UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PETER VLAMING, Plaintiff, v. WEST POINT SCHOOL BOARD; LAURA ABEL, in her official capacity as Division Superintendent; JONATHAN HOCHMAN, in his official capacity as Principal of West Point High School; and SUZANNE AUNSPACH, or her successor in office, in her official capacity as Assistant Principal of West Point High School, Defendants.	)	Civil Action No. 3:19-cv-00773 Judge John A. Gibney Jr.

REPLY BRIEF IN SUPPORT OF JOHN DOE'S
MOTION TO PROCEED PSEUDONYMOUSLY

Plaintiff Peter Vlaming does not oppose proposed Intervenor John Doe's motion to proceed under a pseudonym (ECF No. 9), but objects to his choice of the first name "John" for that pseudonym. Vlaming's objections lack merit. Courts generally permit pseudonymous litigants, including transgender litigants, to select their own pseudonyms. Courts extend that courtesy even when transgender litigants choose not to proceed pseudonymously. Recognizing the importance of referring to transgender litigants by the name and pronouns that correspond with the litigant's gender identity, courts commonly use the name and pronouns used by a transgender litigant. *See, e.g.*, *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 566 n.1 (6th Cir. 2018) ("We refer to Stephens using female pronouns, in accordance with the preference she has expressed through her briefing to this court."), *cert. granted in part*, 139 S. Ct. 1599 (2019); *Brown v. Wilson*, No. 3:13CV599, 2015 WL 3885984 (E.D. Va. June 23,

2015) (referring to transgender *pro se* inmate using her female name and female pronouns). In this case, using "John" is not only consistent with John's gender identity, but also reflects that he has legally changed his name to a traditionally male name, and has legally changed his sex marker to male. *See* Declaration of John Doe in Support of Motion to Intervene and Motion to Proceed under Pseudonym, ECF No. 8-1, at ¶ 7.

The cases cited by Vlaming do not support deviating from this longstanding practice. In *Doe ex rel. Doe v. Lower Merion School District*, 665 F.3d 524 (3d Cir. 2011), and *Doe v. Mercer Island School District No. 400*, 288 F. App'x 426 (9th Cir. 2008), the student plaintiffs filed their complaints using the pseudonym "Student Doe." *Doe v. Lower Merion Sch. Dist.*, Case No. 09-2095, ECF No. 1 (E.D. Pa.); *Doe v. Mercer Island Sch. Dist. No. 400*, Case No, 06-cv-395, ECF No. 1 (W.D. Wash.). Both the Court and defendants adopted the plaintiffs' preferred pseudonyms. Here, like the plaintiffs in the cases cited above, as a proposed intervenor, John Doe has clearly and unequivocally stated how he wants the Court and parties to refer to him.[1]

Permitting John Doe to use the first name "John" also does not require the Court to "prematurely opin[e]" on the merits of this case. *See* Plaintiff's Opposition to the Use of John Doe as a Pseudonym for the Student, ECF No. 29 ("Doe Opp.") at 2. As Vlaming has conceded through his actions and in his pleadings, this case is not about the use of John's stereotypically male first name—Vlaming in fact touts that he has willingly used John's male name (or the male French name John chose) in most of their interactions, and has not claimed any legal right or religious objection that would prevent him from doing so. *See, e.g.*, Memo. in Opp. to Mot. to Intervene, ECF No. 28, at 1. Instead, Vlaming seeks to exempt himself from Defendants' antidiscrimination

[1] John's own clearly expressed desire to use a male name also obviates any concern raised by Vlaming regarding the effect of using a male pseudonym on John's privacy interests. *See* Doe Opp., ECF No. 29, at 2.

and anti-harassment policies—specifically, regarding his own pronoun use for transgender students—by avoiding male pronouns in referring to John. However, John's use of "John Doe" as his pseudonym in this action would not require Vlaming to use male pronouns to refer to John in Vlaming's own papers, as evidenced by Vlaming's use of "Movant" or "Proposed Intervenor" in his opposition to John's motion to intervene. Indeed, anticipating that Vlaming would not want to use male pronouns to refer to John in his written submissions in this case, counsel for John Doe preemptively used different last names for John and his next friend ("John Doe" and "Jane Roe," respectively) so that Vlaming could easily distinguish them within his own papers without using first names, pronouns, or honorifics, if Vlaming deems it necessary. Whether the Court and John use "John" and male pronouns to refer to John Doe is irrelevant to this inquiry, however. Vlaming's claim is that he *himself* should be exempt from the School District's policies in his use of pronouns to refer to transgender students; he makes no claim that *other parties* should be required to cease using John's chosen pronouns as well.

Finally, Vlaming's assertion that the Court's use of "John" or male pronouns could improperly influence a jury is misplaced. *See* Doe Opp., ECF No. 29, at 2. The legally relevant facts in this case are not in dispute, and Vlaming's claims, if not dismissed at the pleading stage, are likely to be resolved on summary judgment. Even if the Court concludes that relevant questions of fact preclude summary judgment, Vlaming's concerns are best addressed through motions *in limine* and jury instructions. At that stage, the Court will be in the best position to consider those concerns in light of the evidence and witnesses that will be presented to the jury.

CONCLUSION

The existing parties in this case acknowledge that John Doe meets each of the criteria for proceeding under a pseudonym in this matter. Further, Vlaming has provided no legitimate basis for denying John Doe's request to use "John" as a first name. Based on the foregoing reasons,

John Doe, by his next friend Jane Roe, respectfully requests that the Court enter an order permitting him and his next friend to proceed under those pseudonyms and directing the parties to refrain from posting their identifying information on the Court's docket.

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Dated: December 16, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on the 16th day of December, 2019, I electronically filed the foregoing John Doe's Opposition to Plaintiff's Motion to Remand, using the Court's CM/ECF system, which will send a notification of such filing (NEF) to all attorneys of record:

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