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7
8 **UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA
9 **TUCSON DIVISION**

10 Jane Doe, by her next friend and parents
Helen Doe and James Doe; and Megan Roe,
11 by her next friend and parents, Kate Roe and
Robert Roe,

12 Plaintiffs,

13 v.

14 Thomas C. Horne in his official capacity as
State Superintendent of Public Instruction;
15 Laura Toenjes, in her official capacity as
Superintendent of the Kyrene School
District; Kyrene School District; The
16 Gregory School; and Arizona Interscholastic
Association Inc.,

17 Defendants.
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Case No. _____

**PLAINTIFFS' MOTION TO PROCEED VIA
PSEUDONYM**

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INTRODUCTION

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2 Pursuant to Federal Rule of Civil Procedure 5.2(e), Plaintiffs Jane Doe and Megan
3 Roe, by and through their respective parents, Helen Doe and James Doe, and Kate Roe
4 and Robert Roe, request this Court’s leave to proceed using pseudonyms for themselves
5 and their parents to protect their identities from public disclosure.

6 As discussed below, Jane and Megan satisfy each element of the Ninth Circuit’s
7 standard for allowing a plaintiff to proceed pseudonymously. Jane and Megan, as
8 transgender children, are especially vulnerable to severe harm if required to disclose their
9 identities in light of their youth and the sensitivity of their transgender status, including
10 the prospect that they will face harassment if their true identities become known. Their
11 “need for anonymity outweighs” any “prejudice to the opposing party” or to the public
12 caused by allowing them to proceed pseudonymously. *Does I thru XXIII v. Advanced*
13 *Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000); *see also Publius v. Boyer-Vine*, 321
14 F.R.D. 358, 361 (E.D. Cal. 2017); *D.T. v. Christ*, 552 F. Supp. 3d 888, 892 n.5 (D. Ariz.
15 2021) (“The Court notes that all of the Plaintiffs”—minors and their parents—“are
16 proceeding in this case under pseudonyms to protect them from harassment stemming
17 from their transgender status.”); *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1133 (D. Haw.
18 2006) (allowing a transgender teenager to proceed under a pseudonym); *Hecox v. Little*,
19 479 F. Supp. 3d 930, 946 n.3 (D. Idaho 2020) (allowing transgender plaintiff and her
20 parents to proceed under pseudonyms).

ARGUMENT

21
22 The Ninth Circuit permits “parties to use pseudonyms . . . when nondisclosure of
23 the party’s identity is necessary to protect a person from harassment, injury, ridicule or
24 personal embarrassment.” *Advanced Textile Corp.*, 214 F.3d at 1067–68 (internal
25 citations and quotation marks omitted). Whether to permit a party to proceed under a
26 pseudonym requires balancing three factors: “(1) the severity of the threatened harm; (2)
27 the reasonableness of the anonymous party’s fears; and (3) the anonymous party’s
28 vulnerability to such retaliation”—against “the general presumption that parties’
29 identities are public information.” *Doe v. Ayers*, 789 F.3d 944, 945 (9th Cir. 2015)

1 (quoting *Advanced Textile Corp.*, 214 F.3d at 1068). “Applying this balancing test, courts
2 have permitted plaintiffs to use pseudonyms . . . when identification creates a risk of
3 retaliatory physical or mental harm” or “when anonymity is necessary to preserve privacy
4 in a matter of sensitive and highly personal nature.” *Advanced Textile Corp.*, 214 F.3d at
5 1068 (internal citation and quotation marks omitted); see also *Brnovich v. Biden*, 2021
6 WL 7630109, at *1 (D. Ariz. Dec. 15, 2021).

7 “[W]hen the party’s need for anonymity outweighs prejudice to the opposing party
8 and the public’s interest in knowing the party’s identity,” that party may proceed
9 anonymously. *Publius*, 321 F.R.D. at 361. “The decision of whether or not to allow a
10 party to remain anonymous is within” a district court’s “discretion and will not be
11 reversed unless the [district court] relies on an erroneous view of the law, makes an
12 erroneous assessment of the evidence, or strikes an unreasonable balance of the relevant
13 factors.” *Id.*

14 Here, Jane and Megan reasonably fear severe harm in the form of lost privacy,
15 discrimination, and harassment if forced to publicly disclose their names and
16 consequently their transgender identity as part of this litigation. They are particularly
17 vulnerable to this type of harm as transgender youth. Defendants will suffer no prejudice
18 by allowing Jane and Megan to proceed anonymously because they do not intend to
19 withhold their identities from Defendants (which will be disclosed under an appropriate
20 protective order) or the Court (which may be disclosed in sealed submissions), and
21 allowing them to proceed anonymously is in the public interest. As such, the Court
22 should exercise its discretion to grant Jane and Megan, and their parents Helen and James
23 Doe and Kate and Robert Roe, leave to proceed under pseudonyms.¹

¹ The Court should also grant Helen and James Doe and Kate and Robert Roe leave to proceed under pseudonyms because identifying them would inexorably expose the identities of their children. (H. Doe Decl. ¶ 18; M. Roe Decl. ¶ 13.) Therefore, Doe’s and Roe’s parents should remain anonymous for the same reasons that their daughters, Jane and Megan, warrant the protection of pseudonyms. *See Doe ex rel. Doe 2 v. Elmbrook Sch. Dist.*, 658 F.3d 710, 724 (7th Cir. 2011), *vacated on other grounds*, 687 F.3d 840, 842–43 (7th Cir. 2012).

1 **I. JANE DOE AND MEGAN ROE REASONABLY FEAR SEVERE**
2 **HARM IF THEIR IDENTITIES WERE TO BECOME PUBLIC**

3 “In order to proceed anonymously, a plaintiff must show both (1) a fear of severe
4 harm, and (2) that the fear of severe harm is reasonable.” *Doe v. Kamehameha Sch.*, 596
5 F.3d 1036, 1043 (9th Cir. 2010) (emphasis omitted). These two showings are “intricately
6 related and should be addressed together.” *Id.* A harm is sufficiently “severe” to allow a
7 plaintiff to proceed anonymously where she “face[s] greater threats of retaliation than the
8 typical [] plaintiff” in civil litigation would. *Advanced Textile Corp.*, 214 F.3d at 1070–71
9 (alterations omitted). The threatened retaliatory harm does not need to be physical in
10 nature. For example, the Ninth Circuit has recognized the loss of privacy “in a matter of
11 [a] sensitive and highly personal nature” as a harm that can necessitate allowing a
12 plaintiff to proceed anonymously. *Id.* at 1068 (quoting *James v. Jacobson*, 6 F.3d 233,
13 238 (4th Cir. 1993)); *see also United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980)
14 (“Where it is necessary, however, to protect a person from harassment, . . . ridicule or
15 personal embarrassment, courts have permitted the use of pseudonyms.”). A loss of
16 privacy harm is likely to be especially severe where, as here, the plaintiff is “compelled . .
17 . to disclose information of the utmost intimacy.” *Doe v. Stegall*, 653 F.2d 180, 185 (5th
18 Cir. 1981) (internal quotation marks omitted).

19 Courts “have long recognized that the harms arising from disclosing a person’s
20 transgender status are among those that make protection by pseudonym appropriate.” *Doe*
21 *v. Pa. Dep’t of Corr.*, 2019 WL 5683437, at *2 & nn.12–13 (M.D. Pa. Nov. 1, 2019)
22 (collecting cases); *see also Doe v. City of Detroit*, 2018 WL 3434345, at *2 (E.D. Mich.
23 July 17, 2018) (“Several courts have held that an individual’s transgender identity can
24 carry enough of a social stigma to overcome the presumption in favor of disclosure.”).
25 This is so because “[t]he excruciatingly private and intimate nature of transsexualism, for
26 persons who wish to preserve privacy in the matter, is really beyond debate.” *Powell v.*
27 *Schrivver*, 175 F.3d 107, 111 (2d Cir. 1999). Courts also regularly extend this protection to
28 guardians and next of kin in cases involving transgender youth. *See, e.g., Roe v.*
29 *Herrington*, No. 4:20-cv-00484-JAS, ECF Nos. 8, 49 (D. Ariz.) (granting motions for

1 transgender minors and their parents to proceed via pseudonym); *Highland Local Sch.*
2 *Dist. v. U.S. Dep’t of Educ.*, 2016 WL 4269080, at *5 (S.D. Ohio Aug. 15, 2016); *Doe v.*
3 *United States*, 2016 WL 3476313, at *1 (S.D. Ill. June 27, 2016).

4 Jane and Megan understandably hope to control to whom they disclose that they
5 are transgender, and they have an acute interest in avoiding the harassment that could
6 arise if their participation in this lawsuit became publicly known. (J. Doe Decl. ¶ 3, M.
7 Roe Decl. ¶ 11.) Moreover, having to share that they are transgender and the intimate
8 details of their gender dysphoria in the public record will only exacerbate the emotional
9 distress that Jane and Megan already face. (J. Doe Decl. ¶¶ 12–13; M. Roe Decl. ¶¶ 10–
10 11; *see also* Budge Decl. ¶ 34.) They also fear the response from members of the public.
11 (J. Doe Decl. ¶ 13; M. Roe Decl. ¶ 11; H. Doe Decl. ¶ 17; K. Roe Decl. ¶ 12.)

12 Being a party to this lawsuit may also require Jane and Megan to disclose private
13 information about their medical care, amplifying the importance of proceeding under a
14 pseudonym. *See Powell*, 175 F.3d at 111 (recognizing “[t]he excruciatingly private and
15 intimate nature of transsexualism”); *Doe v. Blue Cross & Blue Shield of R.I.*, 794 F.
16 Supp. 72, 74 (D.R.I. 1992) (concluding that transgender “plaintiff’s privacy interest is
17 both precious and fragile, and this [c]ourt will not cavalierly permit its invasion”). Jane
18 and Megan—who are fighting for their right to play on the sports teams that align with
19 their gender identity—may be subjected to requests by Defendants of their private
20 medical information. Without prejudice to any objections Plaintiffs may make in respect
21 of any such requests, that information is “of the utmost intimacy,” *Stegall*, 653 F.2d at
22 185, and thus “anonymity is necessary to preserve privacy in” this matter of a “sensitive
23 and highly personal nature,” *Advanced Textile Corp.*, 214 F.3d at 1068 (quoting *James*, 6
24 F.3d at 238).

25 Moreover, Jane and Megan’s fear of lost privacy, discrimination, and harassment
26 is reasonable. As the Seventh Circuit has observed, “[t]here is no denying that
27 transgender individuals face discrimination, harassment, and violence because of their
28 gender identity.” *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*,

1 858 F.3d 1034, 1051 (7th Cir. 2017); *Gonzalez v. Nevares*, 305 F. Supp. 3d 327, 333
2 (D.P.R. 2018) (finding that forcing transgender people “to disclose their transgender
3 status exposes [them] to a substantial risk of stigma, discrimination, intimidation,
4 violence, and danger”). Numerous studies support the *Whitaker* court’s observation. For
5 example, the *Whitaker* court itself cited a 2011 survey which found that “78% of students
6 who identify as transgender or as gender non-conformant[] report being harassed while in
7 grades K-12.” 858 F.3d at 1051 (citing Jaime M. Grant et al., *Injustice at Every Turn: A*
8 *Report of the National Transgender Discrimination Survey*, NAT’L CTR. FOR
9 TRANSGENDER EQUALITY 1, 33 (2011), [http://www.transequality.org/sites/default/](http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf)
10 [files/docs/resources/NTDS_Report.pdf](http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf)). Likewise, a 2019 national school climate survey
11 found that more than 55% of respondents in Arizona reported verbal harassment based on
12 gender expression and more than 20% reported experiencing physical harassment.
13 GLSEN, *School Climate for LGBTQ Students in Arizona (2019 State Snapshot)*, GLSEN,
14 1, 1 (2019), [https://www.glsen.org/sites/default/files/2021-01/Arizona-Snapshot-](https://www.glsen.org/sites/default/files/2021-01/Arizona-Snapshot-2019.pdf)
15 [2019.pdf](https://www.glsen.org/sites/default/files/2021-01/Arizona-Snapshot-2019.pdf); *see also*, Sandy E. James et al., *The Report of the 2015 U.S. Transgender*
16 *Survey*, NAT’L CTR. FOR TRANSGENDER EQUALITY 1, 4 (2016), [https://transequality.org/](https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf)
17 [sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf](https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf) (survey of nearly 28,000
18 transgender individuals from across the United States found “high levels of mistreatment,
19 harassment, and violence in every aspect of life”).

20 In sum, Jane and Megan reasonably fear discrimination and harassment directed at
21 them and their families if their identities are disclosed to the public. (J. Doe Decl. ¶¶ 13–
22 14; M. Roe Decl. ¶¶ 11–12.) The attendant loss of privacy will also cause Jane and
23 Megan significant psychological harm and distress if the intimate details of their medical
24 care are connected to them in any publicly available documents. (J. Doe Decl. ¶¶ 12–13,
25 M. Roe Decl. ¶¶ 10–11; *see also* Budge Decl. ¶ 34.)

1 **II. TRANSGENDER YOUTH, LIKE JANE AND MEGAN, ARE**
2 **PARTICULARLY VULNERABLE TO HARM FROM THE**
3 **DISCLOSURE OF THEIR IDENTITIES**

4 “[T]he anonymous party’s vulnerability to” the harm they fear is a third factor a
5 court considers in determining whether proceeding anonymously is appropriate. *Ayers*,
6 789 F.3d at 945 (internal citation omitted). Jane and Megan are particularly vulnerable to
7 the harm they fear for two reasons: their young age and, as discussed above, unlike most
8 litigants, transgender individuals are a target of pervasive harassment and discrimination
9 in our society. *See* Section I, *supra*. Jane is 11 years old and will soon enter middle
10 school, and Megan is 15 years old and in high school. (J. Doe Decl. ¶ 1; M. Roe
11 Decl. ¶¶ 2, 5.) “[T]he youth of” plaintiffs is often “a significant factor in the matrix of
12 considerations arguing for anonymity[.]” *Stegall*, 653 F.2d at 186 (finding the plaintiffs’
13 youth to be an “especially persuasive” factor justifying anonymity); *see also Al Otro*
14 *Lado, Inc. v. Nielsen*, 2017 WL 6541446, at *5 (S.D. Cal. Dec. 20, 2017) (“[C]hild-
15 plaintiffs are deemed to be especially vulnerable, warranting their anonymity.”).

16 Recognizing the special vulnerability transgender youth face, courts in the Ninth
17 Circuit have allowed transgender children to proceed pseudonymously. *See e.g., Christ*,
18 552 F. Supp. 3d at 892 n.5 (“The Court notes that all of the Plaintiffs”—minors and their
19 parents—“are proceeding in this case under pseudonyms to protect them from harassment
20 stemming from their transgender status.”); *Koller*, 415 F. Supp. 2d at 1133 (allowing a
21 transgender teenager to proceed under a pseudonym); *Hecox*, 479 F. Supp. 3d at 946 n.3
22 (allowing transgender child-plaintiff and her parents to proceed under pseudonyms.)

23 That Jane and Megan belong to two groups that are particularly vulnerable to harm
24 weighs strongly in favor of proceeding via pseudonyms in this case.

25 **III. ALLOWING JANE AND MEGAN TO PROCEED VIA**
26 **PSEUDONYM WILL NOT PREJUDICE DEFENDANTS AND IS IN**
27 **THE PUBLIC INTEREST**

28 Courts must balance the factors in favor of anonymity against the prejudice that a
29 defendant might suffer as a result and determine whether allowing the plaintiff to proceed
30 anonymously serves the public interest. *Ayers*, 789 F.3d at 945; *Publius*, 321 F.R.D. at

1 361. The defendant’s knowledge of the plaintiff’s identity “lessens” any claims the
2 defendant can make that it is “prejudiced by the use of pseudonyms,” *Advanced Textile*,
3 214 F.3d at 1069 n.11, because this knowledge gives a defendant “the information [it]
4 need[s] to defend against the claims” brought against it, *Al Otro Lado, Inc.*, 2017 WL
5 6541446, at *6.

6 Additionally, though the public has a “right to open courts,” it also “has an interest
7 in seeing” cases involving important issues “decided on the merits.” *Kamehameha Sch.*,
8 596 F.3d at 1042–43 (quoting *Advanced Textile*, 214 F.3d at 1073). In these cases,
9 “permitting plaintiffs to use pseudonyms” can “serve the public’s interest in th[e] lawsuit
10 by enabling it to go forward.” *Advanced Textile*, 214 F.3d at 1073. That is especially true
11 in cases “[w]here a plaintiff attacks governmental activity, for example a governmental
12 policy or statute,” because “[i]n such circumstances the plaintiff presumably represents a
13 minority interest (and may be subject to stigmatization), and there is arguably a public
14 interest in a vindication of his rights.” *EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111
15 (E.D.N.Y. 2003) (citation omitted).

16 Here, Jane and Megan do not object to revealing their identity to Defendants under
17 an appropriate protective order and thereby giving Defendants the information they need
18 to defend against the claims in this suit. As such, Defendants will not be prejudiced if
19 Jane and Megan, and their parents, are permitted to proceed anonymously. *See Advanced*
20 *Textile*, 214 F.3d at 1069 n.11.

21 CONCLUSION

22 Because Plaintiffs Jane Doe and Megan Roe are especially vulnerable to severe
23 harm in the form of “harassment, . . . ridicule or personal embarrassment,” *Advanced*
24 *Textile Corp.*, 214 F.3d at 1067–68, their “need for anonymity outweighs” any “prejudice
25 to the opposing party” or “the public’s interest in knowing” his identity, *Publius*, 321
26 F.R.D. at 361. The Court should grant them and their parents leave to proceed under
27 pseudonyms.

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Respectfully submitted this 17th day of April, 2023.

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**Pro hac vice application forthcoming*

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

Jane Doe, by her next friends and parents
Helen Doe and James Doe; and Megan Roe,
by her next friends and parents, Kate Roe and
Robert Roe,

Plaintiffs,

v.

Thomas C. Horne, in his official capacity as
State Superintendent of Public Instruction;
Laura Toenjes, in her official capacity as
Superintendent of the Kyrene School District
Kyrene School District; The Gregory School;
and Arizona Interscholastic Association, Inc.,

Defendants.

Case No. _____

**[Proposed] ORDER GRANTING
PLAINTIFFS' MOTION TO PROCEED VIA
PSEUDONYM**

1 Having considered Plaintiffs’ Motion to Proceed via Pseudonym (“Motion”) and
2 good cause appearing,

3 **IT IS HEREBY ORDERED:**

4 The Motion is **GRANTED**, and Plaintiffs Jane Doe and Megan Roe, and their
5 parents and next friends, Helen Doe, James Doe, Kate Roe, and Robert Roe, may proceed
6 using pseudonyms.

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SO ORDERED.

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