

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-26, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., et al.,

Defendants.

Case No. 4:21-cv-01236-O

**PLAINTIFFS' MOTION FOR PROTECTIVE ORDER AND
MEMORANDUM IN SUPPORT**

TO THE HONORABLE JUDGE O'CONNOR:

Plaintiffs, by and through counsel, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, respectfully move the Court to enter a protective order placing Plaintiffs' identities under seal and permitting Plaintiffs to proceed in this litigation using pseudonyms.

INTRODUCTION

Plaintiffs include thirty-five members of the U.S. Navy that are seeking a religious exemption to the U.S. Navy's COVID-19 vaccination mandate. Given their military positions, they fear that disclosing their identities for the purposes of this lawsuit would compromise the operational security of their respective missions, their own personal safety, the personal safety of their families, and the overall success of their assigned missions. Accordingly, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request that the Court enter a protective order placing Plaintiffs' identities under seal and permit Plaintiffs to proceed in this litigation using pseudonyms.

Plaintiffs have submitted a proposed protective order. As the proposed order makes clear, Plaintiffs do not object to disclosing their identity to the Court, and to Defendants' counsel, to

allow them to investigate the claims, prepare a defense, and to propound discovery, if necessary, provided that such disclosure is subject to adequate protection to prevent disclosure of Plaintiffs' identities.

STATEMENT OF FACTS

Plaintiffs in this case include twenty-six U.S. Navy SEALs, five U.S. Navy Warfare Special Warfare Combatant Craft Crewmen (SWCC), three U.S. Navy Divers (ND), and one U.S. Navy Explosive Ordnance Disposal Technician (EOD). Each plaintiff seeks, or has sought, a religious accommodation to the U.S. Navy's COVID-19 vaccination requirement, based on his sincerely held religious belief. Decl. of U.S. Navy SEALs ("SEALs") 1-26, App. 1-104; Decl. of U.S. Navy Special Warfare Combatant Craft Crewman ("SWCC") 1-5, App. 105-124; Decl. of Explosive Ordnance Disposal Technician ("EOD") 1, App. 125-128; Decl. of U.S. Navy Diver ("ND") 1-3, App. 129-140. Given their consequential positions in the United States Navy, protection of the Plaintiffs' identities is critical to the operational security of their individual missions. *Id.* Further, disclosing the Plaintiffs' identities as Navy SEALs, SWCCs, NDs and an EOD would jeopardize their personal safety and the safety of their family by revealing their position to enemy forces. *Id.* For these reasons, the Plaintiffs move to protect their individual identities and proceed under pseudonyms in this lawsuit.

ARGUMENT

This Court has discretion to enter a protective order to maintain the confidentiality of Plaintiffs' identities. *See* Fed. R. Civ. P. 26(c). In this Circuit, there is "no hard and fast formula for ascertaining whether a party may sue anonymously." *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981). Rather, "[t]he decision requires a balancing of considerations calling for maintenance

of a party's privacy against the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Id.*

I. The *Stegall* Factors Favor Anonymity.

To the extent that the following factors are present in a particular case, the Fifth Circuit has determined that they "deserve considerable weight:" (1) whether plaintiff is "suing to challenge governmental activity;" (2) whether the suit requires plaintiff to "disclose information 'of the utmost intimacy;'" and (3) whether the suit requires plaintiff to "admit their intention to engage in illegal conduct." *Id.* at 185-86 (citing *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712-13 (5th Cir. 1979)). This case involves two of the three factors.

1. The Plaintiffs are suing to challenge the United States Department of the Navy's refusal to issue religious exemptions to the COVID-19 vaccine mandate; thus, they are suing to challenge governmental activity.

2. This suit would require the Plaintiffs to disclose information of the utmost intimacy, given the nature of their positions within the United States Navy. The Plaintiffs' declarations demonstrate that both the operational security of respective their missions and their own personal security would be jeopardized if their names, locations, and other identifying information was publicly disclosed. Decl. of U.S. Navy SEALs ("SEALs") 1-26, App. 1-104; Decl. of U.S. Navy Special Warfare Combatant Craft Crewman ("SWCC") 1-5, App. 105-124; Decl. of Explosive Ordnance Disposal Technician ("EOD") 1, App. 125-128; Decl. of U.S. Navy Diver ("ND") 1-3, App. 129-140.

Further, in *Stegall*, the court reasoned that "religion is perhaps the quintessentially private matter." *Stegall*, 653 F.3d at 186. Thus, this Court has determined that "personal religious beliefs" are an example of "[i]nformation of the utmost intimacy' that might justify allowing a plaintiff to proceed anonymously." *Doe v. Compact Info. Sys., Inc.*, No. 3:13-CV-5013-M, 2015 WL

11022761, at *4 (N.D. Tex. Jan. 26, 2015) (quoting *Wynne & Jaffe*, 599 F.2d at 712, 713). Here, Plaintiffs are bringing this lawsuit to challenge the Navy’s refusal to issue exemptions from the COVID-19 vaccine mandate based on the Plaintiffs’ sincerely held religious beliefs. Thus, Plaintiffs, like the *Stegall* plaintiffs, will be required to make “revelations about their personal [religious] beliefs and practices” that require them to seek a religious exemption from the COVID-19 vaccination. Decl. of U.S. Navy SEALs (“SEALs”) 1-26, App. 1-104; Decl. of U.S. Navy Special Warfare Combatant Craft Crewman (“SWCC”) 1-5, App. 105-124; Decl. of Explosive Ordnance Disposal Technician (“EOD”) 1, App. 125-128; Decl. of U.S. Navy Diver (“ND”) 1-3, App. 129-140.

The presence of two of three *Stegall* factors “tip the balance against the customary practice of judicial openness.” *Id.*

II. Courts Permit Similar Plaintiffs to Proceed Anonymously.

Courts have allowed similar Plaintiffs to proceed anonymously. A protective order may be appropriate when Plaintiffs’ “safety and career could be jeopardized if [his] name were to be revealed[,]” and he can “attest that [his] job requires [him] to remain anonymous.” *Bird v. Barr*, No. 19-cv-1581, 2019 WL 2870234, at *5, (D. D.C. July 3, 2019). In *Bird v. Barr*, several members of the “federal law enforcement and intelligence communities” sued under Title VII, the Americans with Disabilities Act, and the Rehabilitation Act of 1973, alleging sexual harassment or dismissal due to disability. *Id.* at *1. The plaintiffs submitted various declarations demonstrating their need for a protective order, including reasons such as: “effectiveness [at] her job demands that she remain anonymous,” working with “foreign military personnel [causes] fear that her interaction with them could be impaired if her role in this case were known,” and “public exposure could make [her] a target for foreign intelligence collection.” *Id.* at *5. The court held that these plaintiffs had “significant interests in maintaining their anonymity at this early stage in the

litigation [that] are sufficient to overcome the general presumption in favor of open proceedings.”
Id. at *6.

Plaintiffs’ positions as SEALs, SWCCs, NDs, and an EOD closely mirror the *Bird* plaintiffs. As the Plaintiffs attested, disclosing their identities would jeopardize their safety and careers and anonymity in their positions is often of the highest importance. Decl. of U.S. Navy SEALs (“SEALs”) 1-26, App. 1-104; Decl. of U.S. Navy Special Warfare Combatant Craft Crewman (“SWCC”) 1-5, App. 105-124; Decl. of Explosive Ordnance Disposal Technician (“EOD”) 1, App. 125-128; Decl. of U.S. Navy Diver (“ND”) 1-3, App. 129-140. Given the substantial need to protect Plaintiffs’ identities because of threats of violence and retaliation against the Plaintiffs by enemies, the Court should allow Plaintiffs to proceed in this matter using pseudonyms.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court enter the proposed protective order to safeguard Plaintiffs’ identities.

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Respectfully submitted this 1st day of December, 2021.

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CERTIFICATE OF CONFERENCE

On November 30 and December 1, 2021, Plaintiffs' counsel conferred with counsel representing Defendants sued in their official capacities. Counsel for Defendants sued in their official capacities opposes this motion. No counsel has yet appeared representing the two Defendants sued in their individual capacities under RFRA.

/s/Heather Gebelin Hacker
HEATHER GEBELIN HACKER

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2021, I electronically filed the foregoing document through the Court's ECF system, which automatically notifies counsel of record for each party.

/s/Heather Gebelin Hacker
HEATHER GEBELIN HACKER

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[PROPOSED] PROTECTIVE ORDER

Before the Court is Plaintiffs' Motion for a Protective Order filed December 1, 2021. Plaintiffs request that the Court enter a protective order permitting Plaintiffs to proceed in this litigation using pseudonyms and placing Plaintiffs' identities under seal. Having considered the Motion, the Court finds that it should be and is hereby GRANTED.

Accordingly, it is ORDERED that:

1. Plaintiffs shall be permitted to proceed in this litigation using a pseudonym and shall be referred to by pseudonym in all pleadings, depositions, and other documents related to this litigation and in all proceedings held before this Court.
2. Plaintiffs' identities shall be filed with the Court under seal. A copy of that filing shall be served on Defendants' counsel in a manner other than through the Court's electronic filing system.
3. Defendants' counsel shall not, without leave of Court, in any way reveal, disclose, or otherwise make known, in whole or in part, the identities of Plaintiffs to any person except: (a) counsel of record for Defendants in this action and their paralegals and other professional personnel (including support staff) who are employed by the same law firm and directly assisting

such counsel in the prosecution or defense of this litigation, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder; and (b) Defendants' personnel—whether employed permanently, temporarily, or by contract—who are actually engaged in the preparation of this litigation for trial or other proceedings herein and who have been advised of their obligations hereunder.

4. If disclosed to any permitted persons pursuant to Paragraph 3, Plaintiffs' identities shall not be used for any purpose except for the prosecution or defense of this litigation.

SO ORDERED this ____ day of December, 2021.

HON. REED O'CONNOR
UNITED STATES DISTRICT JUDGE