

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REV. PAUL A. EKNES-TUCKER;
BRIANNA BOE, individually and on behalf
of her minor son, MICHAEL BOE; JAMES
ZOE, individually and on behalf of his minor
son, ZACHARY ZOE; MEGAN POE,
individually and on behalf of her minor
daughter, ALLISON POE; KATHY NOE,
individually and on behalf of her minor son,
CHRISTOPHER NOE; JANE MOE, Ph.D.;
and RACHEL KOE, M.D.

Plaintiffs,

v.

KAY IVEY, in her official capacity as
Governor of the State of Alabama; STEVE
MARSHALL, in his official capacity as
Attorney General of the State of Alabama;
DARYL D. BAILEY, in his official capacity
as District Attorney for Montgomery County;
C. WILSON BAYLOCK, in his official
capacity as District Attorney for Cullman
County; JESSICA VENTIERE, in her official
capacity as District Attorney for Lee County;
TOM ANDERSON, in his official capacity as
District Attorney for the 12th Judicial Circuit;
and DANNY CARR, in his official capacity
as District Attorney for Jefferson County.

Defendants.

Civil Action No.
2:22-cv-00184-LCB-SRW

**PLAINTIFFS'
MOTION FOR LEAVE
TO PROCEED
PSEUDONYMOUSLY**

Plaintiffs Brianna Boe, individually and on behalf of her minor child, Michael Boe; James Zoe, individually and on behalf of his minor child, Zachary Zoe; Megan Poe, individually and on behalf of her minor child, Allison Poe; Kathy Noe, individually and on behalf of her minor child, Christopher Noe; Dr. Jane Moe; and Dr. Rachel Koe¹ (collectively, “Plaintiffs”) respectfully request leave to proceed pseudonymously.

Plaintiffs are transgender teenagers, parents of transgender teens, and healthcare providers who are challenging Alabama’s Vulnerable Child Compassion and Protection Act, which criminalizes legitimate and generally accepted medical treatments that alleviate the physical and emotional harms caused by their gender dysphoria. (Compl., Doc. 1).

As transgender people, Michael, Zachary, Allison, and Christopher are members of a stigmatized group that frequently encounters discrimination and harassment. They are especially vulnerable because of their status as young people under the age of 19. To mitigate the serious risk of harm that Michael, Zachary, Allison, and Christopher would face from ridicule, discrimination and harassment if their transgender identity were disclosed in public court filings and any media attention that could result, they seek leave to proceed pseudonymously in this

¹ Michael Boe, Zachary Zoe, Allison Poe, and Christopher Noe are collectively referred to herein as the “Transgender Plaintiffs”; their parents, Briana Boe, James Zoe, Megan Poe, and Kathy Noe are collectively referred to herein as the “Parent Plaintiffs”; and Drs. Jane Moe and Rachel Koe are collectively referred to herein as the “Healthcare Provider Plaintiffs.”

litigation. Their parents also seek to proceed pseudonymously, both to protect the identity of their minor children and to avoid criminal prosecution under the Act during the pendency of this litigation. For similar reasons, Drs. Moe and Koe also seek to proceed pseudonymously in this litigation to protect their privacy interests and the privacy and safety of their patients, and to avoid criminal prosecution under the Act during the pendency of this litigation.

Considering the private subject matter of this lawsuit and the prospect of criminal penalties, the Plaintiffs satisfy the Eleventh Circuit's standard for allowing a plaintiff to proceed pseudonymously.

Standard of Review

Although Federal Rule of Civil Procedure 10(a) requires that “every pleading” in court “must name all the parties,” that “rule is not absolute.” *Plaintiff B v. Francis*, 631 F.3d 1310, 1315 (11th Cir. 2011). A plaintiff “may proceed anonymously if he can show ‘a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.’” *Doe v. Samford Univ.*, No. 21-871, 2021 WL 3403517, at *1 (N.D. Ala. July 30, 2021) (quoting *Plaintiff B*, 631 F.3d at 1315-16).

“To determine whether the plaintiff's privacy right outweighs the presumption of openness, the court must consider all circumstances, including, but not limited to: (1) whether the plaintiff is challenging governmental activity; (2)

whether the plaintiff will have to ‘disclose information of the utmost privacy’; and (3) whether the plaintiff will have to risk criminal prosecution by admitting his intention to engage in illegal conduct.” *Doe*, No. 21-871, 2021 WL 3403517, at *1 (citing and quoting *Plaintiff B*, 631 F.3d at 1316). Other factors a court may consider include whether the plaintiffs are minors, whether they are threatened by violence or physical harm by proceeding under their own names, and whether their anonymity poses a unique threat of fundamental unfairness to the defendant. *Id.* (internal citations and quotation marks omitted). As set forth below, the totality of the circumstances weighs in favor of allowing Plaintiffs to proceed anonymously.

Discussion

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). 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.”

Here, however, the added protection of pseudonymous pleading is essential given the especially sensitive subject matter of this lawsuit and the risk of criminal penalties. If Michael, Zachary, Allison, and Christopher were to receive only the protections of Rule 5.2, their initials and their parents’ names would be disclosed in the public record. That information would be sufficient to identify Michael,

Zachary, Allison, and Christopher, which could result in exposing them to social stigma and retaliation by members of their communities. In addition, the Parent Plaintiffs and Healthcare Provider Plaintiffs could face criminal penalties for seeking or providing medically necessary medical treatment for their children and patients. Thus, the use of pseudonyms is necessary to protect the privacy interests of the Plaintiffs.

First, Plaintiffs are “challenging government activity.” *Chiquita Brands*, 965 F.3d at 1247. Where government activity is challenged, “the government is viewed as having a less significant interest in protecting its reputation from damaging allegations than the ordinary individual defendant,” while the plaintiff typically “represents a minority interest (and may be subject to stigmatization).” *EW v. New York Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003). Thus, the plaintiff’s interest in proceeding pseudonymously is considered particularly strong in such circumstances.

Second, “absent anonymity,” the Plaintiffs “would be compelled ... to disclose information of the utmost intimacy.” *Chiquita Brands*, 965 F.3d at 1247. The challenge here concerns a “quintessentially private matter”—that is, personal medical treatment for gender dysphoria—which creates a strong justification for pseudonyms. *Stegall*, 653 F.2d at 186; *see also id.* (finding that a mother and her children should be allowed to proceed pseudonymously while challenging “Bible

reading exercises in Mississippi public schools” because “religion” is a “quintessentially private matter” and “the youth of these plaintiffs” is a “significant factor in the matrix of considerations”). As the Eleventh Circuit observed, “[c]ourts have permitted plaintiffs to proceed anonymously in cases involving mental illness, homosexuality, and transsexuality”² because “the social stigma attached to the plaintiff’s disclosure was found to be enough to overcome the presumption of openness in court proceedings.” *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992).

Courts from around the country “have long recognized that the harms arising from disclosing a person’s transgender status are among those that make protection by pseudonym appropriate.” *Doe v. Pa. Dep’t of Corr.*, No. 19-1584, 2019 WL 5683437, at *2 & nn.12-13 (M.D. Pa. Nov. 1, 2019) (collecting cases); *see also Doe v. City of Detroit*, No. 18-11295, 2018 WL 3434345, at *2 (E.D. Mich. July 17, 2018) (“Several courts have held that an individual’s transgender identity can carry enough of a social stigma to overcome the presumption in favor of disclosure.”). This is so because “[t]he excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate.” *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999).

² The term “transsexuality” has fallen out of favor but was used to describe a status synonymous with being transgender: having a gender identity different from one’s sex assigned at birth.

Michael, Zachary, Allison, and Christopher seek to proceed anonymously to preserve their privacy in a matter that involves sensitive and highly personal information, including medical information. Michael, Zachary, Allison, and Christopher are teenagers who have been clinically diagnosed by medical and healthcare professionals with gender dysphoria. 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 that they revolve around a juvenile's gender transition and the impact it has on his or her mental health. Because this case concerns details about "the most intimate part of one's life," including genitalia, pubertal development, medical history, mental health, and gender identity, proceeding anonymously is essential. *Doe v. Blue Cross & Blue Shield of R.I.*, 794 F. Supp. 72, 74 (D.R.I. 1992).

Moreover, there is a real risk of discrimination and harassment without pseudonymous pleading. As the Seventh Circuit has observed, "[t]here is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity." *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *see also Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (finding that forcing individuals "to disclose their transgender status ... exposes" them "to a substantial risk of stigma, discrimination, intimidation, violence, and danger").

The same “considerations also support allowing the [Parent Plaintiffs] ... to proceed anonymously, because public disclosure of their identities would nullify any privacy protections given to their children alone.” *D.L. ex rel. Phan L. v. Bateman*, No. 12-208, 2012 WL 1565419, at *2 (M.D. Fla. May 2, 2012) (citing *Doe v. Banos*, 713 F. Supp. 2d 404, 407 n.1 (D.N.J. 2010)); *see also Doe I v. Perkiomen Valley Sch. Dist.*, No. 22-287, 2022 WL 222525, at *2 (E.D. Pa. Jan. 25, 2022) (allowing parents to proceed anonymously “because if they were required to disclose their identities, the identities of their children would be readily determinable, and the privacy interests protected by these rules would be undermined”); *S.E.S. v. Galena Unified Sch. Dist. No. 499*, No. 18-2042, 2018 WL 3389878, at *2 (D. Kan. July 12, 2018) (permitting plaintiffs to proceed anonymously because the parents and child “share common privacy interests based on their inseparable relationship to one another” and “[o]rdering disclosure of the parents’ identities would place—in effect—personally identifiable and confidential information about” the child “in the public record”). Courts regularly extend this protection to guardians in cases involving transgender youth. *See, e.g., Doe v. Volusia Cnty. Sch. Bd.*, No. 18-102, ECF No. 8 (M.D. Fla. Jan. 30, 2018); *Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 16-524, 2016 WL 4269080, at *5 (S.D. Ohio Aug. 15, 2016); *Doe v. United States*, No. 16-0640, 2016 WL 3476313, at *1 (S.D. Ill. June 27, 2016).

For similar reasons, the Healthcare Provider Plaintiffs seek to proceed anonymously to protect their privacy interests and the privacy and safety of their patients. Like the Transgender Plaintiffs and their parents, the Healthcare Provider Plaintiffs face a real risk of ridicule, harassment, and even violence if they are not permitted to proceed anonymously. While they are not transgender, by filing suit, they have revealed their personal beliefs and practices regarding a highly sensitive subject matter that may evoke a hostile public reaction. *See Stegall*, 653 F.2d at 186 (anonymity may be justified where filing suit may reveal “personal belief and practices that are shown to have invited an opprobrium analogous to the infamy associated with criminal behavior”). In addition, the Healthcare Provider Plaintiffs have serious concerns about the privacy and safety of their patients, some of whom are transgender. These concerns further underscore the need for anonymity for the Healthcare Provider Plaintiffs.

Finally, the Parent Plaintiffs and Healthcare Provider Plaintiffs both face the prospect of criminal prosecution under the Act, which makes the need for anonymity even greater in this case. *See id.* at 185 (factor to consider is whether plaintiffs will be compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution). Here, the Parent Plaintiffs and Healthcare Provider Plaintiffs may be forced to admit their intention to violate the Act, which could subject them to criminal liability. Due to the vague and uncertain language in

the Act, the Plaintiffs may unwittingly be admitting to acts, such as consenting to or administering medications, that the Defendants could use to initiate criminal proceedings against any of them. Accordingly, Plaintiffs have a heightened need to proceed pseudonymously in this litigation.

Conclusion

Considering the totality of the circumstances, *Chiquita Brands*, 965 F.3d at 1247 n.5, the Plaintiffs' right to privacy outweighs the presumption of openness in court proceedings. The Plaintiffs, therefore, respectfully request leave to proceed pseudonymously.

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CERTIFICATE OF SERVICE

I certify that on this 20th day of April 2022, I filed the foregoing with the Clerk of Court. I further certify that I served a copy of the foregoing via U.S. Mail, postage prepaid, and properly addressed to the following:

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