

DISTRICT COURT, CITY AND COUNTY OF DENVER
COLORADO
1437 BANNOCK ST., ROOM 230
DENVER, CO 80202

CADEN KENT,

Plaintiff,¹

v.

CHILDREN'S HOSPITAL COLORADO,

Defendant.

▲ COURT USE ONLY ▲

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Case Number:

Div:

Ctrm:

MOTION FOR LEAVE TO FILE COMPLAINT UNDER PSEUDONYM

¹ Caden Kent is a pseudonym.

Plaintiff respectfully requests leave to file the attached Complaint and Jury Demand under pseudonym, based on the sensitive and highly personal nature of his transgender status and the serious risk of retaliatory harm that could result from the public disclosure of his true name. If permitted to file under pseudonym, Plaintiff shall provide his legal name to the Defendant and the Court upon entry of an appropriate confidentiality and protective order.

BACKGROUND

1. Plaintiff is 18 years old and transgender. Plaintiff was diagnosed with gender dysphoria in early 2022. In 2023, after months of consultation and based on an individualized assessment consistent with the standard of care, doctors at Children’s Hospital Colorado (“CHCO”) determined chest masculinization surgery was medically necessary care for Plaintiff and that he was a good candidate for the procedure. Plaintiff had secured the final authorization needed to get his surgery date set when CHCO adopted a new categorical ban on providing gender-affirming surgeries to transgender people. Citing its abrupt policy reversal, CHCO notified Plaintiff his surgery could not move forward. Plaintiff alleges that CHCO’s policy unlawfully discriminates on the basis of sex, gender identity, gender expression, and disability in violation of the Colorado Anti-Discrimination Act.

ARGUMENT

2. Pseudonymous filings are appropriate where a plaintiff has a substantial privacy right outweighing the presumption of openness in judicial proceedings. *Doe v. Heitler*, 26 P.3d 539, 541 (Colo. App. 2001); *see also Does 1 – 11 v. Bd. of Regents of Univ. of Colorado*, No. 21-CV-2637, 2022 WL 43897 at *3-4 (D. Colo. Jan. 5, 2022).

3. When determining whether to allow a complaint to be filed pseudonymously, the Colorado courts consider the following factors:

[W]hether 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; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or to innocent non-parties; whether the action is against a governmental or private party; whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct [...], and the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Heitler, 26 P.3d at 541.

4. Here, the *Heitler* factors weigh in favor of allowing Plaintiff to proceed under a pseudonym.

a. Plaintiff Has a Substantial Privacy Right in His Transgender Status, Heightened by His Age.

5. The first *Heitler* factor asks whether there are significant privacy interests at stake. *Heitler*, 26 P.3d at 542 (citing, e.g., *Doe v. Blue Cross & Blue Shield*, 794 F. Supp. 72 (D.R.I. 1992)).

6. Federal courts have recognized the highly private and sensitive nature of transgender status for more than twenty years, *see, e.g., Powell v. Schriver*, 175 F.3d 107, 111 (2nd Cir. 1999) (deeming the strong privacy interest in transgender status “beyond debate,” not least because it “potentially exposes [a person] to discrimination and intolerance”). Courts have accordingly recognized that the sensitivity of transgender status can justify pseudonymous filing. *See, e.g., Doe v. Genesis Healthcare*, 535 F. Supp. 3d 335, 339 (E.D. Penn. 2021) (allowing a transgender plaintiff to proceed anonymously in her discrimination claim and collecting cases

allowing anonymous filing on the same basis); *Doe v. City of Detroit*, No. 18-cv-11295, 2018 WL 3434354 at *2 (E.D. Mich. July 17, 2018) (same).

7. Here, making Plaintiff's transgender status public also poses a serious risk of exacerbating his gender dysphoria, which is heightened by being unable to live consistent with his gender identity. If Plaintiff's transgender status is public information, he is at greater risk of others refusing to treat him consistent with his gender identity. Plaintiff is especially sensitive to this risk as he is beginning a new chapter when he leaves for college this fall. Public identification of his name risks undermining his safety and ability to live consistently with his gender identity in a new environment.

8. Relatedly, the interest in privacy is heightened when a transgender plaintiff is young. *See Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981) (discussing minor status as weighing in favor of anonymity); *Poe v. Drummond*, No. 23-CV-177-JFH-SH, 2023 WL 4560820 (N.D. Okla. July 17, 2023) (reasoning that the age of the transgender child plaintiffs rendered them unusually vulnerable). Courts have considered age to favor anonymity even for adults, including transgender adults. *See, e.g., Hersom v. Crouch*, 2:21-CV-450, 2022 WL908503 at * 2 (S.D.W. Va. Mar. 28, 2022); *Yacovelli v. Moser*, No. 1:02-CV-546, 2004 WL 1144183 at 8 (M.D.N.C. May 20, 2004). Here, Plaintiff's young age weighs strongly in favor of keeping his name confidential.

9. Particularly at his age and at this juncture, Plaintiff has a strong privacy interest in not being forced to publicly reveal the highly personal and sensitive fact that he is transgender in order to vindicate his rights against discrimination.

b. Plaintiff Faces a Serious Risk of Retaliatory Physical and Mental Harm Should His Identity Be Disclosed.

10. The next *Heitler* factor asks whether identification poses the risk of physical harm. *Heitler*, 26 P.3d at 542. Numerous courts have acknowledged that the mere public identification of a plaintiff as a transgender person can subject them to retaliatory physical or mental harm in the form of violence, harassment, and discrimination. *See City of Detroit*, 2018 WL 3434354 at *2 (taking judicial notice of the increased threat of violence to transgender people); *Foster v. Andersen*, No. 18-2552, 2019 WL 329548 at *2 (D. Kan. Jan. 25, 2019) (finding plaintiff’s fears of harm resulting from possible disclosure of his transgender status justified); *Genesis Healthcare*, 535 F.Supp.3d 340, (concluding that plaintiff’s fears of discrimination were justified based on “statistical evidence and media reports describing the danger faced by transgender individuals in the community” and plaintiff’s personal experiences).

11. Transgender people have faced particular danger in Colorado, as demonstrated by the murder of five people in a much-publicized anti-LGBTQ shooting at a nightclub in Colorado Springs. *See Evidence That Colorado Springs Club Q Shooting Was Motivated by LGBTQ Hatred*, USA Today, Feb. 24, 2023, *available at* <https://shorturl.at/iHUZ3>.

12. Across the country, transgender people, as well as hospitals and care providers, have specifically faced harassment and death threats for advocating for gender affirming care. Katie O’Connor, *Gender-Affirming Clinics Subject to Onslaught of Threats, Harassment*, 2023 Psychiatric News, *available at* <https://shorturl.at/oryL2>. Courts examining whether a plaintiff may file pseudonymously have recognized the risk posed by the political volatility surrounding gender affirming care. *See, e.g., Drummond*, No. 23-CV-177-JFH-SH, 2023 WL 4560820 at *3-5 (finding that the risk of retaliation against transgender plaintiffs justified pseudonymous filings); *see also*

Does 1 – 11, 2022 WL 43897 at *3 (describing the political volatility around COVID-19 vaccination as weighing in favor of permitting anonymous filing).

13. As numerous courts from across the country have recognized, Plaintiff would face a serious risk of physical and mental harm if identified publicly in this litigation. This factor therefore also strongly favors a pseudonymous filing and should be sufficient for this Court to grant the motion.

c. Whether the Defendant is a Governmental Entity or Private Party Carries Little Weight Here.

14. Third, *Heitler* asks whether the defendant is a governmental entity or private party. Here, Defendant is a private party. But the fact that a claim is against a private party does not prohibit pseudonymous filing. *See Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 141 (S.D. Ind. 1996) (stating that a plaintiff with claims against private parties is not barred from pursuing those claims under a fictitious name). Where the plaintiff faces a risk of psychological and physical harm, courts have allowed them to proceed pseudonymously against private parties. *See, e.g., Doe v. Smith*, 105 F. Supp. 2d 40, 42-45 (N.D.N.Y. 1999) (granting plaintiff’s motion for reconsideration to proceed anonymously where plaintiff demonstrated the risk of psychological and emotional injury).

15. Moreover, courts hold that plaintiffs can file pseudonymously if a defendant is a private party when, as here, (1) the substance of the case relates “to policies and procedures of broad application,” (2) “the plaintiff’s personal credibility [is] not seriously at issue,” and (3) “where the claims [do] not amount to a direct attack on any individual’s integrity or reputation.” *Indiana Black Expo, Inc.*, 923 F. Supp. 142. n.2; *see also Blue Cross Blue Shield of Rhode Island*, 794 F. Supp. 75, (allowing transgender individual to proceed pseudonymously in claim against

private insurance company regarding insurance coverage). Thus, this factor carries little weight here.

d. Whether Plaintiff Would Be Compelled to Admit the Intention to Engage in Illegal Conduct Is Inapplicable Here.

16. The next *Heitler* factor asks whether the plaintiff filing pseudonymously would be compelled to admit his or her intention to engage in illegal conduct. This factor is inapplicable where, as here, there is no risk that the plaintiff would be compelled to admit conduct that would risk criminal prosecution. *Heitler*, 26 P.3d at 543.

e. Pseudonymous Filing is not Unfair to CHCO.

17. The final factor the court considered in *Heitler* was the potential unfairness to the defendant created by an anonymous filing. 26 P.3d at 543. In *Heitler*, one private individual sued another, and the court found it unfair that the plaintiff could publicly “attack the defendant’s professional integrity” while remaining anonymous. *Id.* at 543. That dynamic is not at issue in this case. This is not a dispute between two individuals, and the professional integrity of the doctors who treated Plaintiff is not at issue. Plaintiff challenges CHCO’s categorical ban on care, which overrode his doctors’ care plans for him, along with their individualized assessments that he was a good candidate for receiving the medically necessary surgery at CHCO. In other words, the decision of the hospital had nothing to do with Plaintiff in particular, but was instead based on his belonging to a particular class of patients. Identifying Plaintiff publicly will not meaningfully impact this case or CHCO’s defense.

18. Courts have also considered whether a plaintiff’s identity is necessary to the allegations in the complaint. *Does I – II*, 2022 WL 43897 at *4 (granting leave to students at the University of Colorado to proceed anonymously in their suit against the university for religious

discrimination because their identity was “of little-to-no value to the underlying allegations of the complaint”). Here, Plaintiff’s name will not bear on the issue of whether CHCO’s categorical ban is discriminatory. Nor will it bear on whether application of the ban to Plaintiff violated state law. Accordingly, this factor is neutral.

CONCLUSION

19. Plaintiff’s privacy interest and safety concerns far outweigh any interest in his name being disclosed. The disclosure of Plaintiff’s name would make public the highly personal and sensitive information that he is transgender. That disclosure may subject him to serious risk of retaliatory violence in the existing highly volatile political environment that surrounds gender affirming care for transgender people and at a particularly vulnerable point in his life. This lawsuit can be fairly weighed by the public without Plaintiff’s identifying details.

20. Plaintiff therefore respectfully requests leave to file the attached Complaint and Jury Demand pseudonymously.

Respectfully submitted this 14th day of February 2024.

**WILMER CUTLER PICKERING HALE AND
DORR LLP**

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Original signatures on file at the offices of WilmerHale pursuant to C.R.C.P. 121 §1-26(7).