parties to be identified, parties may preserve their anonymity in judicial proceedings “in special circumstances when the party’s need for anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity.” *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068-69 (9th Cir. 2000). Safeguarding the identities of Jane Doe and her parents John Doe and Jean Doe is warranted in light of Jane Doe’s minor status and in order to protect them from online and in-person harassment, injury, and other potential harms.

I. Plaintiff Jane Doe and Her Next Friends, Jean and John Doe, Should Be Permitted to Proceed Under a Pseudonym Because Jane Doe Is a Minor.

Jane Doe is a minor. Declaration of Jean Doe (“Decl. of Jean”) at ¶ 2. As a rule, minors’ identities are protected in court filings by the required use of their initials. *See* Fed. R. Civ. P. 5.2(a)(3).

Moreover, recognizing the “heightened protection” appropriate for minor plaintiffs, *Doe v. Porter*, 370 F.3d 558, 561 (6th Cir. 2004), courts frequently allow them to proceed under pseudonym. *Id.*; *see also Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981). Here, given the amount of information in the Complaint about Jane Doe and her activities, she seeks to

use a pseudonym to adequately protect her privacy. Decl. of Jean at ¶ 9. If Jane Doe is required to appear by her initials, it will effectively disclose her name and other identifying information. *Id.* Jane Doe participates in various athletic and club activities which, combined with the name of her high school and her initials, will reveal her identity. *Id.* at ¶¶ 5, 9. Thus, the only way for Jane Doe’s identity to be protected is through use of a pseudonym.

Likewise, Jane Doe’s next friends and parents should also be allowed to proceed anonymously. Jane Doe shares the same last name as her parents. *Id.* at ¶ 10; Declaration of John Doe (“Decl. of John”) at ¶ 8. Revealing Jane Doe’s parents’ names would effectively identify Jane Doe’s name, which this court may protect against. *See Stegall*, 653 F.2d at 186; *Porter*, 370 F.3d at 558.

II. Plaintiff Jane Doe and Her Next Friends and Parents Jean Doe and John Doe Should Be Permitted to Proceed Under Pseudonyms to Protect Them From Harm.

Courts, including the Ninth Circuit, also “have permitted plaintiffs to use pseudonyms . . . when identification creates a risk of retaliatory physical or mental harm” and “the need for anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity.” *Advanced Textile*, 214 F. 3d at 1068. Here, a pseudonym is necessary to ensure that Jane and her family are protected from retaliation and harm in the context of a highly contentious issue of public debate. Decl. of Jean at ¶¶

6-8, 11-13; Decl. of John at ¶¶ 3-8. No party will be prejudiced if Jane and her parents and next friends are permitted to proceed under a pseudonym.

Transgender people and non-transgender people who support the transgender community are often targeted for violence and discrimination. Decl. of Jean at ¶ 12; *see* Decl. of John at ¶ 6. “[T]here exist numerous documented instances of those targeted for violence based on their . . . gender identity.” *In re E.P.L.*, 26 Misc. 3d 336, 338 (N.Y. Sup. Ct. 2009); *see also Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (“There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.”). This violence often extends to family members and others who support transgender people.¹

¹ *See, e.g.*, Anna Orso, *Philadelphia man dies by suicide after video goes viral of him defending relationship with trans girlfriend, friends say*, Philadelphia Inquirer (Aug. 22, 2019), <https://www.inquirer.com/news/maurice-willoughby-died-by-suicide-after-viral-video-defending-transgender-girlfriend-20190822.html> (describing death by suicide of cisgender man who was harassed for being in a relationship with a transgender woman); Barbara Findlay, *Acting Queerly: Lawyering for Trans People in Trans/Forming Feminisms: Trans-Feminist Voices Speak Out* 145, 150-51 (Krista Scott-Dixon, ed.) (2006) (describing social ostracism of cisgender attorney who represented transgender woman); *Brandon Teena’s Killers: 25 Years Later*, Forensic Files Now (Apr. 12, 2019), <https://forensicfilesnow.com/index.php/2019/04/12/brandon-teenas-killers-25-years-later/comment-page-1/> (describing murder of transgender man, cisgender woman in a relationship with the transgender man, and a cisgender man who was staying with them); Michael Rowe, *Remembering Pfc. Barry Winchell on the 10th Anniversary of His Murder*, HuffPost (Dec. 6, 2017), https://www.huffpost.com/entry/taps-for-barry-winchell-r_b_226004 (describing murder of a cisgender man for being in a relationship with a transgender woman); Emily McCombs, *Christian, Conservative And Parenting A Transgender Child in Texas*, HuffPost (Mar. 2, 2017, 5:19 PM), https://www.huffpost.com/entry/kimberly-and-kai-shapple-transgender-child-bathroom-rights_n_58b5b5b6e4b060480e0c4393 (describing family and

In Idaho, transgender people are not explicitly protected under statewide anti-discrimination laws and, as such, there are not protections against retaliation for pointing out anti-transgender discrimination or against discrimination for associating with transgender people.² By challenging a statewide law that primarily targets women and girls who are transgender, Jane Doe is putting herself at risk for potential retaliatory discrimination and harassment without legal recourse.

In the last three months alone, the Idaho legislature introduced at least four pieces of legislation attempting to further limit the rights of transgender people.³ Debate around H.B. 500, the law Jane Doe is challenging, gained extensive media attention in Idaho and nationally.⁴ By

friends of cisgender woman rejecting her after she began support her transgender daughter)

² Movement Advancement Project, https://www.lgbtmap.org/equality_maps/profile_state/ID, (last visited Apr. 12, 2020).

³ Nathan Brown, *Lawmakers end session with much unsettled*, Idaho Press (Mar. 28, 2020), https://www.idahopress.com/news/local/lawmakers-end-session-with-much-unsettled/article_acc4be65-bcf5-53d8-939c-855664154b00.html.

⁴ *See generally*, Madison Hardy, *Transgender athletes bill passes senate committee; will be amended by full senate Monday*, Idaho County Free Press (Mar. 14, 2020), https://www.idahocountyfreepress.com/news/transgender-athletes-bill-passes-senate-committee-will-be-amended-by-full-senate-monday/article_986cb92c-6596-11ea-90ad-1b1d2c5c15c4.html. H.B. 500 also gained national attention. *See generally*, Talya Minsberg, *'Boys Are Boys and Girls Are Girls': Idaho Is First State to Bar Some Transgender Athletes*, N.Y. Times (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/sports/transgender-idaho-ban-sports.html>.

challenging a law that has received widespread media attention, Jane Doe, a minor child, is at risk of harassment, harm and retaliation.

This is evidenced by public posts on the ACLU's social media channels surrounding passage of H.B. 500, on which many people responded with derogatory and harassing statements about transgender athletes and those who support transgender people.⁵ Courts have recognized that threats of harassment and violence especially favor anonymity. *See Doe v. New Ritz, Inc.*, Civil No. WDQ-14-2367, 2015 WL 4389699 at *2 n.12 (D. Md. July 14, 2015) (citing *Doe v. Stegall*, 653 F.2d at 186).

Jane Doe and her parents are therefore concerned with their own safety, as well as harassment and property damage. Decl. of Jean at ¶¶ 7, 11, 12; Decl. of John at ¶¶ 7-8. Courts have recognized that threats of harassment and violence especially favor anonymity. *See New Ritz*, 2015 WL 4389699 at *2 n.12 (citing *Stegall*, 653 F.2d at 186). In light of both the history of harassment and violence experienced by transgender Americans generally, and the particular questions raised in this case, the Does' concerns are well-founded and reasonable.

Anonymity in this case is further supported by the privacy claims at issue, which concern sensitive forms of compelled medical testing (such as genetic tests and pelvic examinations) for minors like Jane Doe. *See D.T. v.*

⁵ ACLU (@ACLU), Twitter (Apr. 10, 2020, 3:42 PM), <https://twitter.com/ACLU/status/1248743101855870980>.

Armstrong, Case No. 1:17-cv-00248-EJL, 2017 WL 2636519, at *2 (D. Idaho June 16, 2017) (permitting that plaintiff to proceed under a pseudonym because law suit could involve disclosure of sensitive medical information); *cf. Doe v. Rostker*, 89 F.R.D. 158, 161 (N.D. Cal. 1981) (explicitly noting that anonymity is appropriate in cases involving, among other things, transgender individuals and cases involving children).

There is no risk of prejudice to the opposing parties in this matter from allowing the Does to proceed pseudonymously. Jean Doe and John Doe do not seek to prevent disclosure of their identities to Defendants, merely to the public. Additionally, the complaint challenges the validity of an Idaho law under the U.S. Constitution and other federal law, and pseudonyms are often permitted in such circumstances. *See Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139 and 141 (S.D. Ind. 1996). All parties' information will be available through the discovery process for the litigants and under an appropriate protective order. Thus, allowing the Does to file under a pseudonym will not prejudice the opposing parties in investigating the claims or presenting a defense.

Furthermore, revealing Jane Doe and her parents' true identities will not add to the court or the public's understanding of those issues. "[I]t is difficult to see 'how disguising plaintiffs' identities will obstruct public scrutiny of the important issues in this case.'" *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1043 (9th Cir. 2020)

(quoting *Advanced Textile*, 214 F.3d at 1072); *see also Armstrong*, 2017 WL 2636519 at *2 (noting that anonymity may actually further public interest in disclosure, since it may lead to fuller disclosure of sensitive information the plaintiff would otherwise not put forward). The facts presented are sufficient to provide the public information about the genesis for the case without disclosing the Does' names and identities.

CONCLUSION

That Jane Doe is a minor; the history of violence and harm to the transgender community and those who defend and associate with them; the contentious nature of this dispute; and the nature of the private information at issue all support anonymity in this case. Granting this motion will not prejudice the Defendants or the public. For these reasons, the motion should be granted.

Dated: April 15, 2020

Respectfully submitted,

/s/ Richard Eppink

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, and JANE DOE
with her next friends JEAN DOE and
JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as Governor of the State of
Idaho, et al.

Defendants,

No.

**DECLARATION OF
PLAINTIFF JANE DOE'S
NEXT FRIEND AND
MOTHER JEAN DOE IN
SUPPORT OF MOTION FOR
PERMISSION TO PROCEED
UNDER PSEUDONYMS**

I, Jean Doe, depose and say as follows:

1. I am over the age of eighteen and have personal knowledge of the facts herein.

2. My daughter, Jane Doe, is under the age of eighteen.
3. She is in high school and lives with me and her father.
4. Jane has never been involved in a lawsuit before but feels strongly about the issues in this case.
5. Jane has always been athletic and enjoyed playing sports and being on a team.
6. She wants the same opportunities for all girls, including transgender girls.
7. I support her inclusion in this lawsuit but am worried she may be harassed.
8. I know people have strong feelings about this topic and have seen and heard it in my community.
9. The lawsuit has information about Jane's high school, her age, the sports and activities in which she participates. If it also includes Jane's initials – rather than use a pseudonym for Jane – she will not be able to remain anonymous.
10. I also fear that if my true name is made public in these proceedings, Jane will no longer be anonymous because we share the same last name.
11. Our family will face an increased risk of retaliation, harassment, or violence.
12. People have shown anger and hostility toward transgender people and those who support them.
13. I am concerned for Jane's safety and ask that I may remain anonymous, so that Jane can be protected.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Executed this 14th day of April, 2020.

Jean Doe

Jean Doe

Richard Alan Eppink
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FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, and JANE DOE
with her next friends JEAN DOE and
JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as Governor of the State of
Idaho, et al.

Defendants,

No.

**DECLARATION OF
PLAINTIFF JANE DOE'S
NEXT FRIEND AND FATHER
JOHN DOE IN SUPPORT OF
MOTION FOR PERMISSION
TO PROCEED UNDER
PSEUDONYMS**

I, John Doe, depose and say as follows:

1. I am over the age of eighteen and have personal knowledge of the facts herein.

2. My daughter, Jane Doe, is very athletic and has excelled participating in sports and athletic teams.

3. Jane has benefitted from her participation in sports and wants the same for all girls.

4. Jane was aware of H.B. 500 and the impact it would have on all girls and was upset by it. She went to the legislature to testify against the bill.

5. I support Jane in standing against an unjust law, but I want her to be safe and protected in doing so.

6. My wife and I know not everyone feels the same way as we do about transgender rights.

7. I want my family to be safe. I am concerned people might say or do things to harm us.

8. I am concerned for Jane's safety and ask that I may remain anonymous, so that Jane can be protected, particularly because we share the same last name.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Executed this 14th day of April, 2020.



John Doe