

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN DOES 1-4 and JANE DOE,)	
)	
Plaintiffs,)	No. 16 C 4847
)	
v.)	
)	
LISA MADIGAN, Attorney General of the State of Illinois, and LEO P. SCHMITZ, Director of the Illinois State Police.)	Judge Norgle Magistrate Judge Finnegan
)	
Defendants.)	

PLAINTIFFS’ MOTION FOR LEAVE TO PROCEED ANONYMOUSLY

Plaintiffs John Does 1-4 and Jane Doe, through counsel, respectfully move this Honorable Court for entry of an order granting them leave to proceed in this matter anonymously. In support thereof, Plaintiffs state as follows:

1. The Plaintiffs in this case are five individuals who are classified as “child sex offenders” under Illinois law. Dkt. 1, Complaint at ¶¶5–9. Plaintiffs have brought this action to challenge the constitutionality of certain Illinois statutes that regulate where they are permitted to be present. *Id.* at ¶1.

2. Because of their status as sex offenders, Plaintiffs face realistic threats of harm if their names become publicly known. Specifically, Plaintiffs fear that if their names become public, they will be stigmatized in their communities and places of work and fear that they and their families could be subjected to retaliation and possible violence. Accordingly, they seek to proceed in this case by the

anonymous names “John Doe” and “Jane Doe.”

3. Although the use of anonymous names is disfavored, the test for granting such use is met here. Rule 17(a) of the Federal Rules of Civil Procedure provides that “[e]very action shall be prosecuted in the name of the real party in interest.” And Fed. R. Civ. Pro. 10(a) requires that pleadings contain the names of the parties. Notwithstanding these rules, “many federal courts . . . have permitted parties to proceed anonymously when special circumstances justify secrecy.” *Does I – XXIII v. Advanced Textile Corporation*, 214 F.3d 1058, 1067 (9th Cir. 2000) (allowing undocumented workers to use anonymous names in Fair Labor Standards Act case.)

4. The Seventh Circuit has held that it is within the District Court’s discretion to determine whether the circumstances of a particular case justify a departure from the general rule that parties must be identified by name. *Doe v. Blue Cross and Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997). The Court has found circumstances justifying the use of anonymous names where, as here, a plaintiff is “a likely target of retaliation by people who would learn her identity” from court filings. *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004).

5. In deciding whether to permit a party to proceed by anonymous name, courts apply a balancing test, weighing “the possible prejudice to the opposing party from concealment” against “the harm to the plaintiff” from disclosure of his or her identity. *Id.* Here, as shown in the analysis below, the balancing analysis favors permitting Plaintiffs to proceed by anonymous name.

6. First, there is a real and substantial risk to the Plaintiffs' safety if their identities are publicized. In granting leave to proceed anonymously, courts have recognized this risk as a substantial factor in support of granting plaintiffs leave to proceed anonymously. See, e.g., *John Does I-IV v. City of Indianapolis*, 2006 WL 2289187 at *2 (S.D. Ind. Aug. 7, 2006) (Young, C.J.) (granting leave to proceed anonymously and noting that "persons identified as sex offenders have been subject to violence."); *Doe v. City of Indianapolis*, 12 C 0062 (S.D. Ind. Feb. 27, 2012) (Dinsmore, M.J.) ("If Plaintiff were named, not only would his past crimes be highlighted, but he would also be identified as the person challenging the constitutionality of a statute that was created to protect the public, which could make Plaintiff an even bigger target for retaliation. Allowing the plaintiff to bring this case anonymously reduces this risk.") See also, Exhibit 1, MSNBC.com, Man Turns Self In After 2 Child Molesters Killed (9/6/05), <http://msnbc.com/id/9227684>; The Boston Globe, Man Defends Attacks on Sex Offenders (12/5/04), <http://www.boston.com/news/local/articles/2004>).

7. Second, where, as here, a plaintiff is challenging government (rather than private) action "the plaintiff's interest in proceeding anonymously is considered particularly strong. In such circumstances the plaintiff presumably represents a minority interest (and may be subject to stigmatization), and there is arguably a public interest in a vindication of his rights." *EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003) (citing *Roe v. Wade*, 410 U.S. 113 (1973)). Moreover, when a plaintiff seeks to proceed anonymously against a government entity, the

government “is viewed as having a less significant interest in protecting its reputation from damaging allegations than the ordinary individual defendant.” *Id.*

8. Third, allowing Plaintiffs to proceed anonymously will not harm the public interest. Where a plaintiff challenges the constitutionality of a state statute, courts have found “an atypically weak public interest in knowing [the] litigants’ identities” because such constitutional challenges present “purely legal” issues. *Free Speech v. Reno*, 1999 WL 47310, *2 (S.D.N.Y. 1999) (quoting *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 467 (E.D. Pa. 1997)).

9. Fourth, the Defendants will not be prejudiced if the Court allows the Plaintiffs to proceed anonymously. Plaintiffs are not seeking to hide their identities from the Defendants. Instead, if this motion is granted, Plaintiffs will disclose their identities to counsel for the defendants when they enter their appearances. *John Does I-IV*, 2006 WL 2289187 at *3 (“Plaintiffs request understandably that Defendants be precluded from disclosing their names publicly. Thus, Defendants will not be prejudiced by allowing Plaintiffs to proceed by anonymous names.”)

10. Balancing the interests of the parties, courts have routinely granted motions to proceed anonymously in cases similar to this one where individuals required to register as sex offenders are challenging the constitutionality of statutes applicable to them. See *Smith v. Doe*, 538 U.S. 84 (2003)¹; *Doe v. Penn. Bd. of Prob. and Parole*, 513 F.3d 95, 98 (3rd Cir. 2008); *Doe v. Michigan Dept. of State Police*,

¹ For purposes of clarification, the Supreme Court in *Smith* did not specifically mention the anonymous name issue. However, the Court of appeals noted that it had reversed a district court order that had denied plaintiffs the right to proceed by anonymous name. *Doe I v. Otte*, 259 F.3d 979, 983 (9th Cir. 2001), rev’d on other grounds, 538 U.S. 84 (2003).

490 F.3d 491, 496 (6th Cir. 2007); *Paul P. v. Farmer*, 227 F.3d 98 (3rd Cir. 2000); *Doe v. Sauer*, 186 F.3d 903, 904 (8th Cir. 1999); *Doe v. Pataki*, 120 F.3d 1263, 1265 (2nd Cir. 1997); *E.B. v. Verniero*, 119 F.3d 1077 (3rd Cir. 1997); *G.B. v. Rogers*, 2009 WL 1322451, *1 n.1 (S.D. Ohio May 11, 2009); *Doe v. Heil*, 2008 WL 4889550 (D. Col. Nov. 13, 2008); *Doe v. Shurtleff*, 2008 WL 4427594, *1 (D. Utah Sept. 25, 2008), vacated on other grounds, 2009 WL 2601458 (D. Utah. Aug. 20, 2009), *aff'd*, 628 F.3d 1217 (10th Cir. 2010) (*en banc*), cert. denied, *Does I-IV v. City of Indianapolis*, 2006 WL 2289187 (S.D. Ind. Aug. 7, 2006); *Woe v. Spitzer*, 571 F. Supp. 2d 382, 383 (E.D.N.Y. 2008); *Doe v. McVey*, 381 F. Supp. 2d 443, 444 (E.D. Pa. 2005), *aff'd*, 513 F.3d 95 (3rd Cir. 2001); *Doe v. Ward*, 124 F. Supp. 2d 900, 902, n. 2 (W.D. Pa. 2000); *Roe v. Farwell*, 999 F. Supp. 174, 177, n.2 (D. Mass. 1998); *Doe v. Gregoire*, 960 F. Supp. 1478, 1480, n. 1 (W.D. Wash.1997).

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order granting them leave to proceed anonymously.

Respectfully submitted,

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/s/ Adele D. Nicholas
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