

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

JOHN DOE 1, et al.,)	CASE NO: 23-cv-H-02-0089
)	
Plaintiffs,)	
)	
vs.)	
)	JUDGE: DAVID M. GORMLEY
CITY OF COLUMBUS, et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS' MOTION FOR LEAVE TO PROCEED PSEUDONYMOUSLY

Plaintiffs respectfully move for leave to proceed pseudonymously, using the pseudonyms John Doe 1–4 and Jane Doe as outlined in their Complaint and its attached affidavits. This Motion is filed in response to the Defendants' Motion to Dismiss, or in the Alternative, Motion to Transfer Venue. In said Motion Defendants assert that this Court must dismiss the Complaint because it was filed using pseudonyms rather than the identity and addresses of the Plaintiffs. As explained in the attached Memorandum in Support, the Supreme Court of Ohio has sanctioned the use of pseudonyms in filing a cause of action where the plaintiffs have a substantial privacy interest in doing so. Plaintiffs meet the standards of the Ohio Supreme Court to proceed pseudonymously and therefore Plaintiffs are entitled to continue to proceed in such fashion. Therefore, Plaintiff's request that the Court grant this motion.

A proposed order is attached as Exhibit A.

Respectfully submitted,

/s/ David C. Tryon

David C. Tryon (0028954)

Robert Alt (0091753)

Jay R. Carson (0068526)

Alex M. Certo (0102790)

The Buckeye Institute

88 East Broad Street, Suite 1300

Columbus, Ohio 43215

(614) 224-4422

Email: d.tryon@buckeyeinstitute.org

Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

JOHN DOE 1, et al.,)	CASE NO: 23-cv-H-02-0089
)	
Plaintiffs,)	
)	
vs.)	
)	JUDGE: DAVID M. GORMLEY
CITY OF COLUMBUS, et al.,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR
LEAVE TO PROCEED PSEUDONYMOUSLY**

I. Introduction

Plaintiffs brought this action to protect themselves from arrest and prosecution pursuant to an unlawful and unconstitutional law. Plaintiffs filed this action pseudonymously to prevent the disclosure of their names and addresses to the very entity that would prosecute them for possessing 30-round magazines. By virtue of filing this lawsuit and attaching their affidavits to the Complaint, Plaintiffs have admitted to possessing magazines ostensibly banned by Columbus inside the city. Because these disclosures not only provide probable cause to obtain a search warrant but could also be used as evidence in a criminal trial against the Plaintiffs, they are entitled to proceed pseudonymously.

II. Law and Argument

A. Ohio recognizes the right of litigants to file a cause of action pseudonymously.

“The practice of proceeding under a pseudonym is well established in Ohio * * *.”

Doe v. Bruner, 12th Dist. Clinton No. CA2011–07–013, 2012-Ohio-761, ¶ 4, citing *Doe v. Shaffer*, 90 Ohio St.3d 388, 738 N.E.2d 1243 (Noting the plaintiff’s name has been changed); *Doe v. George*, 12th Dist. Warren No. CA2011–03–022, 2011-Ohio-6795 (Allowing but not commenting on use of pseudonyms for plaintiffs); *Doe v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. Trumbull No.2004–T–0034, 2005-Ohio-2260 (Mother’s name changed during malicious prosecution action against child services agency). Just last year, the Ohio Supreme Court again recognized that a court may excuse a plaintiff from identifying himself in certain situations. *State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St.3d 382, 2022-Ohio-448, 185 N.E.3d 1089, ¶ 36. When the plaintiff’s “privacy interests substantially outweigh the presumption of open judicial proceedings,” the court may allow the plaintiff to proceed under a pseudonym. *Id.*, quoting *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir.2004).

Though the Ohio Supreme Court has not outlined an exhaustive list of interests for the courts to consider, it has noted that other courts “have identified numerous factors that may be relevant * * *.” *Id.*, citing *Porter* at 560–561; *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2nd Cir.2008). In *Sealed Plaintiff* the Second Circuit set out an extensive, though not exhaustive, list of potential factors, including those identified by the other cases cited by the Ohio Supreme Court. Because the use of a specific factor depends on the situation of the case, the relevant factors are:

- (1) “whether identification presents other harms and the likely severity of those harms, including whether ‘the injury litigated against would be incurred as a result of the disclosure of the plaintiff’s identity’”;
- (2) “whether the suit is challenging the actions of the government or that of private parties”;
- (3) “whether the plaintiff’s identity has thus far been kept confidential”;

(4) “whether the public’s interest in the litigation is furthered by requiring the plaintiff to disclose his identity” or “whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants’ identities”;

(5) “whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously * * *”; and

(6) “whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.”

Sealed Plaintiff at 190 (internal citations omitted). Every one of these factors militates in favor of the Plaintiffs’ proceeding pseudonymously.

First, because Plaintiffs have provided signed and notarized affidavits attesting to their possession of banned 30-round magazines within the city of Columbus, disclosure of their names and addresses would grant Columbus probable cause to arrest Plaintiffs pursuant to an unlawful ordinance—causing the very injury litigated against to be incurred as a result of the disclosure of the Plaintiffs’ identity. This is not speculative. In the preliminary injunction hearing, defense counsel submitted into evidence a “Probable Cause Affidavit” charging an individual with violating the ordinance which is the subject of this case. Prelim. Inj. Hr’g Def.’s Ex. 3. Defense counsel explained that this evidence was to answer the court’s question about whether anyone had been charged under the ordinance in the affirmative. Further, forcing Plaintiffs to reveal their names and addresses would make them choose between their fundamental right against self-incrimination and their fundamental right to access the courts.

The Ohio Supreme Court has noted that “[a] plaintiff seeking to proceed anonymously for fear of retaliation must show that the filing of the lawsuit causes a risk of retaliation.” *Shanahan*, 166 Ohio St.3d 382, 2022-Ohio-448, 185 N.E.3d 1089, at ¶ 37. The court followed the Ninth

Circuit's factors that courts should consider when a plaintiff alleges that using a pseudonym is necessary to protect against a threat of retaliation. *Id.* at ¶ 38. Those factors are: “(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears, and (3) the anonymous party’s vulnerability to such retaliation.” *Id.*, quoting *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir.2000) (internal quotation marks omitted).

Here, the harm threatened is not a civil suit or a civil penalty. The harm is a mandatory six-month incarceration and a \$1,500 fine. Columbus City Code 2323.32, Compl. Ex. A at 5–6. It is exceptionally reasonable for the Plaintiffs to fear prosecution because the defense has submitted evidence of the ordinance being enforced. Prelim. Inj. Hr’g Def.’s Ex. 3. Because of Plaintiffs’ affidavits admitting to possessing 30-round magazines within the city, the release of their names and addresses makes them especially vulnerable to prosecution by the city.

Second, the suit challenges the actions of the government—the Defendants are the city of Columbus, and the City Council President and the City Attorney in their official capacities. The government has no need to know the identities of the individuals challenging the Ordinance. The government’s interest in who the Plaintiffs are is limited to the fact that they are residents of Columbus and are impacted by the Ordinance—which gives them standing to challenge the Ordinance.

Third, there has been no public disclosure of the Plaintiffs’ identities to anyone outside of Plaintiffs’ counsel.

Fourth, the public has no need to know the identities of the affected individuals. The opposite is true. The public has a strong interest in seeing unlawful and unconstitutional criminal laws challenged without forcing the plaintiff to subject themselves to criminal prosecution first. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163, 189 L.Ed.2d 246, 134 S.Ct. 2334

(2014). Indeed, the public is well served by the Plaintiffs' moving forward to establish if those who are also subject to this law will need to divest themselves of supposedly illegal items without members of the public being subject to arrest and prosecution. Further, the resolution of this case turns on purely legal determinations. Whether Plaintiffs possess the banned 30-round magazines is the only essential fact in this case. Plaintiffs provided signed and notarized affidavits attesting to these facts. The dispositive determination in this case will be (1) whether the ordinance violates R.C. 9.68, (2) whether the ordinance violates Article I, Section 4 of the Ohio Constitution, or (3) whether the ordinance violates Article I, Section 1 of the Ohio Constitution. These are purely legal determinations that will not change based on the identity of the Plaintiffs.

Fifth, there will be no prejudice to the Defendants by not releasing the Plaintiffs' names. Outside of the facts presented in the Plaintiffs' affidavits, no facts are necessary to determine this case. As such, releasing Plaintiffs' names will not aid the Defendants in defending the challenged ordinance. Further, as the Second Circuit noted, the court should consider "whether the nature of that prejudice (if any) differs at any particular stage of the litigation * * *." *Sealed Plaintiff*, 537 F.3d at 190. Because this motion is before the court at an early stage in the litigation, greater deference should be given to protecting the Plaintiffs' privacy interests. Defendants have made no showing that the names of the Plaintiffs are necessary to mount a defense, and the essential facts are the same for each Plaintiff. See *Does I thru XXIII*, 214 F.3d at 1072.

Finally, there are no alternative mechanisms for the court to protect the Plaintiffs' identities. Any disclosure of the Plaintiffs' names not only destroys their privacy claim but would also release their names to the very entities that seek to charge them. The Ohio Supreme Court has made clear that disclosure of the information sought to be protected to the persons from whom the

information is protected destroys any claim to privacy. *Shanahan*, 166 Ohio St.3d 382, 2022-Ohio-448, 185 N.E.3d 1089, at ¶ 41–42.

Defendants have argued that the court does not have subject matter jurisdiction to entertain this action because Plaintiffs filed pseudonymously. Defs.’ Mot. to Dismiss at 6. But Defendants contradict this statement by citing multiple cases where the courts have allowed actions to proceed pseudonymously. Defs.’ Mot. to Dismiss at 6–7. Defendants also claim that Plaintiffs should have sought leave prior to filing anonymously. Aside from the logistical and procedural challenges to do that, the Ohio Supreme Court refuted this in *Shanahan*, explaining that “Judge Shanahan has the authority to *excuse* M.R. from identifying himself in his complaint * * *.” *Shanahan* at ¶ 42; *Bruner*, 12th Dist. Clinton No. CA2011-07-013, 2012-Ohio-761, at ¶ 2. In *Shanahan*, the Court determined that there was no need to excuse M.R. from continuing pseudonymously because—unlike here—M.R. had already disclosed his name publicly. In any event, it is clear that pseudonymous pleadings are permitted.¹

Plaintiffs have kept their names anonymous and have demonstrated a significant need to proceed pseudonymously.

Conclusion

Based on the foregoing, Plaintiffs request leave to proceed pseudonymously.

Respectfully submitted,

/s/ David C. Tryon

David C. Tryon (0028954)
Robert Alt (0091753)
Jay R. Carson (0068526)
Alex M. Certo (0102790)
The Buckeye Institute
88 East Broad Street, Suite 1300

¹ Indeed, some of the most monumental cases in the history of this Country have been filed and decided under such anonymity. *See, e.g., Roe v. Wade*, 410 U.S. 113, 35 L.Ed.2d 147, 93 S.Ct. 705 (1973).

Columbus, Ohio 43215
(614) 224-4422
Email: d.tryon@buckeyeinstitute.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Motion For Leave To Proceed Pseudonymously and Memorandum in Support has been served by operation of this Court's electronic filing system this 24th day of February 2023.

/s/ David C. Tryon

David C. Tryon