

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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NICHOLAS K. MERIWETHER,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:18-cv-753
vs.	:	
	:	Judge Susan J. Dlott
THE TRUSTEES OF SHAWNEE STATE	:	Magistrate Judge Karen L. Litkovitz
UNIVERSITY, ET AL.	:	
	:	
Defendants.	:	
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**JANE DOE’S MOTION TO TEMPORARILY SEAL FILINGS PENDING
RESOLUTION OF HER MOTION TO PROCEED PSEUDONYMOUSLY**

Jane Doe seeks an order temporarily sealing all filings containing her real name, including future filings, pursuant to S.D. Ohio Civ. R. 5.2.1(a), while this Court decides her pending motion to proceed pseudonymously. Ms. Doe requests that this motion be treated as an “urgent motion” pursuant to S.D. Ohio Civ. R. 7.1(b)(3).

1. On December 24, 2018, Jane Doe moved to intervene in this matter and sought leave to proceed under a pseudonym. Mot. to Intervene, Doc. 18; Mot. to Proceed Pseudonymously (“Doe Mot.”), Doc. 19. She also sought to seal Plaintiff’s complaint and certain attached exhibits, which used Ms. Doe’s real name approximately 60 times, and order Plaintiff to file redacted versions of those documents for public access. Doe Mot., Doc. 19, at PageID 526; *see* Complaint & Exhibits, Docs. 1, 1-8, 1-12, 1-13, 1-15, 1-16, 1-17, 1-18.

2. As described in Jane Doe’s memorandum in support of her motion to proceed pseudonymously, Ms. Doe has a substantial legal interest in maintaining her transgender status as private information, an interest that she seeks to vindicate in this matter. Doe Mot., Doc. 19, at PageID 530-537. That interest is frustrated every time her real name appears in public filings. *Id.*

Additionally, the public disclosure of Ms. Doe's transgender status hinders her physical and emotional wellbeing and exposes her to a significant risk of discrimination and mistreatment. *Id.*

3. On January 14, 2019, Defendants filed a response supporting Ms. Doe's motion to proceed pseudonymously and noting that "Defendants agree that the student's name should not have appeared in the Complaint and that the appropriate redactions can be made." Def. Resp. to Doe Mot., Doc. 25, at PageID 593.

4. Also on January 14, 2019, Plaintiff filed his opposition to Ms. Doe's motion and a supporting declaration. Docs. 27, 27-1. In those filings, Plaintiff used Ms. Doe's real name approximately 80 times and connected Ms. Doe's real name with her proposed pseudonym. Pl. Opp. Decl. ¶ 4, Doc. 27-1, at PageID 638.

5. In response, Ms. Doe's reply brief requested that the Court seal Plaintiff's opposition and supporting declaration. Reply Br. in Support of Doe Mot., Doc. 29, at PageID 680.

6. Ms. Doe's motion to proceed pseudonymously is now fully briefed before this Court.

7. Plaintiff's opposition to Defendants' motion to dismiss is currently due no later than January 28, 2019. *See* S.D. Ohio Civ. R. 7.2(a)(2) ("Any memorandum in opposition shall be filed within twenty-one days after the date of service of the motion."); Def. Mot. to Dismiss, Doc. 22, at PageID 588 (motion served on January 7, 2019).

8. Good cause exists to treat Ms. Doe's motion to temporarily seal as an "urgent motion." Given Plaintiff's attempts to vitiate Ms. Doe's privacy interests by continuing to use her real name in public filings, Ms. Doe respectfully asks the Court to seal Plaintiff's opposition and all subsequent filings while the Court considers Ms. Doe's motion to proceed pseudonymously.

9. Without this Court's intervention, Ms. Doe's privacy and wellbeing continue to be harmed and face the possibility of further harm with the filing of Plaintiff's opposition to Defendants' motion to dismiss on or before January 28, 2019.

10. Plaintiff has stated to the undersigned counsel that he plans to oppose this motion.

11. Defendant Shawnee State University does not oppose this motion.

For the foregoing reasons, as well as those expressed in the accompanying memorandum of law, Jane Doe respectfully urges this Court to GRANT this motion and temporarily seal the following filings until this Court rules on Ms. Doe's motion to proceed under a pseudonym: 1) Plaintiff's complaint and attached exhibits, Docs. 1, 1-8, 1-12, 1-13, 1-15, 1-16, 1-17, and 1-18; and 2) Plaintiff's opposition to Ms. Doe's motion to proceed pseudonymously and his supporting declaration, Docs. 27 and 27-1. Ms. Doe further requests that the Court order all subsequent filings in this matter containing Ms. Doe's real name be filed under seal until this Court rules on Ms. Doe's motion to proceed under a pseudonym.

Dated: January 23, 2019

Respectfully submitted,

/s/ Adam G. Unikowsky

Adam G. Unikowsky (admitted *pro hac vice*)

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**MEMORANDUM IN SUPPORT OF JANE DOE’S MOTION TO
TEMPORARILY SEAL FILINGS PENDING RESOLUTION OF HER
MOTION TO PROCEED PSEUDONYMOUSLY**

Jane Doe has made significant efforts—both in this litigation and in her daily life—to keep her transgender status private. She has moved to intervene in this lawsuit to protect herself against unwanted public “outing,” and the harmful consequences that follow. Jane Doe’s Mot. to Intervene, Doc. 18, at PageID 496-497, 499. Her motion to proceed pseudonymously in this lawsuit is currently pending. *See* Jane Doe’s Mot. to Proceed Pseudonymously (“Doe Mot.”), Docs. 19 and 29. While Ms. Doe is reluctant to add this further motion to the Court’s docket, she must now do so to protect the same privacy interests at stake in her motions to intervene and proceed pseudonymously. She must raise this issue because Plaintiff’s filings on this docket have continued to use her real name while her motion to proceed pseudonymously remains pending,¹ and Ms. Doe expects that she will similarly be named in Plaintiff’s filing in response to Defendants’ motion to dismiss, which is due in five days.² Publicly naming Ms. Doe while her

¹ *See* Pl.’s Resp. to Jane Doe’s Mot. to Proceed Pseudonymously, Doc. 27, at PageID 613 *et seq.*; Decl. of Pl. Nicholas K. Meriwether, Doc. 27-1, at PageID 638 *et seq.*

² Plaintiff’s counsel has indicated to the undersigned counsel that he plans to oppose this motion.

motion is pending effectively deprives her of the relief she seeks before her motion is resolved by the Court, and threatens to sap the effectiveness of any order the Court may enter granting Ms. Doe's motion to proceed pseudonymously. Ms. Doe accordingly seeks with this motion a narrow order that would seal all filings containing her name, including any future filings, while this Court considers her motion to proceed pseudonymously. Only an immediate sealing order will prevent further disclosure of her name while that motion remains pending.

Ms. Doe filed a motion to proceed pseudonymously, and to redact references to her name in the complaint and attached exhibits, in conjunction with her motion to intervene. *See Doe Mot.*, Doc. 19, at PageID 525-527. She there described the intimacy of information about her transgender status (which she does not make public), *id.* at PageID 530-532, the fact that she raised her complaint to the University through a confidential Title IX procedure, *id.* at PageID 532-533, and the significant harm and harassment she may face if forced to litigate under her own name, *id.* at PageID 533-537. Ms. Doe also explained that courts routinely grant requests to proceed pseudonymously by transgender litigants seeking to protect the privacy of their transgender status. *Id.* at PageID 531-532. Although Plaintiff's complaint had used Ms. Doe's real name prior to her motion to intervene, Ms. Doe brought her request to prevent the disclosure from getting worse. *Id.* at PageID 537-538; *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 422 n.6 (1983) (order can "grant partial relief by preventing further disclosure"); *United States v. Smith*, 123 F.3d 140, 155 (3d Cir. 1997) ("Although the district court could not prevent the newspapers from publishing the sentencing memorandum once they came into possession of it, the court properly prevented further government disclosures Even if the dissemination by members of the public continues, the order . . . will at least narrow that dissemination.").

While Ms. Doe's motion remained before the Court, Plaintiff publicly filed a response to Ms. Doe's motion to proceed pseudonymously and an accompanying declaration, which used Ms. Doe's real name a total of 80 times. This continued exposure of Ms. Doe's name, which undermines the very interest she seeks to protect, will preemptively impair the effectiveness of an order granting Ms. Doe's motion before the Court has had an opportunity to rule. The more public filings that contain Ms. Doe's real name, the more public exposure Ms. Doe will get, even if the Court does ultimately grant Ms. Doe's motion to proceed pseudonymously. It is regrettable that further relief is necessary to preserve Ms. Doe's ability to obtain effective relief on her motion. All parties should have refrained from using Ms. Doe's name until the Court was able to rule. However, because Ms. Doe's real name continues to appear in Plaintiff's public filings, Ms. Doe must act now to preserve the privacy interests her motion seeks to protect. Plaintiff's opposition to Defendants' motion to dismiss will be filed within five days, and only an order before that memorandum is filed can preserve Ms. Doe's privacy interests until the Court is able to rule on Ms. Doe's motion to proceed under a pseudonym.

Accordingly, Ms. Doe requests a temporary order that will preserve her privacy for the interim period before the Court is able to resolve her motion to proceed pseudonymously. This limited relief will not prejudice any party. If the Court ultimately grants Ms. Doe's motion to proceed pseudonymously, any sealed filings may remain under seal and redacted versions can be filed publicly if necessary. If the Court ultimately does not grant Ms. Doe's motion, the Court may unseal the temporarily sealed filings at that time. This is an interim request that will effectively preserve the status quo, by preventing any litigant from unilaterally stripping the Court of its ability to grant effective relief. The University has stated to that it does not oppose this motion.

Jane Doe therefore respectfully requests that this Court grant this motion and, until this Court rules on Ms. Doe's motion to proceed pseudonymously, seal the following filings: 1) Plaintiff's complaint and attached exhibits, Docs. 1, 1-8, 1-12, 1-13, 1-15, 1-16, 1-17, and 1-18; and 2) Plaintiff's opposition to Ms. Doe's motion to proceed pseudonymously and his supporting declaration, Docs. 27 and 27-1. Ms. Doe further requests that the Court order the parties to file any documents using Ms. Doe's real name under seal until this Court resolves Ms. Doe's motion to proceed under a pseudonym.

Dated: January 23, 2019

Respectfully submitted,

/s/ Adam G. Unikowsky

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2019, a copy of the foregoing pleading and supporting memorandum was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Asaf Orr
Attorney for Jane Doe