IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division

STERLING MISANIN, et al.,

Plaintiffs,

v.

ALAN WILSON, in his official capacity as the Attorney General of South Carolina, et al.,

Defendants.

Case No.: 2:24-cv-04734-BHH

PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER AND TO PROCEED UNDER PSEUDONYMS

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 2

ARGUMENT 4

I. The *James* factors weigh strongly in favor of pseudonymity. 4

A. Disclosure of Plaintiffs' identifying information would reveal "a matter of sensitive and highly personal nature." 5

B. Disclosure of Plaintiffs' identifying information would expose them to "physical or mental harm." 6

C. Pseudonymity protects the privacy and safety interests of Minor Plaintiffs. 7

D. Because this case raises uniquely legal claims against state officials, the public's interest in open judicial proceedings is not undermined by pseudonymity. 9

E. Defendants would not be prejudiced by the issuance of a protective order or by an order granting pseudonymity. 10

CONCLUSION 12

Plaintiffs respectfully submit this motion for a protective order and to proceed under pseudonym.[1]

INTRODUCTION

The presumption of open pleading must sometimes yield to a party's legitimate interest in safety and privacy. This is one such case.

Plaintiffs Jane Doe and Jill Ray (together, "Adult Plaintiffs") are transgender women living in South Carolina. Jane Doe is employed by the State of South Carolina, and Jill Ray's spouse is employed by the State of South Carolina. Because they receive health insurance through the Public Employee Benefits Authority ("PEBA"), Doe and Ray cannot receive coverage for essential medical care for gender dysphoria under S.C. Code § 44-42-340. Plaintiffs Gary Goe and Nancy Noe (together, "Parent Plaintiffs") are the parents of minor children with gender dysphoria, Plaintiffs Grant Goe and Nina Noe (together, "Minor Plaintiffs"), who cannot receive essential medical care for that serious medical condition anywhere in South Carolina because of S.C. Code § 44-42-320. To avoid risks of serious mental, emotional, and potentially physical harm, Movants respectfully request a protective order barring disclosure of their real names and other identifiers, and for permission to litigate under pseudonyms for the duration of this case.

Movants have no objection to providing their legal names to counsel for Defendants and the Court. Movants also do not intend to prevent the public from having access to the Court's rulings or observing the proceedings of this Court under adequate protections. They want only to prevent public disclosure of their identity.

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[1] Plaintiffs do not submit an accompanying memorandum of law because a full explanation of the motion as set forth in Loc. Civ. R. 7.05 is contained within this motion. *See* Loc. Civ. R 7.04 (D.S.C.). Further, as of the filing of this motion, conferral with opposing counsel has not been possible under Loc. Civ. R. 7.02 because opposing counsel has not yet entered an appearance or otherwise identified themselves to Plaintiffs.

Because this request is vital for protecting Movants from harm, will not impede the public's understanding of the case, and will not burden Defendants in any way, Movants' request easily satisfies the five-factor balancing test announced in *James v. Jacobson*, 6 F.3d 233 (4th Cir. 1993), and should be granted.

STATEMENT OF FACTS

House Bill 4624 ("H 4624"), codified in South Carolina Code Annotated §§ 44-42-310 *et seq.*, imposes significant barriers to healthcare for transgender people. In particular, H 4624 (1) categorically prohibits medical professionals from providing "gender transition procedures" to adolescents under the age of 18, S.C. Code § 44-42-320; (2) prohibits "public funds" from being used "directly or indirectly for gender transition procedures," regardless of age, S.C. Code § 44-42-340; and (3) excludes "gender transition procedures" from coverage under the South Carolina Medicaid Program, again regardless of age, S.C. Code § 44-42-350. These provisions prevent transgender South Carolinians from receiving certain types of medically necessary care that remains available to non-transgender people.

Movants are two adults and two adolescents who have been diagnosed with gender dysphoria and who access medically necessary gender-affirming healthcare, and the parents of the two adolescents. Movants have either received denials of care or anticipate receiving such denials based on H 4624.

Movant Jane Doe is a transgender woman living in South Carolina. Doe Decl. ¶ 3.[2] She is a physician employed by the state of South Carolina. Doe Decl. ¶ 4. After consultation with her physicians, Ms. Doe began receiving hormone therapy treatment. Doe Decl. ¶ 8. Ms. Doe is

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[2] Citations to declarations in this motion refer to the declarations appended as exhibits to Plaintiffs' concurrently-filed Motion for Preliminary Injunction.

insured through a state healthcare plan administered by PEBA. Doe Decl. ¶ 11. She is scheduled for further treatment for her gender dysphoria in the form of surgical care on November 11, 2024, but due to H 4624, that procedure cannot go forward absent a preliminary injunction from this Court. Doe Decl. ¶ 10. Ms. Doe needs this medically necessary healthcare to be the best version of herself, for her family and for her patients at South Carolina hospitals. Doe Decl. ¶¶ 14, 16. Ms. Doe requests that this Court allow her to proceed pseudonymously to protect her privacy and safety.

Movant Jill Ray is a transgender woman living in South Carolina. Ray Decl. ¶¶ 3, 8. Ms. Ray has been receiving gender-affirming care for her gender dysphoria for almost four years. Ray Decl. ¶¶ 9-11. Before she began receiving gender-affirming care, Ms. Ray was so depressed and anxious, she could not even leave her home. Gender-affirming care has given Ms. Ray her life back. It has brought her closer to her spouse and enabled her to build a loving and happy community. Ray Decl. ¶¶ 17, 18. Worrying about not being able to access the care she needs is stressful and debilitating for Ms. Ray, who is forced to contemplate feeling unsafe in her own body. Ray Decl. ¶ 24. Ms. Ray requests that this Court allow her to proceed pseudonymously to protect her privacy and safety.

The Goe Family live in Anderson County, South Carolina. Grant Goe Decl. ¶ 3; Gary Goe Decl. ¶ 3. Grant Goe, a minor, is transgender. Grant Goe Decl. ¶ 4. He has known since a very young age that his gender identity did not match his sex assigned at birth, and he has lived as the boy he is for nearly four years. Grant Goe Decl. ¶¶ 5, 7-8. After careful consideration by Gary Goe and his wife, Grant's medical team, Gary Goe, and his wife decided to start Grant on hormone therapy as medically necessary treatment for his gender dysphoria. Gary Goe Decl. ¶¶ 10-17. Gary is terrified at the possibility of not being able to access the care that has greatly improved his life,

because of H 4624. Grant Goe Decl. ¶¶ 18-21. The Goe Family requests that this Court allow them to proceed pseudonymously to protect their privacy and safety.

The Noe Family live in South Carolina. Nancy Noe Decl. ¶ 2. Nina Noe, a minor, is transgender. Nina Noe Decl. ¶ 5. Nina was diagnosed with gender dysphoria. Nancy Noe Decl. ¶ 8. After consulting with physicians and with the consent of her mother Nancy Noe, Nina started hormone therapy as medically necessary treatment for her gender dysphoria. Nancy Noe Decl. ¶ 12. Nina receives healthcare coverage through a Medicaid plan, and up until now Medicaid has covered her hormone therapy. Nancy Noe Decl. ¶16. Nina is deeply distressed over the prospect of losing access to gender-affirming care, and Nancy is worried about her daughter's future and mental health. Nancy Noe Decl. ¶14. The Noe Family requests that this Court allow them to proceed pseudonymously to protect their privacy and safety.

ARGUMENT

Courts have held that "an individual's transgender identity can carry enough of a social stigma to overcome the presumption in favor of disclosure." *Doe v. City of Detroit*, No. 18-cv-11295, 2018 WL 3434345, at *2 (E.D. Mich. July 17, 2018) (collecting cases). For that reason, many courts have allowed transgender plaintiffs to proceed pseudonymously, especially when seeking prospective relief against government defendants. *See, e.g.*, *Hersom v. Crouch*, 2:21-CV-00450, 2022 WL 908503, *2 (S.D. W.Va. Mar. 28, 2022). Here, the Fourth Circuit's five-factor balancing test from *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993), supports the same result.

I. The *James* factors weigh strongly in favor of pseudonymity.

In the Fourth Circuit, district courts assessing a party's request to proceed under a pseudonym must balance several factors, including but not limited to:

> [1]Whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly

> personal nature; [2] whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent nonparties; [3] the ages of the person whose privacy interests are sought to be protected; [4] whether the action is against a governmental or private party; and, relatedly, [5] the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

James, 6 F.3d at 238 (numerals added).

Not all the *James* factors may be relevant to a given case, and there may be other factors that are relevant. *Doe v. Alger*, 317 F.R.D. 37, 39 (W.D. Va. 2016) (citing *James*, 6 F.3d at 238). "At bottom, the trial court must carefully review *all* the circumstances of the case and then decide whether the customary practice of disclosing the plaintiff's identity should yield to the plaintiff's privacy concerns." *Id.* at 39–40 (quoting *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992)) (emphasis in original).

A. Disclosure of Plaintiffs' identifying information would reveal "a matter of sensitive and highly personal nature."

As courts routinely recognize, "a person's transgender status is a highly sensitive and private matter." *Hersom v. Crouch*, No. 2:21-CV-00450, 2022 WL 908503, at *2 (S.D.W. Va. Mar. 28, 2022) (applying *James*); *see also Doe v. Genesis HealthCare*, 535 F. Supp. 3d 335, 339 (E.D. Pa. 2021) ("[C]ourts in this Circuit have allowed anonymity due to the private and intimate nature of being transgender."). But this case not only reveals Adult and Minor Plaintiffs' transgender *status*, which "is natural" and not "a psychiatric condition," *Kadel v. N. Carolina State Health Plan for Tchrs. & State Emps.*, 12 F.4th 422, 427 (4th Cir. 2021), but also their gender dysphoria diagnoses and related need for safe and effective, but politicized, medical treatment. The disclosure of sensitive medical information further sharpens the need for pseudonymity. *See, e.g.*, *Doe v. Chesapeake Med. Sols., LLC*, Civ. No. SAG-19-2670, 2020 WL 13612472, at *1 (D. Md. Feb. 26, 2020) (finding the first factor weighed in favor of allowing the use of

a pseudonym where the plaintiff's claims involved "information about the plaintiff's medical conditions").

Treatment for gender dysphoria is designed to reduce stress and discomfort by facilitating a patient's social, legal, and medical transition; as relevant there, Adult Plaintiffs and Minor Plaintiffs discuss in detail their medical transitions. *Kadel*, 12 F.4th at 427. Given the highly detailed (albeit non-identifying) information in the Complaint about the Movants, and their medical histories, the use of pseudonyms is essential to protect their privacy.

The first *James* factor strongly supports pseudonymity.

B. Disclosure of Plaintiffs' identifying information would expose them to "physical or mental harm."

There is ample evidence that "transgender individuals often face verbal and physical harassment when forced to reveal their transgender status." *Hersom*, 2022 WL 908503 at *2 (citing Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey, Nat'l Ctr. for Transgender Equal.*, 2 (December 2016), https://transequality.org/sites/default/files/docs/usts/USTS% 20Full% 20Report% 20-% 20FINAL% 201.6.17.pdf); *see also Kadel v. Folwell*, 100 F.4th 122, 143 (4th Cir. 2024) ("[T]ransgender people have historically been subject to discrimination."). That is certainly true in South Carolina, where a transgender woman was recently murdered because of her gender identity. *See* U.S. Dept. of Justice, *South Carolina Man Found Guilty of Hate Crime for Killing a Transgender Woman Because of Her Gender Identity* (Feb. 24, 2024) (available at: https://www.justice.gov/opa/pr/south-carolina-man-found-guilty-hate-crime-killing-transgender-woman-because-her-gender).

Anti-transgender attitudes show no signs of abating, and the risk of retaliation against Movants is very real. If anything, animosity towards transgender people is escalating as politicians intentionally inflame prejudices in service of their election campaigns. *See* James Pollard, *GOP*

candidates elevate anti-transgender messaging as a rallying call to Christian conservatives, Associated Press (Feb. 18, 2024) (describing Donald Trump's promise to South Carolina voters to cut federal funding to schools allowing "transgender insanity").

Adult Plaintiffs and Minor Plaintiffs seek gender-affirming medical care to relieve their gender dysphoria and live and be recognized by their gender, not their sex assigned at birth. Disclosing their transgender status in this litigation interferes with those goals. As other courts have held, pseudonymity is particularly appropriate when—as here—identification would cause the very injury from which the plaintiff seeks relief. *See, e.g.,. Alger*, 317 F.R.D. at 42 ("If he were not allowed to proceed anonymously, part of the relief he seeks—expungement of his student record—would fall short of making him whole: the cat would have already been let out of the bag."); *see also Doe v. Harris*, 640 F.3d 972, 973 n.1 (9th Cir. 2011) (granting a plaintiff leave to proceed anonymously "because drawing public attention to his status as a sex offender is precisely the consequence that he seeks to avoid by bringing this suit"); *Doe v. Alaska*, 122 F.3d 1070, 1070 (9th Cir. 1997) ("disclosure [of Plaintiffs' names] will deny them the very relief they seek"); *Roe v. Ingraham*, 364 F. Supp. 536, 541 fn. 7 (S.D.N.Y. 1973) ("[I]f plaintiffs are required to reveal their identity prior to the adjudication on the merits of their privacy claim, they will already have sustained the injury which by this litigation they seek to avoid.").

For Adult Plaintiffs and Minor Plaintiffs (and by extension Parent Plaintiffs), the ability to maintain the privacy of their transgender status is critical to their physical and mental health, both now and in the future. For both reasons, the second *James* factor strongly supports pseudonymity.

C. Pseudonymity protects the privacy and safety interests of Minor Plaintiffs.

Under Federal Rule of Civil Procedure 5.2(a)(3), Minor Plaintiffs Grant Goe and Nina Noe are already entitled to proceed with a measure of anonymity, by using their initials instead of names; however, additional privacy protections are warranted both for the Minor Plaintiffs and

their parents. In our present information age, disclosing the names and identities of Gary Goe and Nancy Noe will have the result of disclosing the identities of their transgender adolescent children, Grant and Nina. Moreover, proceeding under initials alone may be insufficient to protect the identities of the Minor Plaintiffs and their parents given the small number of transgender adolescents in South Carolina and the highly personal or potentially identifying information they must provide to vindicate their rights in this matter.[3] Other courts have not hesitated to allow minor adolescents who are transgender and their parents to proceed under pseudonyms. *See, e.g.*, *Poe v. Drummond*, No. 23-CV-177-JFH-SH, 2023 WL 4560820, at *5 (N.D. Okla. July 17, 2023) (granting motion to proceed under pseudonyms to five transgender adolescent plaintiffs and their parents in challenge to ban on gender affirming medical care); *see also Poe by & through Poe v. Labrador*, No. 1:23-CV-00269-BLW, 2023 WL 8935065, at *19 (D. Idaho Dec. 26, 2023) (noting that plaintiffs, who were transgender adolescents and their parents, were proceeding under pseudonym in challenge to ban on gender-affirming medical care); *Doe v. Ladapo*, 676 F. Supp. 3d 1205, 1215 (N.D. Fla. 2023) (same).

Because pseudonymity is necessary to preserve the privacy and safety interests of vulnerable transgender children, the third *James* factor supports pseudonymity.

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[3] The Williams Institute estimates that there are 3,700 transgender youth ages 13-17 in South Carolina. *See* Jody L. Herman, Andrew R. Flores & Kathryn K. O'Neill, *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Institute (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf.

D. Because this case raises uniquely legal claims against state officials, the public's interest in open judicial proceedings is not undermined by pseudonymity.

Although not explicit in *James*, the Fourth Circuit has subsequently ruled that "the public's interest in open proceedings must inform a district court's pseudonymity calculus." *Doe v. Public Citizen*, 749 F.3d 246, 274 (4th Cir. 2014).

Allowing Movants to proceed under pseudonyms does not deny the public its right to attend the proceedings or inspect the court's opinions and orders resolving the underlying constitutional issue. *See Alger*, 317 F.R.D. at 39. The public is still free to examine pleadings, evaluate the behavior of the parties and the judiciary, and follow the resolution of claims presented. Indeed, "the only thing potentially being shielded from the public is plaintiff's name and any court proceedings or opinions that might be necessary to determine standing." *Id.* (quoting *Doe v. Barrow Co.*, 219 F.R.D. 189, 193 (N.D. Ga. 2003).

The public interest in Movants' identities is further diminished here because of the uniquely legal nature of Movants' claims. Movants argue that S.C. Code §§ 44-42-320, -340, and -350 violate the Fourteenth Amendment and several federal anti-discrimination laws. ECF 1, ¶¶ 198-267. They do not seek damages, but rather only a court order enjoining enforcement of these discriminatory laws. In such a case, "knowing the Plaintiffs' identities lends little to the public's ability to follow the proceedings or understand the disposition of the case." *Doe v. City of Apple Valley*, 2020 WL 1061442, at *2 (D. Minn. Mar. 5, 2020); *see also Doe v. El Paso*, 2015 WL 1507840, at *4 (distinguishing between legal challenges and individual damages actions where parties' identity might assist discovery). Rather, the public interest "pertains more to its outcome than to its individual participants." *Doe v. Hood,* 3:16-CV-00789-CWR-FKB, 2017 WL 2408196, at *2 (S.D. Miss. June 2, 2017) (allowing anonymity in a class action challenging sex offender classifications because "each request plainly challenges the constitutionality of state action, as

applied to plaintiffs and the putative class they seek to represent"). Many courts agree. *See, e.g.*, *Doe v. Megless*, 654 F.3d 404, 409 (3d Cir. 2011) (favoring anonymity where, "because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities"); *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008) (same); *Doe v. Harris*, 2014 WL 4207599, at *2 (W.D. La. Aug. 25, 2014) ("[M]any of the cases allowing plaintiffs to proceed anonymously involve challenges to the constitutional, statutory, or regulatory validity of government activity.").

In sum: Movants' claims turn on strictly legal questions of statutory interpretation and constitutional jurisprudence, not on Movants' credibility, reliability, special expertise as a witness, or any valuation of harm experienced by a specific Movant. As a result, Movants' request does not impede the public's interest in open judicial proceedings.

E. Defendants would not be prejudiced by the issuance of a protective order or by an order granting pseudonymity.

For three reasons, there is no risk of prejudice or unfairness to Defendants if the Court grants Movants' request for a protective order and allows them to proceed pseudonymously.

First, as state officials, Defendant Attorney General Wilson and the other Defendants acting in their official capacities do not suffer the same reputational harm or other disadvantages that private defendants might face if litigating against an anonymous adversary. As other courts have explained, the "government is not vulnerable to similar reputational harm [as a private party], particularly in a case involving a challenge to the constitutional, statutory, or regulatory validity of government activity." *Doe v. Virginia Polytechnic Inst. & State Univ.,* 7:19-CV-00249, 2020 WL 1287960, at *4 (W.D. Va. Mar. 18, 2020 (citing *Int'l Refugee Assistance Project v. Trump*, TDC-17-0361, 2017 WL 818255, at *3 (D. Md. Mar. 1, 2017)); *see also S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1988 (describing suits

challenging the constitutional validity of government activity as involving "no injury to the Government's 'reputation'"). For that reason, anonymity "is more likely to be appropriate in cases challenging government activity because there is both 'arguably a public interest in a vindication of . . . rights' and a risk of stigmatization of the plaintiff, who often represents a minority interest." *Int'l Refugee Assistance Project*, 2017 WL 818255, at *3 (quoting *EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003).

Second, Defendants will not suffer any unfairness or prejudice from Movants proceeding under pseudonyms because they will be provided with each Movant's identifying information under a protective order. *See, e.g.*, *Doe v. Virginia Polytechnic*, 2020 WL 1287960, at *5 ("there is no risk [of unfairness to defendants] because the defendants are aware of Doe's and Roe's identities."); *Doe v. Univ. of Maryland Med. Sys. Corp.*, No. CV SAG-23-1572, 2023 WL 3949737, at *3 (D. Md. June 12, 2023) ("[T]here is no risk of prejudice to Defendants by allowing this action to proceed anonymously, given that Defendants are aware of Plaintiff's identity."). Subject to a protective order, Defendants will be free to investigate and validate facts bearing on Movants' standing. There is no prejudice to Defendants if Movants' identities are protected from public dissemination.

Third, Defendants are not prejudiced by pseudonymity because Movants only seek declaratory and injunctive relief. *Cf. Doe v. El Paso County Hospital,* EP–13–CV–00406–DCG, 2015 WL 1507840, at *4 (W.D. Tex. April 1, 2015) (recognizing a distinction between legal challenges and individual damages actions where parties' identities might assist in discovery); *see also E.B.*, *supra* at *5 (holding that cases denying anonymity in monetary class actions are "inapposite" in an injunctive class action). Discovery into the valuation of damages—which might

require more invasive investigation into Movants' lives than would be possible with a protective order in place—is not necessary here.

CONCLUSION

The public benefits when constitutional rights and liberties are vindicated. Here, the citizens of South Carolina benefit from Movants' collective willingness to represent the interests of the thousands of transgender South Carolinians who harmed by S.C. Code §§ 44-42-310, *et seq*. To require the public dissemination of their identities would inflict gratuitous injury, would undermine the relief they seek, is not in the public interest, and would not prejudice Defendants' reputation or their ability to defend against Movants' legal claims.

For these and the foregoing reasons, Movants respectfully request that the Court grant their motion to proceed under pseudonyms and for a protective order limiting disclosure of their identities to counsel for Defendants.

Date: August 30, 2024

Respectfully submitted,

/s/ Meredith McPhail

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** Application for Admission Pro Hac Vice Forthcoming*