

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MARY ROE,

Plaintiff,

File No. 16-cv-13353

v.

Hon. Mark A. Goldsmith

RICHARD SNYDER, Governor of the  
State of Michigan, Col. KRISTE ETUE,  
Director of the Michigan State Police,  
CORRIGAN O'DONOHUE, Royal Oak  
Chief of Police, and JESSICA COOPER,  
Oakland County Prosecutor, in their official  
capacities, and Royal Oak Police Officer  
CABANAW, in his individual capacity

Mag. Judge David R. Grand

Defendants.

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**PLAINTIFF'S MOTION AND BRIEF  
TO PROCEED UNDER FICTITIOUS NAME**

The Plaintiff, by counsel, moves the Court for permission to bring this action as Mary Roe, in order to protect the Plaintiff's privacy and identity from public disclosure. The motion is supported by the brief below.

Local Rule 7.1(a)(1) requires the Plaintiff to ascertain whether this motion will be opposed. Because this motion was filed shortly after Ms. Roe filed her Complaint, no attorney for Defendants has entered an appearance. Nevertheless, counsel for Plaintiff has sought concurrence in the relief requested in this motion from the attorneys who have represented the State of Michigan in *Does v. Snyder*,

from the Oakland County General Counsel's Office, and from the Royal Oak City Attorney's Office. Given the time constraints, no concurrence has been received.

## **PLAINTIFF'S BRIEF IN SUPPORT**

### **Introduction**

The Plaintiff asks the Court for permission to bring this action using the assumed name "Mary Roe" for the purpose of protecting her identity from public disclosure. The Plaintiff seeks a Temporary Restraining Order and Preliminary Injunction against the Royal Oak Police Department and state and county officials prohibiting the enforcement of the Michigan Sex Offender Registration Act, which has been found unconstitutional by the Sixth Circuit. *See Does v. Snyder*, \_\_\_ F.3d \_\_\_ (6th Cir. Aug. 25, 2016) (Exhibit 1 to Plaintiff's Complaint). As a registered sex offender, Ms. Roe belongs to highly a stigmatized group and forcing her to disclose her identity in public court records could subject her to significant harm.

The Plaintiff has no objection to providing her true name to the defendants, provided that the Court enters a protective order barring further dissemination of her name and requiring that any documents containing the Plaintiff's name be filed under seal. A proposed protective order is attached as Exhibit A.

### **Argument**

The Federal Rules of Civil Procedure establish a presumption that complaints state the name of all parties in the case caption. Fed. R. Civ. P. 10(a). But

“trial courts have always been afforded the power to seal their records when interests of privacy outweigh the public’s right to know.” *In re Knowville News-Sentinel Co., Inc.*, 723 F.2d 470, 474 (6th Cir. 1983) (citations omitted). Plaintiffs can be excused from identifying themselves if a court concludes that their privacy interests are more substantial than the presumption of open judicial proceedings. *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

In addition, Fed. R. Civ. P. 26(c) specifically permits the Court to “make any order which justice requires to protect the party or person from annoyance, embarrassment, oppression or undue burden or expense” upon motion of a party. The granting of a protective order under Rule 26(c) requires only a showing of good cause by the movant. Once that showing is made, the Court has “broad discretion ... to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

Here, the Plaintiff’s privacy interest outweighs the general presumption of open records. Persons publicly identified as sex offenders risk the threat of widespread opprobrium, embarrassment, and humiliation. *See Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004) (permission to proceed pseudonymously was properly granted to plaintiffs in Establishment Clause case because the topic “could subject them to considerable harassment”). Because of the stigma attached to sex offender registration, it is standard practice in litigation brought by registrants for courts to

allow the plaintiffs to proceed under pseudonyms. *See, e.g., Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003); *Smith v. Doe*, 538 U.S. 84 (2003); *Does v. Snyder*, \_\_\_ F.3d \_\_\_ (6th Cir. Aug. 25, 2016); *Doe v. Sturdivant*, 490 F.3d 491 (6th Cir. 2007); *Does v. Munoz*, 507 F.3d 961 (6th Cir. 2007); *Doe v. Kelley*, 961 F. Supp. 1105 (W.D. Mich. 1997); *Poe v. Snyder*, 834 F. Supp. 2d 721 (W.D. Mich. 2011).

Moreover, if the Plaintiff's identity becomes publicly known, she could well become a focus of media attention.<sup>1</sup> The Plaintiff fears for her personal safety if her identity is thus disclosed. There is widespread public hostility towards registrants, so much so that Michigan's registry explicitly warns the public not to use information on the site to "unlawfully injure, harass, or commit a crime against any individual named in the registry." *See* Michigan Sex Offender Registry Home Page.<sup>2</sup> Unfortunately, in practice such "warnings have done little to prevent threats and violent attacks." Sarah Stillman, "The List," *The New Yorker* (March 14,

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<sup>1</sup> The media focuses considerable attention on issues related to sex offender registration. *See, e.g.,* "Judges Are Starting to Question Overzealous Sex-Offender Laws," *New York Magazine*, August 29, 2016, available at <http://nymag.com/daily/intelligencer/2016/08/judges-are-questioning-overzealous-sex-offender-laws.html>; "Law Enforcement Agencies Conduct Sex Offender Sweep," *Upper Michigan Source*, September 2, 2016, available at <http://www.uppermichiganssource.com/content/news/Law-enforcement-agencies-conduct-sex-offender-sweep-392173371.html>.

<sup>2</sup> Available at [http://www.communitynotification.com/cap\\_main.php?office=55242](http://www.communitynotification.com/cap_main.php?office=55242).

2016)<sup>3</sup> (cataloging vigilantism towards registrants); *see also* Tegan Hanlon, “Man charged with assaulting 3 in Anchorage after finding addresses on sex-offender registry,” *adn.com* (July 27, 2016).<sup>4</sup>

As a registrant, the Plaintiff is already vulnerable to becoming a target of harassment or retaliation. If the Plaintiff is publicly identified with this case, she faces even greater risks. These risks are exacerbated by the fact that, if the Plaintiff’s name is known, her whereabouts can easily be determined through the public sex offender registry, which shows her photograph and detailed personal information, including her home addresses, employer address, and vehicle information. The registry website even has maps that pinpoint her home. Thus, the Plaintiff is not only vulnerable but also an easily accessible target of harassment and vigilantism. A protective order is necessary to safeguard not just the privacy, but also the safety, of the Plaintiff.

The Plaintiff is also concerned about the clients at the drug treatment center where she works. Her relationships with her clients could be put at risk if the press connects her to this lawsuit. The Plaintiff fears that such publicity could make it harder for her to do her job, and also could make it harder for her to find housing

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<sup>3</sup> Available at <http://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes>.

<sup>4</sup> Available at <http://www.adn.com/alaska-news/crime-courts/2016/07/27/man-charged-with-assaulting-3-people-in-anchorage/>

or jobs in the future. The Plaintiff should not be required to risk exacerbating the very injuries she is attempting to prevent in an effort to enforce her rights.

In addition to expressing concern about plaintiffs who may be subject to harassment, the Sixth Circuit has identified several factors that courts may consider in determining whether plaintiffs should proceed anonymously, including “(1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; (2) whether prosecution of the suit will compel the plaintiffs to disclose information ‘of the utmost intimacy’; (3) whether the litigation compels the plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiffs are children.” *Porter*, 370 F.3d at 560.

Here the Plaintiff challenges government activity, specifically the enforcement of SORA provisions which have been found to be unconstitutional. *Does v. Snyder, supra*. The information disclosed in the complaint, and information likely to be disclosed during discovery, is highly personal.

The Sixth Circuit has also noted that courts should consider whether defendants would have sufficient information to present their defense. In *Porter*, the court approved of a protective order that required disclosure of the plaintiffs’ identities to the defendants but limited disclosure of the plaintiffs’ personal information to the public or outside the litigation. 370 F.3d at 560-61. That is all the Plaintiff is asking here. Thus, the proposed protective order will not hamper the Defendants’

ability to present their case.

Two of the Defendants in this case, Governor Richard Snyder and Col Kriste Etue (collectively “state defendants”) were also Defendants in *Does v. Snyder*. In *Does*, the Defendants entered into a stipulated protective order almost identical to the protective order proposed here. The existence of the protective order in *Does* in no way interfered with the ability of the Defendants to litigate that case.

In sum, a protective order is necessary to prevent the Plaintiff from being subjected to harassment, vigilantism, or other harm, as well as to protect her professional relationships. Such an order would in no way compromise the Defendants’ ability to conduct their defense.

### Conclusion

For the above reasons, the Plaintiff asks the Court to grant the motion to proceed as Mary Roe, and to enter the proposed protective order filed with this motion.

Respectfully submitted,

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Dated: September 16, 2016

Attorneys for Plaintiff



**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2016, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send e-notification of such filing to all counsel of record. I further certify that I emailed the foregoing document to AAGs Erik Grill at grille@michigan.gov and Denise Barton at bartond@michigan.gov, assistant Oakland County counsel Keith Lerminiaux at lerminiauxk@oakgov.org, and Royal Oak City Attorney Mark Liss at markl@romi.gov and that the foregoing document will be served on the Defendants with the complaint as soon as practicable:

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