

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

JANE DOE I, JANE DOE II, JANE DOE)
III, JANE DOE IV, JANE DOE V, JANE)
DOE VI, AND JANE DOE VII, on behalf)
of themselves and derivatively on behalf of)
KAPPA KAPPA GAMMA FRATERNITY,)

Plaintiffs,)

v.)

CASE NO. 23-CV-51-J

KAPPA KAPPA GAMMA FRATERNITY,)
an Ohio non-profit corporation, as a)
Nominal Defendant and as a Direct)
Defendant; MARY PAT ROONEY,)
President of the Fraternity Council of)
KAPPA KAPPA GAMMA FRATERNITY,)
in her official capacity, KAPPA KAPPA)
GAMMA BUILDING CO., a Wyoming)
non-profit corporation, and TERRY)
SMITH)

Defendants.)

RENEWED REQUEST TO PROCEED ANONYMOUSLY

COMES NOW, the Jane Does by and through counsel, and hereby renew their request to proceed under pseudonym with the following additional information:

1. Yesterday, the Court denied Plaintiffs’ motion to proceed anonymously, concluding that “after weighing Plaintiffs’ alleged privacy rights against the public interest favoring openness, this case, **at present**, does not warrant pseudonymity.” Doc. 3 at 9 (emphasis added).
2. The difficulty with the Court’s decision is that anonymity cannot be restored if the ‘present’ circumstances change. And they have. Plaintiffs renew their request in light of developments since the filing of the Complaint ten days ago, and they trust that the

information will revise the Court’s assessment of the merits of their request for anonymity at this stage of litigation.¹

3. The Court held that Plaintiffs “have not shown that they are in real danger of physical harm.” Doc. 3 at 8. To the extent that this Court requires concrete evidence of threats of violence directed against each individual Plaintiff, this is impossible: no one knows their identities. But the experience of the past ten days is instructive.
4. Last night, on April 6, 2023, Riley Gaines was speaking about the need for protected spaces for women on a university campus in California, and she was assaulted by individuals asserting that “trans-women are women”.² Ms. Gaines was barricaded in a room for three hours; she was physically assaulted as she was escorted out of the event by law enforcement, all the while being screamed at and called a “fucking transphobic bitch” by biological men.
5. On April 2, 2023, Representative Karlee Provenza (D-Laramie), who serves as the sitting House member for the district of the University of Wyoming where the Plaintiffs are currently located, posted an ANTIFA referenced meme that received national attention. See Exhibit 1. The meme depicts a woman holding an assault rifle with a scope and the words, “Auntie Fa Says protect trans folks against fascists & bigots!” *Id.* Rep. Provenza

¹ This process for anonymity in the Tenth Circuit feels, to a certain extent, anomalous. Usually, when questions of jurisdictional fact arise at the outset of litigation, they are resolved in favor of the Plaintiff. For example, “[w]hen a plaintiff invokes federal-court jurisdiction, the plaintiff’s amount-in-controversy allegation is accepted if made in good faith.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014). If that is the case, then Plaintiffs’ very real, good-faith concerns about safety should be treated similarly. Factual disputes can then be revisited later within the context of adversarial briefing. And if the justification for anonymity is wanting, then the Plaintiffs can be forced to reveal themselves to the public.

² <https://nypost.com/2023/04/07/riley-gaines-ambushed-and-hit-after-womens-sports-speech-at-sfsu/>

has been publicly censured by the House Leadership. At the same time, the Speaker of the House noted that Rep. Provenza has received death threats as a result of her post on social media.³

6. Also of note, after this case was filed, undersigned counsel were informed by university officials that the Church Elder who recently hosted a table in the University of Wyoming Student Union related to Terry Smith has *also* received death threats.
7. Contrary to the suggestion in the Court's order on April 6, 2023, death threats and safety concerns in this matter go both ways. Doc. 3 at 8 (stating "[i]t seems to this Court that the protester, in fact, supported Plaintiffs' views on transgender rights.>").
8. The original request made to this Court contemplated relief for both the male (self-identified transgendered individual) referred to as "Terry Smith" and the Plaintiff Jane Does. Various publications then chose to identify Smith by name. A March 30, 2023, article in the Branding Iron reported that Smith has "faced statewide and national backlash" since induction.⁴
9. The Sorority members have been told to not wear their sorority letters around campus for their own safety and the UW law enforcement presence has increased to keep them safe. But the Plaintiffs have a vulnerability that extends beyond the individual above and almost all of the plaintiffs in the cases cited by the Court: everyone knows where they live. Their

³<https://cowboystatedaily.com/2023/04/03/wyoming-lawmaker-apologizes-for-politically-charged-post-gets-death-threats/>. The statement by Rep. Provenza stated that she intended to convey the need for the 2nd Amendment to protect individuals and minority "communities." Rep. Provenza is a personal acquaintance of Smith, and it remains unclear whether Rep. Provenza considers Plaintiffs to be some of the 'bigots' who are attacking the transgender community and whose actions must be met with firearms.

⁴ <https://www.uwbrandingiron.com/2023/03/30/kkg-faces-lawsuit-from-chapter-members/>

only current protection is that the general public does not know which of the forty or so residents they are. If the Court's standard for anonymity is that Plaintiffs must wait for personalized death threats and harassment before they can become anonymous, then the Court has eliminated protection for all litigants.

10. The Court's opinion also states social media attacks are the sort of "criticism, ostracism, and vitriol" that should be expected, and Plaintiffs have brought "any social media backlash, or celebrity, on themselves." Doc. 3 at 8. It is unclear whether this means that Internet death threats are not to be taken seriously or that the Plaintiffs are like the sexual assault victim who "asked for it." These women are understandably concerned about their lives and their safety. Everyone already knows where they live on campus. The present climate regarding transgender issues, particularly in the wake of the Nashville school shooting and attempted Colorado shooting, both with transgender individuals, remains real and present.

11. The Court's opinion noted that "numerous media outlets have reported Smith's real name." Plaintiffs would also add that some of these media outlets have exaggerated the allegations in the verified Complaint. Defendant Smith deserves kindness, not anger and harassment. Although some of Smith's behavior is troubling, the Plaintiffs want him treated with respect.⁵ This was the basis for the request for his anonymity.

12. As to anonymity, however, the Plaintiffs are not similarly situated. Smith has put his own name out in the public forum; the Plaintiffs have not. In the past ten days, Smith has engaged with the press and consented to the revelation of his identity. A call between

⁵ Nor should a missed redaction in 235 pages of attachments be seen to reflect hidden motive. Usually, such oversights are resolved with a call from the clerk's office so a corrected version can be provided.

undersigned counsel and the Branding Iron publication at UW revealed that Smith consented to his identification in the March 30, 2023 story. In addition, the first news article in early October about Mr. Smith's membership in Kappa Kappa Gamma was created with his involvement.⁶ The girls, as Plaintiffs, have not done so. Moreover, without their consent their sorority house down to the house number was doxed⁷ online.⁸

13. Some of the women in this matter sleep with bars over their doors. To say that Plaintiffs "cower behind an anonymity shield" is untrue and does not reflect this Court's usual temperate approach to difficult issues. The Complaint was verified, as it must be. While the Federal Rules of Civil Procedure contains the presumption that, "Every action shall be prosecuted in the name of the real party in interest," exigent circumstances warrant the request that the Jane Does at least, remain confidential to the public. W.R.C.P. 17(a).

For the foregoing reasons, the Jane Does respectfully requests that this Court **GRANT** their *Motion to Proceed Pseudonymously* for the protection and safety of these young women. The Jane Does offer this additional information below and respectfully urge this Court to **GRANT** the motioned relief and permit the young women herein to proceed under pseudonym.

⁶<https://www.uwbrandingiron.com/2022/10/12/kappa-kappa-gamma-first-to-accept-open-transgender-student-in-uw-history/>

⁷ Doxed means to "publish private or identifying information about (a particular individual) on the internet, typically with malicious intent" available at Oxford Languages Online last accessed April 6, 2023.

⁸<https://cowboystatedaily.com/2023/03/28/women-sue-university-of-wyoming-sorority-for-accepting-transgender-member/> (showing the house number where the girls live). <https://cowboystatedaily.com/2023/03/29/floodgates-are-open-with-lawsuit-challenging-uw-sorority-over-transgender-member/> (showing photographs of the Kappa members without their knowledge or consent).

Respectfully submitted,

/s/ Cassie Craven
Cassie Craven, 7-5664
Longhorn Law Limited Liability Company
109 E. 17th St. Suite 11
Cheyenne, Wyoming 82001
307-823-3062
cassie@longhornlawllc.com

/s/ John G. Knepper
John Knepper
Law Office of John G. Knepper, LLC
P.O. Box 1512
Cheyenne, Wyoming 82003
307-632-2842
John@KnepperLLC.com

Dated this 7th day of April, 2023.

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023, a copy of the foregoing pleading, 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.

Exhibit

1



Karlee Provenza 11h



Auntie Fa Says



**PROTECT
TRANS FOLKS
AGAINST
FASCISTS &
BIGOTS!**

@offcolordecals

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Defendants.)

ORDER ON RENEWED REQUEST FOR USE OF THE JANE DOE PSEUDONYM

THE COURT, having reviewed the *Plaintiffs' Request to Proceed under Pseudonym* and the Court being otherwise fully advised in the premises hereby finds and orders as **FOLLOWS**:

1. The Court finds there is good cause to **GRANT** the motion and such motion is hereby **GRANTED**.

SO ORDERED this _____ day of April, 2023.

ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE