

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

SAM DOE 1, et al.,)	
)	Civil Complaint No.
Plaintiffs,)	
)	
v.)	Judge
)	
JACKSON CITY SCHOOL DISTRICT, et)	
al.,)	
)	
Defendants.)	
)	
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)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO
PROCEED USING PSEUDONYMS**

Plaintiffs have filed this lawsuit using pseudonyms rather than their true identities. As alleged in the Complaint, the individual plaintiffs are citizens and residents living in or near Jackson County within the Jackson City School District (JCSD). The suit is also brought on behalf of a minor plaintiff who, is a student presently enrolled within JCSD. Plaintiff Sam Doe 1 is the parent a minor currently enrolled at Jackson Middle School. Plaintiff Sam Doe 2, is a minor and a student currently attending Jackson Middle School. Plaintiff Sam Doe 3 has children currently attending a public elementary school within JCSD and Plaintiff Sam Doe 3's children expect to attend Jackson Middle School in the future. The Plaintiffs fear for their safety if their identities are disclosed.

INTRODUCTION

Jackson Middle School, a public school in Jackson, Ohio, has displayed a portrait of Jesus Christ in one of its hallways for some years. Plaintiffs bring suit to challenge the portrait

of Jesus hanging at the Middle School. Due to the highly personal and sensitive nature of the religious matters involved in this case and the potential for retribution against the Plaintiffs, Plaintiffs seek to proceed pseudonymously.

ARGUMENT

Generally, pleadings must disclose the identities of the litigants. *See* Fed. R. Civ. P. 10(a) (“... the title of the complaint must name all the parties...”). While there is a presumption of open judicial proceedings pursuant to this rule, there are exceptions when the issues involved are of a sensitive and highly personal nature. Fed. R. Civ. P. 26(c)(1) allows a court to issue a protective order that allows plaintiffs to proceed under pseudonyms and protects against the public disclosure of the plaintiffs’ personally identifiable information. Courts have granted such protective orders when there is a concern that the privacy and safety of the plaintiffs will be threatened if their names and identities are disclosed to the public. *See Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 467 (E.D. Pa. 1997).

The Sixth Circuit has identified factors a court must weigh to “determine whether a plaintiff’s privacy interests substantially outweigh the presumption of open judicial proceedings.” *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004). These factors are:

“(1) whether the plaintiffs seeking anonymity are suing to challenge a 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; (4) whether the plaintiffs are children.” *Id.* at 559 (citing *Doe v. Stegall*, 653 F.2d 180, 185-86 (5th Cir. 1981)).

In this case, the *Porter* factors weigh heavily in favor of pseudonymity and a protective order. The Plaintiffs are suing a governmental entity; they will be forced to reveal information of the utmost intimacy; and one of the plaintiffs is a minor child. The other *Porter* consideration —

whether litigation compels Plaintiffs to disclose an intention to violate the law — is not applicable in this case.

I. The Doe Plaintiffs Are Challenging a Governmental Activity

The Doe plaintiffs are suing Jackson City Schools. As averred in the Complaint, Jackson City Schools is a public school district in Jackson, Ohio. For many years, Jackson City Schools has posted a portrait of Jesus Christ, in the hallway entrance to Jackson Middle School. Plaintiffs are challenging the posting of religious iconography in a public school and are suing to remove this religious imagery from the walls of a public school.

II. The Doe Plaintiffs Will Be Forced to Reveal Information of the “Utmost Intimacy”

Plaintiffs will be forced to reveal information of the “utmost intimacy,” in particular their religious beliefs, or lack thereof, and their views on separation of church and state. Courts have recognized that “religion is perhaps the quintessentially private matter.” *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981). The “preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Lee v. Weisman*, 505 U.S. 577, 589 (1992).

Even if Plaintiffs would not have to “directly state their religious affiliations, or lack thereof,” Plaintiffs will nonetheless have to explain their injuries — a requisite element to prove standing — which will necessarily “require [them] to reveal [their] beliefs concerning the proper interaction between government and religion.” *Doe v. Barrow County*, 219 F.R.D. 189, 193 (N.D. Ga. 2003). “The court recognizes that such concerns can implicate privacy matters similar to those associated with actual religious teachings and beliefs.” *Id.* at 193.

In *Doe v. Porter*, a case in which the plaintiffs sought to enjoin a public school district’s decision to allow religious instruction in its schools, the Sixth Circuit aptly noted the uniquely

controversial aspect of religious issues involved and found that forcing the plaintiffs to reveal their identities could “subject them to considerable harassment.” 370 F.3d at 561.

Plaintiffs in this case face a unique risk inherent in Establishment Clause cases, which typically involve highly charged matters relating to religion. “Lawsuits involving religion can implicate deeply held beliefs and provoke intense emotional responses.” *Doe ex rel Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 723 (7th Cir. 2011), vacated by 678 F.3d 840 (7th Cir. 2012)(adopting opinion on issue of justiciability and anonymity).

A. Establishment Clause Plaintiffs Routinely Face Harassment and Threats Including Physical Violence

Plaintiffs would like to draw to the Court’s attention the alarming history of violence and threats of violence against Establishment Clause plaintiffs. Vashti McCollum brought a suit in 1945 objecting to the practice of allowing public school students to attend religious classes held in public school classrooms. *See Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948). Ms. McCollum’s house was vandalized, she received hundreds of pieces of hate mail, and her sons were physically attacked. *See Robert S. Alley, Without a Prayer: Religious Expression in Public Schools* 84-89 (1996).

In 1981, Joann Bell and Lucille McCord filed suit to block religious meetings and the distribution of Gideon Bibles in their children’s schools. *See Bell v. Little Axe Indep. Sch. Dist. No. 70*, 766 F.2d 1391 (10th Cir. 1985). The plaintiffs’ children were consequently branded as “devil worshipers.” Alley, *supra*, at 106. “An upside-down cross was hung on thirteen-year-old Robert McCord’s locker,” *Id.*, and the Bells received threatening phone calls. “More than once a caller said he ... was going to break in the house, tie up the children, rape their mother in front of them, and then ‘bring her to Jesus.’” *Id.* at 107-08. The threats were far from empty: The Bells’ home was burned down. *Id.*

In 1994, Lisa Herdahl brought an action challenging prayer practices in her children's schools. See *Herdahl v. Pontotoc Cty. Sch. Dist.*, 887 F. Supp. 902 (N.D. Miss. 1995). As a result, her children were called "atheists and devil worshipers" by their classmates. Stephanie Saul, *A Lonely Battle in Bible Belt: A Mother Fights to Halt Prayer at Miss. School*, *Newsday*, Mar. 13, 1995, at A8. Other children were threatened with beatings by their parents if they were caught talking to, or playing with, the Herdahl children. Alley, *supra*, at 177. There were reports that a boycott would be organized against the convenience store where Lisa Herdahl worked. Saul, *supra*, at A08. Herdahl gave up her job "because of threats against her children." Alley, *supra*, at 182. She received death threats and threats that her home would be firebombed. *Id.* at 186.

The son of the plaintiff in *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000)(a challenge to prayer at school-related events), was "harassed at school almost daily." Jonathan Ringel, *Alabama Claims U.S. Court Order Denies Students' Right to Pray*, *Fulton County Daily Rep.*, Dec. 4, 1998, at 1. And even though she was not a plaintiff but merely a vocal opponent of the school-prayer policy challenged in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), Debbie Mason received threatening phone calls and was followed home by persons trying to scare her. Kenny Byrd, *Baptist Family Opposed to Football Prayer Feels Pressure*, *Baptist Standard*, June 12, 2000. Eventually, her husband and children became unable to find work in the town where they lived. *Id.*

Tammy Kitzmiller, the lead plaintiff in a high-profile case challenging a Pennsylvania school district's promotion of intelligent design, received death threats, among other hate mail. *Judgment Day: Intelligent Design on Trial* (PBS NOVA television broadcast Nov. 13, 2007); see generally, *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 721-22 (M.D. Pa. 2005).

New Jersey high-school student Matthew LaClair also received a death threat after he tape-recorded and publically objected to his history teacher's frequent proselytizing of students. Tina Kelly, *Talk in Class Turns to God, Setting Off Public Debate on Rights*, N.Y. Times, Dec. 18, 2006, at B1. After speaking out, LaClair was quickly ostracized by his classmates. Matthew LaClair, *Scholarship Essay*, <http://www.aclu.org/students/34399res20080314.html>.

In the case of *Wynne v. Town of Great Falls*, 376 F.3d 929 (4 th Cir. 2004), the plaintiff suffered extreme harassment at the hands of her neighbors after she sued to enjoin a town council from opening its meetings with sectarian prayers. Individuals unhappy with the suit broke into the plaintiff's home and beheaded her pet parrot, leaving behind a note reading, "You're next!" See Christina Lee Knauss, *A Quiet Life No More*, The State, Sept. 19, 2004, at D1. In addition, several of the plaintiff's pet cats were killed and her pet dog was beaten. *Id.*

Tyler Deveny, the eighteen year-old plaintiff in *Deveney¹ v. Board of Education*, 231 F. Supp. 2d 483 (S.D.W. VA. 2002), endured a beating of his own after successfully challenging the invocation planned for his high-school graduation ceremony. See Charles Shumaker, *Student Beaten for Prayer Suit, HE Says*, Charleston Gazette & Daily Mail, June 19, 2002, at 6D. A group of eight teens evidently displeased with the outcome attacked Deveny in a public place, with one saying, "Oh, you hate God," before striking Deveny in the face. *Id.*

Unlike Deveny, the Dobrich family — plaintiffs in *Dobrich v. Walls*, 380 F. Supp. 366 (D. Del. 2005) — did not suffer physical violence after challenging their public school district's practices of permitting teachers to proselytize and distribute Bibles to non-Christian students and of rewarding students who attended school-sponsored Bible clubs. See David Barrio, *A Lesson in Tolerance*, Am. Lawyer, July 2008, at 122. But the harassment, anti-Semitic taunts, and veiled

¹ Mr. Deveny's last name was erroneously spelled "Deveney" in the case caption.

threats the family endured from fellow community members ultimately drove them to move to another county. *Id.*

And in a case from the Seventh Circuit challenging the display of Christian paintings by the City in a public park, Judge Cudahy gave this description of events surrounding the substitution of a new, anonymous plaintiff for the original, named one:

The record indicates that the original plaintiff in this case, Richard Rohrer, was, in effect, ridden out of town on a rail for daring to complain about the City's conduct. The present plaintiff has concealed her identity to avoid suffering the same treatment. However much some citizens of Ottawa may disagree with the position that the Plaintiffs have taken, however, much they may think the Plaintiffs annoying and overlitigious, the conduct of some of them has been deplorable.

Doe v. Small, 964 F.2d 611, 626 (7th Cir. 1992)(Cudahy, J., concurring in the judgment)(citations omitted).

Finally, just recently in a similar case over religious iconography in school, the publicly identified high school student plaintiff, Jessica Ahlquist, faced “bullying and threats at school, on her way home from school and on-line.” *Ahlquist v. City of Cranston ex rel. Strom*, 840 F. Supp. 507, 516 (D.R.I. 2012). After filing the lawsuit, Ahlquist was “subject to frequent taunting and threats at school, as well as a virtual on-line hate campaign via Facebook.” *Id.*

B. Plaintiffs in this Case Have a Reasonable Fear of Facing Harassment and Threats Including Physical Violence

“To proceed anonymously for fear of retaliation and harassment a ‘plaintiff must demonstrate that ... retaliation is not merely hypothetical but based in some real-world evidence; a simple fear is insufficient.” *Does v. Snyder*, No. 12-11194, 2012 WL 1344412 (E.D. Mich. April 18, 2012). As discussed below, Plaintiffs in this case have a reasonable fear of facing harassment, retaliation, and threats including physical violence based on commentaries made on the internet in news media accounts and on social media networks.

The issues involved in this case have already elicited a considerable amount of public outcry and will only elicit further community outrage directed at Plaintiffs. Here, there has been a bombardment of internet-based speech against those who oppose the continued hanging of the Head of Christ in Jackson Middle School. On Facebook and in online commentary to media accounts, individuals have expressed the desire to suppress minority viewpoints, and have alluded to a desire for those in disagreement to leave Jackson, Ohio, or have the students go to another middle school. The comments also show veiled threats of physical violence. Thus, it is reasonable that Plaintiffs fear social ostracism, harassment, intimidation and other threats including physical violence. The following demonstrates that this fear is not based on the hypothetical, but rather based on the comments made by real persons on-line.

Social media sites appear to be the hotbed of this threatening and harassing activity. In addition to comments on public Facebook pages, particularly news stations fan pages, residents of Jackson have expressed their displeasure with the opposition on their own Facebook pages.

Comments posted on Facebook have demonstrated veiled threats of physical violence. For example, John Davis commented on Lacey Williams Sturgell's Facebook page, "Hunt down whoever complained and get them," to which Ms. Sturgell replied, "John Davis if they remove the picture I think it might get a little ugly in this small town & [sic] it will turn so quickly they won't have a chance 2 [sic] get away! I can't stand people like this!" *See Ex. 4.* Another Facebook commenter, Steve Hayburn commented, "Find out who complained about it and settle this out in the parking lot." *See Ex. 9.* Glen Smith commented, "But, alas, I believe in freedom of speech unconditionally unless it lessons [sic] or severs my Liberties and Freedoms ... in which case I must invoke my 2nd Ammendment [sic] Rights upon you and your unjust endeavors." *See Ex. 10.*

Equally alarming are the attempts already to find the identities of the attorneys involved. Commenters have targeted the attorneys representing the Freedom from Religion Foundation (FFRF) which first contacted Superintendent Howard about the constitutional concerns regarding the portrait in January 2013. FFRF attorneys are co-counsel in this matter. CARL_IN_OHIO suggested, "Why not post the home addresses of these lawyers in Wisconsin? Let's send THEM cards, phone calls, and emails." See Ex. 8.

Adding to the mob mentality, many commenters espoused a "you're either with us or against us" philosophy. On the Telegram News Facebook Page, J Matthew Thomas commented, "Support us. Or else." See Ex. 1. On her own page, Lacey Williams Sturgell commented, "If they do remove it, I would say its [sic] not gonna be so happy go lucky in this little town of ours bc [sic] so many ppl [sic] I know disagree with removal." See Ex. 3.

Others suggested those opposing the portrait were Satan worshippers or the "Anti-Christ." Posting in response to an article on www.theblaze.com, Cyber Geezer commented,

"It's about time someone stood up and told these anti-Christ nut cases to take a flying leap off a tall building! This is such a fine upstanding group to be challenging what we do. They are all so proud of their beliefs that they keep a low profile so that no one in their own communities even know they are one of the Anti-Christ and self-glorifying atheists!" See Ex. 7

Another woman posted "What a shame, This group That wants It taken Down Is Of Satan." See Ex. 10.

Many commenters suggested those opposing the portrait of Jesus in Jackson Middle School leave the country or find another school. Samantha Ostrander commented on Ms. Sturgell's Facebook page, "I am not even a huge Christian and believe the complainer and this so called 19,000 member cult are Fucking crazy. If they don't like it, go to school somewhere else." See Ex. 2. Hannah Nichelle Vance commented on Lauren Schmoll WSAZ's Facebook page that "No

one told you that you had to look at it. If you have a problem with it then don't go into the middle school." *See* Ex. 10. "Pardon my French but these assholes need to get away from our schools PERIOD... get the hell out of our states, our region and our schools!" stated Sam Songer on WOWK13's Facebook page. *See* Ex. 6. In addition to suggesting the Plaintiffs leave Jackson, some commenters wished eternal damnation upon the opposition. For example, Pat Grochowski Mihaly commented,

"To those who want it down, when you die I hope God sends you 'down'. You wacko, sicko liberals are denying others their constitutional rights! Go find a deserted island and start a Liberal Colony. You are as much wanted in GOD'S COUNTRY as the lepers." *See* Ex. 5.

Plaintiffs have stated in declarations included with this filing that they fear experiencing social ostracism, harassment or threats. The plaintiffs are aware of the online commentary directed at those opposing continued hanging of the Head of Christ at Jackson Middle School. Under these circumstances, it is unsurprising that Plaintiffs fear social ostracism, harassment, intimidation, and physical violence should their association with this lawsuit become known.

III. One of the Doe Plaintiffs is a Minor

The potential harm to children in Establishment Clause cases is great and thus, courts have frequently allowed minor plaintiffs to proceed using pseudonyms. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290(2000); *Doe v. Porter*, 370 F.3d at 560-61; *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981). In *Doe v. Porter*, the Sixth Circuit noted, "this case is brought on behalf of very young children, to whom we grant a heightened protection." 370 F.3d at 561.

As a minor, Doe 2 is particularly vulnerable in this litigation. Recognizing the vulnerabilities of minors in litigation, the Federal Rules of Civil Procedure require minors to be identified by their initials. *See* Fed. R. Civ. P. 5.2. This measure of protection is not sufficient in this case, however, due to the highly publicized nature of the controversy and the size of the school and

city of Jackson, Ohio. Because Plaintiffs are drawn from such a small pool of individuals, even the use of initials for the minor plaintiff would make Plaintiffs easily identifiable.

Sam Doe 2 is a minor child in this litigation and is thus deserving of “heightened protection.” Doe 2 will not participate if identified. Additionally, Sam Doe 3 is the parent of minor children. Doe 3’s anonymity is necessary to protect Doe 3’s minor children, not party to this lawsuit, but nevertheless affected by it should the identities of their parents become known.

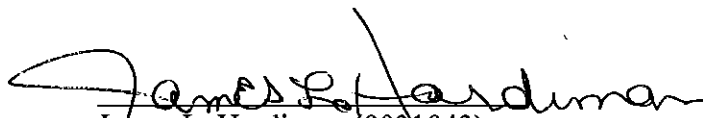
IV. Pseudonymity Traditionally Granted when Plaintiffs Uniquely Vulnerable to Stigma

Pseudonymity has traditionally been granted when plaintiffs are uniquely vulnerable to stigma. For example, pseudonymity has been granted to: a bipolar plaintiff (*Doe v. Hartford Life and Acc.Ins. Co.*, 237 F.R.D. 545 (D.C. D. N.J. 2006), a plaintiff seeking an abortion (*Roe v. Wade*, 410 U.S. 113 (1973)), and a gay plaintiff challenging a sodomy law (*Doe v. City of Richmond*, 403 F.Supp. 1199 (E.D.Va.1975), *aff’d*, 425 U.S. 901 (1976)). The plaintiffs in *Porter* who were challenging religious education in public schools were vulnerable due to the fact that they espoused a minority viewpoint in their small, rural town. So too, Plaintiffs in this case are particularly vulnerable to stigma for espousing what appears to be the minority viewpoint in their small, rural town and for being individuals on record to challenge this religious display. Plaintiffs clearly fit within the traditional purpose of pseudonymity.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that their Motion for Leave to Use Pseudonyms and For Protective Order be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The foregoing Memorandum in Support was filed this 6th day of February, 2013 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.



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