IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ELI BRIDGE, on behalf of Andrew Bridge, a minor, by his next friends and parents, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. CIV-22-00787-JD
OKLAHOMA STATE DEPARTMENT OF EDUCATION, et al.,	)	
Defendants.	)	

ORDER

Before the Court are Plaintiffs' Renewed Motion for Leave to Proceed Pseudonymously [Doc. No. 46] and State Defendants' Motion for Leave to Maintain Filed Parent Declaration Under Initials [Doc. No. 58]. Two of the plaintiffs, along with their parents and next friends, seek permission to proceed in this matter under pseudonyms. Plaintiffs seek this relief given their status as minors, and for the parents and next friends to protect the identities of their minor children. Similarly, State Defendants seek to continue identifying one of their parent witnesses via initials ("R.A.") to protect the minor daughter from being identified. Neither party seeks to withhold their (or their witnesses') identities from each other or the Court, and they do not seek to restrict the public's general access to filings, proceedings, or rulings in the case.

After review of the relevant motions, briefing, and arguments, the Court GRANTS both motions.[1] The parties shall not file information containing the moving Plaintiffs' or R.A.'s unredacted names or personal data identifiers. The parties shall refer to moving Plaintiffs using their pseudonyms and R.A. using those initials.

I. BACKGROUND

Plaintiffs filed this lawsuit challenging the legality of Oklahoma Senate Bill 615 ("S.B. 615"). Plaintiffs allege that S.B. 615 violates the Equal Protection Clause of the United States Constitution and Title IX by requiring students in prekindergarten through twelfth grades to use the "multiple occupancy restroom or changing area" that corresponds to the students' "genetics and physiology, as identified on the individual's original birth certificate." Okla. Stat. tit. 70, § 1-125.

On September 6, 2022, Plaintiffs filed a Motion for Leave to Proceed Pseudonymously [Doc. No. 4]. On September 12, 2022, the Court entered a Temporary Order Allowing Pseudonym Litigation, which provisionally granted the request and provided that

> [s]hould Movants desire to continue under pseudonyms following service of process and appearance by Defendants, then Movants shall confer with Defendants to determine whether they oppose the relief sought. Following that conference, Movants shall refile their request as a new motion, indicating whether the request is opposed or unopposed. If the relief sought is opposed, the Court will hear from Defendants before issuing a further ruling on this matter.

[1] State Defendants' request is granted because "Plaintiffs [do] not oppose the State Defendants' recent request to maintain under initials the declaration submitted by R.A." Pls.' Reply [Doc. No. 61] at 7 n.8.

[Doc. No. 11]. These motions [Doc. Nos. 46 and 58] followed, along with briefing regarding Plaintiffs' renewed request [Doc. Nos. 51, 61, and 89].

II. LEGAL STANDARD

When suit is filed in federal court, "[t]he title of the complaint must name all the parties . . . ." Fed. R. Civ. P. 10(a). A suit must also "be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a). However, when a filing contains "the name of an individual known to be a minor, . . . the filing may include only . . . the minor's initials" unless the court orders otherwise. Fed. R. Civ. P. 5.2(a).

Outside of this narrow exception regarding minors, "[p]roceeding under a pseudonym in federal court is, by all accounts, 'an unusual procedure.'" *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000) (quoting *M.M. v. Zavaras*, 139 F.3d 798, 800 (10th Cir. 1998)). "The Federal Rules of Civil Procedure 'make no provision for suits by persons using fictitious names or for anonymous plaintiffs.'" *United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d 1242, 1249 (10th Cir. 2017) (quoting *Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989) (per curiam)). "Nonetheless, even though there is no explicit congressional grant of a right of a party to proceed anonymously, [the Tenth Circuit has] recognized that there is also a public benefit in allowing some litigants to proceed anonymously." *Raiser v. Church of Jesus Christ of Latter-Day Saints*, 182 F. App'x 810, 811 (10th Cir. 2006) (unpublished) (citing *Femedeer*, 227 F.3d at 1246).

When determining whether a plaintiff should be permitted to proceed anonymously, courts must evaluate whether "exceptional circumstances" warrant some

form of anonymity. *Femedeer*, 227 F.3d at 1246. Exceptional circumstances exist in cases "'involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity.'" *Id.* (quoting *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992)). Courts must also "weigh the public interest in determining whether some form of anonymity is warranted." *Id.*[2]

III. ANALYSIS

Plaintiffs argue that both their parents and minors should be allowed to proceed pseudonymously because of the private and intimate nature of this suit.[3] In addition to State Defendants' request to maintain its Filed Parent Declaration under initials, they oppose Plaintiffs' motion. The parties do not dispute that the minors involved are entitled to be referred to by their initials under Federal Rule of Civil Procedure 5.2.

A. Because this case involves minor plaintiffs and matters of a highly sensitive and personal nature, exceptional circumstances exist.

Here, Plaintiffs' complaint discloses Mark's and Sarah's gender identities, medical histories, and struggles with mental disorders. *See, e.g.*, Compl. [Doc. No. 1] ¶¶ 29–31, 75, 77–79, 94, 96; Pls.' Mot. [Doc. No. 46-1] at 9 (arguing courts have recognized

[2] Other factors, such as prejudice to the defendant, are considered by the Tenth Circuit when "determining whether or not a district court abused its discretion in dismissing a case for violation of court rules and orders." *M.M.*, 139 F.3d at 803. Here, the Court is not dismissing the case for violation of court rules, so it limits its analysis to the factors the Circuit has set forth for granting requests to proceed anonymously.

[3] Plaintiffs also argue anonymity is warranted based on risks of stigmatization and violence, but the Court finds it unnecessary to reach these arguments.

pseudonym use in cases involving medical conditions and mental health).[4] The Tenth Circuit has held that matters of a highly sensitive and personal nature can include "'[s]ignificant privacy interests,' such as plaintiffs' interest in keeping their sexual habits from public scrutiny." *W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001) (quoting *Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989) (per curiam)). The kind of information revealed in Plaintiffs' complaint has also been protected in other contexts by the Circuit. *See Eastwood v. Dep't of Corr. of State of Okla.*, 846 F.2d 627, 631 (10th Cir. 1988) (stating the "constitutionally protected right [of privacy] is implicated when an individual is forced to disclose information regarding personal sexual matters"); *A.L.A. v. W. Valley City*, 26 F.3d 989, 990 (10th Cir. 1994) ("There is no dispute that confidential medical information is entitled to constitutional privacy protection.").

Accordingly, under the Circuit's law, Mark and Sarah being minors, coupled with the intimate nature of this suit, weighs in favor of the Court allowing pseudonymous litigation. These considerations also weigh in favor of permitting Mark's and Sarah's parents to use pseudonyms because, without doing so, it would be practically impossible to preserve the anonymity of the minors involved, particularly given the detailed information disclosed about the minors, their schools, and their grade levels in the complaint and other filings.[5]

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[4] The Court uses ECF page numbering in its orders.

[5] State Defendants argue that if the Court allows Mark, Sarah, and their parents to proceed pseudonymously, it should also allow the Defendants' minors and parents to do

B. Because Plaintiffs do not seek to limit the public's access to the filings, proceedings, or rulings in this case, the public's interest in knowing the names or initials of those involved is outweighed by the exceptional circumstances.

Importantly, "the public has an important interest in access to legal proceedings, particularly those attacking the constitutionality of popularly enacted legislation." *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000). Here, Plaintiffs attack the constitutionality of popularly enacted S.B. 615. However, they "do not seek to restrict the public's general right to access the filings, proceedings, and rulings in this case." Pls.' Mot. [Doc. No. 46-1] at 13. Additionally, they "do not seek to withhold their identity from Defendants or the Court but only to proceed pseudonymously to prevent disclosure of Plaintiffs' identity in public documents." *Id.* at 14. Thus, granting Plaintiffs' request to proceed pseudonymously would not limit the public's access to proceedings, filings, or the ensuing constitutional debate. The Court therefore concludes that given the sensitive information disclosed under federal pleading standards and because this case involves minor litigants, the exceptional circumstances present here outweigh the public's interest in knowing the names or initials of moving Plaintiffs.

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so. State Defs.' Resp. [Doc. No. 51] at 8–9. However, State Defendants' argument is made in its response to Plaintiffs' motion and has not been raised in a separate motion. Thus, the request is improper, and the Court will not consider it. *See* Fed. R. Civ. P. 7(b)(1) (requiring that a request for court action must be made by motion); LCvR7.1(c) ("A response to a motion may not also include a motion or a cross-motion by the responding party."). Additionally, instead of issuing a blanket order allowing minors and parents to proceed pseudonymously, the Court will evaluate proper motions on a case-by-case basis to ensure they meet the standards set out in binding Circuit precedent.

IV. CONCLUSION

For these reasons, the Court resolves Plaintiffs' Renewed Motion for Leave to Proceed Pseudonymously [Doc. No. 46] by allowing Mark, Sarah, and their next friends and parents to proceed using pseudonyms. State Defendants' Leave to Maintain Filed Parent Declaration Under Initials [Doc. No. 58] is granted because Plaintiffs do not object. It is unclear to the Court whether the parties have already exchanged the names of the moving Plaintiffs, Plaintiffs' parents and next friends, and R.A. *Cf.* Pls.' Reply [Doc. No. 61] at 7 n.8. To the extent the parties have not done so, the Court orders them to promptly do so. If such an exchange is contingent on the Court entering a protective order on confidentiality, the parties shall immediately confer and submit a proposed, agreed order to the Court. The Court *sua sponte* gives moving Plaintiffs, Plaintiffs' parents and next friends, and R.A. leave to file under seal a notice to the Court providing their legal names. These filings shall be made within 7 days, or by **January 19, 2024**.

IT IS SO ORDERED this 12th day of January 2024.

JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE