

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Jane Doe, by her next friend and parents
Helen Doe and James Doe; and Megan Roe,
by her next friend 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,

Warren Petersen, in his official capacity as
President of the Arizona State Senate, and
Ben Toma, in his official capacity as
Speaker of the Arizona House of
Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ
Hon. Jennifer G. Zipp

ORDER

PROTECTIVE ORDER

1
2 WHEREAS the Court has granted the motion of Plaintiffs Jane Doe and Megan
3 Roe, along with their respective parents Helen Doe and James Doe, and Kate Roe and
4 Robert Roe, to proceed under pseudonyms, (Dkt. 44);

5 WHEREAS the parties stipulate that there is good cause to protect from public
6 disclosure the actual identities of the parties proceeding by pseudonyms in this case;

7 WHEREAS the parties recognize that evidence relied upon by the parties and
8 Documents produced in discovery in the above-captioned matter may require the exchange
9 of highly confidential and private information beyond the identities of the parties; and

10 WHEREAS the parties stipulate to the terms of this Protective Order (the “Order”);

11 IT IS THEREFORE ORDERED THAT,

12 1. The term “Confidential Information” will mean and include information
13 disclosed, relied upon, or produced in this action (regardless of how it is generated, stored,
14 or maintained) that (i) qualifies for protection under Federal Rule of Civil Procedure 5.2(a)
15 or 26(c); (ii) contains personal identifying information, including the names of any
16 pseudonymous party (as well as the names of other individuals that would reveal the
17 identity of any pseudonymous party), social security numbers, taxpayer identification
18 numbers, birth dates, addresses, telephone numbers, or financial account information; (iii)
19 contains any individual’s privacy-protected personal health information; (iv) constitutes,
20 includes, or is contained in “records” subject to the Privacy Act, 5 U.S.C. § 552a; or (v)
21 reflects any other information the confidentiality of which the disclosing party is under a
22 legal duty to protect.

23 2. The term “Document” shall include, but is not limited to: correspondence;
24 memoranda; email; clinician and/or patient information; materials that identify clinicians,
25 and/or patients or potential patients; insurance information; letters; statements; audio
26 and/or video recordings; photographs; motion pictures; sketches; drawings; notes of
27 discussions with third parties; other notes; business reports; instructions; disclosures; other
28 writings; internet archives; answers to interrogatories; responses to requests for

1 admissions; trial testimony; deposition testimony; transcripts of trial testimony and
2 depositions, including data, summaries, and compilations derived therefrom; and any other
3 electronically stored information (“ESI”).

4 3. The term “Producing Party” shall mean any party which relies upon,
5 discloses to another party, or produces, any Confidential Information, which shall be
6 designated “Confidential” or “Highly Confidential – Attorney’s Eyes Only.”

7 4. The parties may, in good faith, designate in whole or in part as “Confidential”
8 or “Highly Confidential – Attorney’s Eyes Only” any Document that contains Confidential
9 Information.

10 a. Designation as “Confidential”: Any party may designate a Document as
11 “Confidential” only if, in the good faith belief of such party and its
12 counsel, the unrestricted disclosure of the Confidential Information
13 could cause harm in the form of lost privacy, discrimination, or
14 harassment, or could be harmful to any party’s business or operations.

15 b. Designation as “Highly Confidential – Attorney’s Eyes Only”: Any
16 party may designate a Document as “Highly Confidential – Attorney’s
17 Eyes Only” only if, in the good faith belief of such party and its counsel
18 and despite the provisions of this Order, there may be a substantial risk
19 of harm to the disclosing party if that Document and its Confidential
20 Information is disclosed to all other parties or non-parties to this action.

21 5. Such designation may be made by stamping “Confidential” or “Highly
22 Confidential – Attorney’s Eyes Only” on a Document or, if a Document cannot be stamped,
23 by including “Confidential” or “Highly Confidential – Attorney’s Eyes Only” in the
24 Document file name. A Document that is not stamped or named “Confidential” or “Highly
25 Confidential – Attorney’s Eyes Only” is not restricted in its use unless otherwise provided
26 by law. If a party inadvertently or mistakenly discloses or produces a Document without
27 designating it as provided in this order, the Producing Party may give written notice to the
28 receiving party that the Document at issue is “Confidential” or “Highly Confidential –

1 Attorney’s Eyes Only” and should be treated as such in accordance with this order. In such
2 instance, the Producing Party shall also provide copies of the material at issue properly
3 designated as required under this order within a reasonable time. Upon receipt of such
4 notice, the receiving party shall treat such information consistent with the redesignation.

5 6. Disclosure, production, or designation of Documents pursuant to this Order
6 shall not constitute a ruling on discoverability, relevance, or admissibility of the
7 Documents or the information contained therein.

8 7. All Documents filed with this Court that are designated as “Confidential” or
9 “Highly Confidential – Attorney’s Eyes Only” shall be filed according to the District of
10 Arizona Local Rules of Civil Procedure. *See* LRCiv. 5.6.

11 8. In all publicly-filed Documents and at all public hearings and trials before
12 this Court, the pseudonymous parties shall be identified and referred to only by their
13 pseudonyms.

14 9. If a party seeks to use in any way at any public hearing or trial before this
15 Court a Document designated as “Confidential” or “Highly Confidential – Attorney’s Eyes
16 Only,” then counsel for the parties shall confer on procedures necessary to protect the
17 confidentiality of that Document and the Confidential Information contained in the
18 Document. Such Document and the Confidential Information contained therein shall not
19 lose its protected status through such agreed-upon use.

20 10. Upon request by another party, counsel for a pseudonymous party who will
21 provide live, recorded, or written testimony in this case, shall disclose the identity of the
22 party to counsel for the requesting party. The identities of persons subject to this order
23 shall be used only for purposes of this litigation, and may be shared only as set forth herein.
24 Individuals to whom the pseudonymous parties’ identities, or any Documents designated
25 as “Confidential” or “Highly Confidential – Attorney’s Eyes Only,” are disclosed pursuant
26 to this paragraph shall not further disclose that information to any other person except as
27 allowed herein.
28

1 11. Documents designated as “Confidential” or “Highly Confidential –
2 Attorney’s Eyes Only” shall be used solely for purposes of this litigation and may not be
3 used for any other purpose except as required by law.

4 12. Defendants and their counsel shall not disclose the identities of the
5 pseudonymous parties, or any Documents designated as “Confidential” or “Highly
6 Confidential – Attorney’s Eyes Only,” to any person authorized to or involved in
7 investigating, prosecuting, or otherwise enforcing any actual, alleged, or possible violation
8 of any law or regulation, including Ariz. Rev. Stat. § 15-120.02 (the “Act”), except as
9 required by law. Nothing in this agreement shall prevent any person authorized to or
10 involved in investigating, prosecuting, or otherwise enforcing any actual, alleged, or
11 possible violation of any law or regulation from using independently developed evidence
12 or information to enforce any law or regulation.

13 13. Counsel for the parties may disclose the identities of the pseudonymous
14 parties, as well as Documents designated as “Confidential” or “Highly Confidential –
15 Attorney’s Eyes Only,” to counsel for the parties and their employees and agents, including
16 any expert witness retained for this case, but only to the extent necessary to litigate this
17 case and only after the person to whom disclosure will be made has read this order and
18 agreed to be bound by it by signing an undertaking to that effect, such as that attached to
19 this order as Attachment A, except counsel for the parties are not required to sign
20 Attachment A or a similar undertaking. Counsel for the parties may disclose the identities
21 of the pseudonymous parties and Documents designated as “Confidential” to the parties,
22 but only to the extent necessary to litigate this case and only after the person to whom
23 disclosure will be made has read this order and agreed to be bound by it by signing an
24 undertaking to that effect, such as that attached to this order as Attachment A. All persons
25 who sign such an undertaking, including that attached to this order as Attachment A, should
26 retain that signed form for two years after the final termination of this case (including
27 disposition of all appeals). Counsel shall not disclose the identities of pseudonymous
28

1 parties, or “Confidential” or “Highly Confidential – Attorney’s Eyes Only” documents to
2 anyone else who is not specified in this paragraph.

3 14. Except as provided in this Order, under no circumstances shall any person
4 disclose the identities of the pseudonymous parties, or any Documents designated as
5 “Confidential” or “Highly Confidential – Attorney’s Eyes Only.”

6 15. If a person discloses the identity of a pseudonymous party, a Document
7 designated as “Confidential” or “Highly Confidential – Attorney’s Eyes Only,” in a manner
8 not authorized in this order, that person must immediately and in writing notify the
9 Producing Party of all pertinent facts relating to such disclosure and, without prejudice to
10 other rights and remedies of the Producing Party, make every effort to prevent further
11 disclosure by the recipient or by the person to whom the recipient disclosed such
12 information.

13 16. If any specific issues related to nondisclosure of the pseudonymous parties’
14 identities arise during the course of this case, the parties shall seek to resolve those issues
15 without court intervention. If the parties cannot agree, they shall seek further direction
16 from this Court.

17 17. The parties agree to be bound by the terms of this Order pending entry by
18 the Court, and any violation of its terms shall be subject to the same penalties and sanctions
19 as if this order had been entered by the Court.

20 18. Within 60 days after final termination of this case (including final
21 disposition of any appeals), all unredacted Documents designated as “Confidential” or
22 “Highly Confidential – Attorney’s Eyes Only” shall be returned to the Producing Party or
23 destroyed, at the option of the Producing Party. At the request of the Producing Party, a
24 party shall certify in writing that it has undertaken its best efforts to destroy or return such
25 Documents and that such Documents have been returned or destroyed to the best of its
26 knowledge.

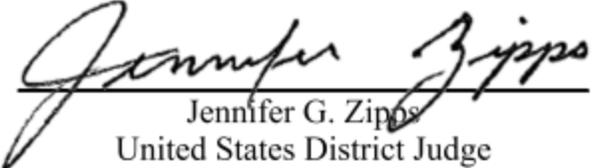
27 19. This Order shall continue to be binding after the conclusion of this case,
28 including any appeals, absent prior written consent of all parties or order of this Court,

1 except that there shall be no restriction on Documents that are used as exhibits in Court
2 unless such exhibits were filed under seal.

3 20. The parties agree that they shall designate as “Confidential” or “Highly
4 Confidential – Attorney’s Eyes Only” only such Documents, ESI, and other things that
5 truly contain private and highly sensitive information relating to a party or to non-parties.
6 The parties agree that if disputes arise about whether a Document or information should be
7 designated as “Confidential,” or about the applicability of this Order, such disputes shall
8 be resolved, if possible, by agreement of the parties of this action, but that the Court will
9 decide any disputes the parties are unable to resolve themselves.

10
11 **IT IS ORDERED** Parties’ Joint Motion for Protective Order (Doc. 147) is
12 **GRANTED.**

13 Dated this 20th day of September, 2023.

14
15 
16 Jennifer G. Zippo
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

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

Jane Doe, by her next friend and parents
Helen Doe and James Doe; and Megan Roe,
by her next friend 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,

Warren Petersen, in his official capacity as
President of the Arizona State Senate, and
Ben Toma, in his official capacity as
Speaker of the Arizona House of
Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ
Hon. Jennifer G. Zipp

**Declaration and Agreement to be
Bound by Stipulated Protective Order**

**DECLARATION AND AGREEMENT TO BE BOUND BY STIPULATED
PROTECTIVE ORDER**

I, _____, hereby attest to my understanding that information
or Documents designated “Confidential” or “Highly Confidential – Attorney’s Eyes Only”
are provided to be subject to the Stipulated Protective Order (“order”) entered by the Court
in the above-captioned litigation, Dkt. ____; that I have been given a copy of and have read
the order; and that I agree to be bound by its terms. I also understand that my execution of
this Declaration and Agreement to be Bound by the Stipulated Protective Order
(“Declaration”) is a prerequisite to my review of any information or Documents designated
as “Confidential” or “Highly Confidential – Attorney’s Eyes Only” pursuant to the order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I further agree and attest to my understanding that, if I fail to abide by the terms of the order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the District of Arizona for the purposes of any proceedings related to enforcement of the order, even if such enforcement proceedings occur after termination of this action.

I agree to be bound by and to comply with the terms of the order as soon as I sign this declaration.

Executed this ____ day of _____, _____.

Signature

Name (Printed)