

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
Nashville Division**

L.W., by and through her parents and next friends, Samantha Williams and Brian Williams, et al.,

Plaintiffs,

v.

JONATHAN SKRMETTI, in his official capacity as the Tennessee Attorney General and Reporter, et al.,

Defendants.

Civil No. 3:23-cv-00376

Judge Richardson

Judge Newbern

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO PROCEED PSEUDONYMOUSLY**

Plaintiffs John Doe, by and through his parents and next friends, Jane Doe and James Doe; Jane Doe; James Doe; Ryan Roe, by and through his parent and next friend, Rebecca Roe; and Rebecca Roe (collectively, “Movants”) hereby submit their reply to *Defendants’ Response to Plaintiffs’ Motion for Leave to Proceed Pseudonymously*, dated May 2, 2023 [ECF No. 76] (the “Response”). Through this reply, Movants seek to underscore the importance of proceeding under pseudonym and oppose one of the Defendants’ proposed three conditions to consenting to the *Plaintiffs’ Motion to Proceed Pseudonymously*, dated April 21, 2023 [ECF No. 19] (the “Motion”).

ARGUMENT

As explained in the Motion, courts in this Circuit have repeatedly permitted transgender individuals to proceed pseudonymously in recognition of the intimate nature of the information required to be disclosed, as well as the risks of “retaliation, harassment, and social stigma” associated with their gender identity. *Ray v. Dir., Ohio Dep’t of Health*, No. 2:18-cv-272, 2018 WL 8804858, at *1 (S.D. Ohio Apr. 5, 2018); *see also, e.g., Bd. of Educ. of Highland Loc. Sch. Dist. v. U.S. Dep’t of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at *5 (S.D. Ohio Aug. 15, 2016); *Love v. Johnson*, 146 F. Supp. 3d 848, 856 (E.D. Mich. 2015).

In their Response, Defendants ask the Court to place three conditions on Movants’ right to proceed pseudonymously. The first and third are acceptable to Movants; the second is not. Specifically, Defendants’ second proposed condition is that “during this litigation, Defendants shall not publicly or privately disclose or identify for any purpose that these movant-plaintiffs are parties to the case, *except ‘to the full extent necessary to defend the law being challenged.’*” Response at 689 (emphasis added).¹ Defendants offer no support for demanding the unbounded

¹ Pincites to record materials reference the “Page ID” numbers in the ECF file stamps.

right to disclose “publicly” Plaintiffs’ identities as they see fit and fail to explain how Movants would be protected by an order that cedes to the opposing party the authority to determine whether and when to reveal their identities.

The Amended Proposed Order, attached as Exhibit 1, incorporates the first and third conditions requested by Defendants and otherwise sets forth the specific procedures and protections that Movants believe are appropriate to protecting their identity, while still giving Defendants sufficient room to defend the Ban.² Among other things, the Amended Proposed Order (i) permits Defendants’ counsel to disclose Identifying Information to Defendants, Defendants’ employees, and experts retained in this action “to the minimum extent necessary to litigate this action,” provided such persons have been provided with and read the Amended Proposed Order, (ii) permits Defendants’ counsel to disclose Identifying Information on third-party subpoenas “to the minimum extent necessary to litigate this action,” provided such third-party has been provided with and read the Amended Proposed Order, and (iii) provides a mechanism for the parties to meet-and-confer if future issues arise and seek Court intervention as needed. To require any less would endanger Movants, particularly given the reality that involuntary disclosure of a person’s transgender status “exposes transgender individuals to a substantial risk of stigma, discrimination, intimidation, violence, and danger.” *See Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018).

For the foregoing reasons, and those identified in the Motion, the Court should grant the Motion and order the relief set forth in the Amended Proposed Order.

² Plaintiffs provided a copy of the Amended Proposed Order to Defendants in an effort to resolve this dispute without the Court’s involvement, but Defendants rejected Plaintiffs’ offer and continue to insist upon the inclusion of all three conditions.

Dated: May 9, 2023

s/ Stella Yarbrough

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2023, the undersigned filed the foregoing Plaintiffs' Reply in Support of Motion to Proceed Pseudonymously via this Court's electronic filing system, which sent notice of such filing to the following counsel of record:

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Exhibit 1

Amended Proposed Order

**IN THE UNITED STATES DISTRICT COURT FOR THE
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L.W., by and through her parents and next friends, Samantha Williams and Brian Williams, et al.,

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Defendants.

Civil No. 3:23-cv-00376

Judge Richardson

Judge Newbern

**AMENDED PROPOSED ORDER AUTHORIZING PLAINTIFFS TO PROCEED
PSEUDONYMOUSLY**

THIS MATTER came before the Court on Plaintiffs' Motion For Leave To Proceed Pseudonymously and Brief In Support, whereby Plaintiffs move this Court for leave to proceed under the pseudonyms "John Doe," "Jane Doe," "James Doe," "Ryan Roe," and "Rebecca Roe."

The Court, having considered Movants' motion, Movants' supporting memorandum, Defendants' Response to Plaintiff's Motion for Leave to Proceed Pseudonymously, Movants' reply, and the entire record in this case, finds there is good cause to grant Movants' motion and hereby **ORDERS:**

1. Movants may proceed in this action under the pseudonyms "John Doe," "Jane Doe," "James Doe," "Ryan Roe," and "Rebecca Roe."
2. Movants' counsel shall disclose Movants' true names and, to the extent otherwise discoverable under the Federal Rules of Civil Procedure, other information that identifies Movants

or Movants' family members, directly or indirectly ("Identifying Information"), upon request to Defendants' counsel and the Court.

3. All publicly-filed documents shall identify Movants only by Movants' pseudonyms.

4. All documents filed with the Court that contain Movants' names or Identifying Information shall be redacted or filed under seal.

5. Defendants' counsel may disclose Identifying Information to Defendants, Defendants' employees, and experts retained in this action, but only to the minimum extent necessary to litigate this action.

6. Defendants' counsel may disclose Identifying Information on a third-party subpoena pursuant to Federal Rule of Civil Procedure 45 and Local Rule 45, but only to the minimum extent necessary to litigate this action.

7. Individuals to whom Identifying Information is disclosed shall not further disclose that information to any other person without first obtaining written confirmation from Movants' counsel that such disclosure is necessary to litigate this action.

8. Under no circumstances shall any person disclose Identifying Information to the media.

9. Before disclosing Identifying Information to any person for purposes of litigating this action, Defendants' counsel shall give that person a copy of this order, require that person to read this order, specifically point out to that person the provisions of section 7 and 8 of this order, and specifically warn that person that violation of this order may result in sanctions for contempt of court.

10. If any specific issues related to non-disclosure of Identifying Information arise during the course of litigation, the parties shall seek to resolve those issues without court intervention. If the parties cannot agree, they shall seek further clarification from this Court.

IT IS SO ORDERED.

JUDGE ALISTAIR NEWBERN