

2018 WL 8804858

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United States District Court, S.D. Ohio, Eastern
Division.

Stacie RAY, et al., Plaintiffs,

v.

DIRECTOR, OHIO DEPARTMENT OF HEALTH,
et al., Defendant.

Civil Action 2:18-cv-272

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Filed 04/05/2018

Attorneys and Law Firms

Freda J. Levenson, Elizabeth Bonham, ACLU of Ohio, Jennifer S. Roach, Cleveland, OH, David J. Carey, Thompson Hine LLP, Columbus, OH, Gabriel Arkles, Pro Hac Vice, American Civil Liberties Union, New York, NY, John Knight, Pro Hac Vice, American Civil Liberties Union, Kara N. Ingelhart, Pro Hac Vice, Lambda Legal Defense and Education Fund, Inc., Chicago, IL, Peter C. Renn, Pro Hac Vice, Lambda Legal Defense and Education Fund, Inc., Los Angeles, CA, Susan Jane Becker, Avon Lake, OH, for Plaintiffs.

Jason J. Blake, Albert J. Lucas, Calfee Halter & Griswold LLP, Columbus, OH, Kimberly Moses, Calfee Halter & Griswold, Cleveland, OH, for Defendants Chief, Office of Vital Statistics, State Registrar, Office of Vital Statistics.

Jason J. Blake, Albert J. Lucas, Calfee Halter & Griswold LLP, Columbus, OH, for Defendant Amy Acton.

ORDER

CHELSEY M. VASCURA, UNITED STATES
MAGISTRATE JUDGE

*1 This matter is before the court for consideration of Plaintiff Jane Doe's Motion for Protective Order and

Leave to Proceed Anonymously. (ECF No. 2.) Plaintiffs, Stacie Ray, Basil Argento, Ashley Breda, and Jane Doe, filed a Complaint in this Court on March 29, 2018, asserting constitutional claims against the following Defendants: Director, Ohio Department of Health; Chief, Office of Vital Statistics; and State Registrar, Office of Vital Statistics. (ECF No. 1.) On the same date, Plaintiff Doe filed the subject Motion, seeking leave to proceed anonymously and a protective order to protect her identity from public disclosure. (ECF No. 2.) Plaintiff asserts that "disclosure of her identity, including her transgender identity, could put her at serious risk of harm." (*Id.*) For good cause shown, Plaintiff's Motion is **GRANTED**, and Plaintiff Doe may proceed in this action with the pseudonym Jane Doe in place of her true identity. (ECF No. 2.)

Although filed as a single Motion, the Court takes the request to proceed anonymously and the request for a protective order in turn.

I. MOTION FOR LEAVE TO PROCEED ANONYMOUSLY

Generally, a complaint must state the names of all the parties. Fed. R. Civ. P. 10(a). However, the Court "may excuse plaintiffs from identifying themselves in certain circumstances." *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004). To determine whether a plaintiff's privacy interests outweigh the presumption in favor of openness, the United States Court of Appeals for the Sixth Circuit has identified factors to consider, including:

- (1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity;
- (2) whether prosecution of the suit will compel the plaintiffs to disclose information 'of the utmost intimacy';
- (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and
- (4) whether the plaintiffs are children."

Id. (citing *Doe v. Stegall*, 653 F.2d 180, 185-86 (5th Cir. 1981)). This case implicates the first two *Porter* factors.

First, Plaintiff Doe is suing to challenge governmental activity. Specifically, she is suing to overturn Ohio's policy prohibiting transgender persons from correcting the gender marker on their birth certificates to match their gender identity. Plaintiff alleges that Ohio's policy violates her constitutional rights to equal protection, due process, and freedom of speech. (Compl. 22-26, ECF No. 1.) Because Ohio's policy constitutes governmental activity, the first *Porter* factor weighs in favor of Plaintiff Doe proceeding anonymously.

Second, disclosure of Plaintiff Doe's identity would equate to a disclosure of information "of the utmost intimacy." *Porter*, 371 F.3d at 560 (citing *Doe v. Stegall*, 653 F.2d 180, 185-86 (5th Cir. 1981)). As Plaintiff asserts in her Motion, "Plaintiff's transgender status[] ... places her in a small and highly stigmatized social group that reliably experiences retaliation when their identity is disclosed." (Mot. for Protective Order 3, ECF No. 2.) This Court has previously discussed the ramifications of compelling identification of transgender persons in litigation with respect to minors. *See Bd. Of Educ. Of the Highland Local 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) However, the Court also noted that "some courts have allowed non-minor transgender plaintiffs to proceed anonymously due to the social stigma associated with their gender identity." *Id.* (collecting cases). Although minors may be particularly susceptible to retaliation, harassment, and social stigma due to their gender identity, non-minor transgender persons face many similar challenges. *See, e.g.,* Jaclyn M. White Hughto, *et al., Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. & Med. 222 (demonstrating that transgender stigma limits opportunities and access to resources). Moreover, as the United States Court of Appeals for the Second Circuit recognized in *Powell v. Schriver*, "[t]he excruciatingly [sic] private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate." 175 F.3d 107, 111 (2d Cir. 1999) (citing *Farmer v. Moritsugu*, 163 F.3d 610, 611 (D.C. Cir. 1998)). Therefore, the second factor weighs heavily in favor of permitting Plaintiff Doe to proceed anonymously.

*2 In conclusion, the Court finds compelling reasons to protect Plaintiff Doe's privacy and shield her from discrimination and harassment. Therefore, Plaintiff Doe's

Motion for Leave to Proceed Anonymously is **GRANTED**. (ECF No. 2.)

II. MOTION FOR PROTECTIVE ORDER

For good cause shown, the Court **GRANTS** Plaintiff Doe's Motion for Protective Order. (ECF No. 2.)

It is hereby **ORDERED**, pursuant to Federal Rules of Civil Procedure 26(c), 5.2(d) and (e)(1) that:

1. In all publicly-filed documents, Plaintiff Jane Doe shall only be identified as Jane Doe.
2. All documents filed with this Court that contain the full name of Plaintiff Jane Doe, or contain information that identifies her, directly or indirectly, shall be filed under seal. The filing party must also contemporaneously file a public version with any identifying information redacted.
3. Upon request, Plaintiff Jane Doe shall disclose her identity to counsel for Defendants. Plaintiff need only disclose information that is reasonably and in good faith calculated to aid Defendants in the preparation and/or defense of this case.
4. Counsel for Defendants may disclose Plaintiff Jane Doe's identity to the Defendants, their agents, and to any experts retained in this case, but only to the extent the disclosure is reasonably and in good faith calculated to aid in the preparation and/or defense of this case.
5. Every individual to whom disclosure of Plaintiff Jane Doe's identity is made shall read and be bound by this order. Counsel for Defendants shall ensure that persons to whom disclosure is made under paragraphs 3 and 4 above are aware of this Order.
6. Under no circumstance shall any party, or any other person, intentionally disclose Jane Doe's identity without her counsel's written consent.
7. Any allegations of abuse or violation of this order will be considered by the Court either for purposes of determining whether it should enter sanctions, including a contempt of court order or sanctions available under Federal Rules of Civil Procedure 26 and 37, such as dismissal and default judgment. If an

allegation of abuse or violation of this Order is found, the Court may take disciplinary action upon appropriate parties.

8. This Order is subject to modification by the Court upon application of either party.

For the reasons set forth above, Plaintiff's Motion for Protective Order and Leave to Proceed Anonymously is **GRANTED.** (ECF No. 2.)

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 8804858

III. DISPOSITION
