

NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
No. 2019-01308-H**

Notified 06-25-19 (NS)
- LOKDH/H.D.H.
- G.C.B./D.B.
- LORW/R.L.W.

**JOHN DOE 1, JOHN DOE 2, AND JOHN DOE 3,
Plaintiffs,**

vs.

**ROBERT J. MANNING, as Trustee, UNIVERSITY OF MASSACHUSETTS, et al.,
Defendants.**

**MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFFS' MOTION TO PROCEED UNDER A PSEUDONYM**

The plaintiffs are three students of the University of Massachusetts (the "University") who are attending the University at its Amherst campus ("UMass Amherst"). In their Verified Complaint, plaintiffs allege that by allowing on-campus events led by representatives of organizations that espouse anti-Semitic views, the University is discriminating against them and other students (Count 1) and breaching its contract with the students by "creating an intimidating, hostile and offensive academic environment for its Jewish students." Verified Complaint ¶ 49 (Count 2).

On May 2, 2019, this Court denied plaintiffs' motion to enjoin a panel discussion titled "Not Backing Down: Israel, Free Speech, & The Battle for Palestinian Rights," which after denial of the motion was held at the UMass Amherst campus on May 4, 2019. In the pending motion, plaintiffs seek the right to litigate this case under pseudonyms, asserting that due to "the rising anti-semitism they are experiencing from peers and from faculty, [they] fear for their safety and fear retaliation in the form of bad grades, refusals to give them recommendations and...other subtle actions" (Docket # 4) (emphasis in

original). The Court heard oral argument on the pending motion on June 17, 2019. For the below reasons, plaintiffs' motion is **DENIED**.

DISCUSSION

A. The Legal Standard

Mass. R. Civ. P. 10(a) provides that “[t]he title of the action shall include the names of all the parties.” “This rule serves more than administrative convenience. It protects the public’s legitimate interest in knowing all of the facts involved, including the identities of the parties.” *Plaintiff B v. Francis*, 631 F.3d 1310, 1315 (11th Cir. 2011).

Courts have allowed parties to proceed under a pseudonym only if the party “has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Singer v. Rosencrantz*, 453 Mass. 1012, 1013 (2009) (internal quotations and additional citations omitted). When anonymity is sought, “[t]he burden is upon the proponent to demonstrate the need for confidentiality.” *McGinnis v. Cigna Group Insurance Co. of America*, 379 F. Supp. 2d 89, 90 (D. Mass. 2005). “Cases in which parties are allowed to proceed anonymously because of privacy interests often involve ‘abortion, mental illness, personal safety, homosexuality, transsexuality and illegitimate or abandoned children in welfare cases.’” *Doe v. Bell Atl. Business Sys. Servs., Inc.*, 162 F.R.D. 418, 420 (D. Mass. 1995), quoting *Doe v. Blue Cross and Blue Shield of Rhode Island*, 794 F. Supp. 72, 74 (D.R.I. 1992).

B. Application of the Legal Standard

In deciding this motion, the Court takes judicial notice of evidence that anti-Semitic incidents have increased in recent years, in Massachusetts and across the United States. See, e.g., “Audit of Anti-Semitic Incidents: Year in Review 2018,” Anti-

Defamation League (March 2019), posted at www.adl.org/audit2018. Moreover, this Court assumes that the plaintiffs believe in good faith that being identified in this lawsuit could cause them safety concerns and lead to retaliation in the form of bad grades, faculty refusals to give recommendations and other actions against them. However, plaintiffs have adduced no credible evidence that being so identified is likely to lead to any of the reactions they fear. Indeed, as the Court noted in denying plaintiffs' motion for a preliminary injunction, there is no allegation in the Verified Complaint that anyone has personally threatened any of the plaintiffs with physical harm or any other type of harm.

In reaching its decision, the Court relies heavily on *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981) and *Doe v. Pittsylvania County*, 844 F. Supp. 2d 724 (2012), two cases relied on by plaintiffs in their motion. See Memorandum in Support of Motion to Allow Plaintiffs to Proceed Under Pseudonyms ("Plt. Memo") at 4; Supplemental Memorandum in Support of Motion to Allow Plaintiffs to Proceed Under Pseudonyms ("Plt. Supp. Memo") at 2-4. *Stegall*, in which the Fifth Circuit Court of Appeals allowed plaintiffs to proceed anonymously in a school prayer case, lends some support to plaintiffs' position. However, *Stegall* is distinguishable in several respects.

In *Stegall* there was direct evidence that being identified with the lawsuit would expose the plaintiffs to threats and possible violence. The record contained many threatening public statements, for example, statements that the lawsuit had been filed by a "Jew" and that "Christians must beat the evil out of these people." 653 F.2d at 180. Here, there is no evidence of anti-Semitism or threats directed at anyone for the filing of this lawsuit.

In *Pittsylvania County, supra*, a more recent case relied on by plaintiffs, the court *denied* plaintiff's motion to proceed anonymously. 844 F. Supp. 2d at 731. Moreover, in denying the motion, the court distinguished *Stegall* on two grounds that are equally applicable in this case:

First, there is no record of any threat made against plaintiff in this case, and she has not established the likelihood of retaliatory physical harm. *Cf.* [*Stegall*, 653 F.2d] at 182 n. 6 (county residents stated Satan was "working his evil on these people filing this suit" and that "Christians must beat the evil out of these people" and must "band together and whop this evil thing"). Secondly, this case does not involve a child-plaintiff, a factor the *Stegall* court found "especially persuasive." *Id.* at 186.

844 F. Supp. 2d at 742. Thus, there are at least three grounds on which to distinguish *Stegall* from this case.

Plaintiffs state that the most recent case cited by the University to support its position was issued in 2013, and then argue that the explosion in online media since then has changed the calculation of when anonymity is necessary to protect privacy interests. See Plt. Memo at 2-8. If the legal landscape had changed in recent years, presumably there would be case law reflecting this change, and plaintiffs cite no post-2013 case to support their argument. Moreover, in *Pittsylvania County, supra*, the court considered the significant online commentary surrounding the litigation, see 844 F. Supp. 2d at 736-738, before denying plaintiff's motion to proceed anonymously.

Plaintiffs have further weakened their position by naming each individual trustee of the University in the caption of virtually every pleading they have filed. See, e.g. Verified Complaint (Docket # 1); Plt. Supp. Memo (Docket # 38). Even after the University pointed this out, *see* University Defendants' Response to Plaintiffs' Motion to Proceed Under Pseudonyms (Docket # 9) ("Def. Resp. Memo") at 2, n. 1, plaintiffs

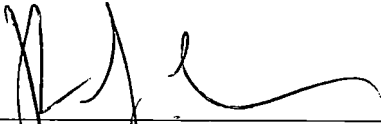
named each trustee individually in the case caption of Plt. Memo while attacking the University's position on the motion, and *again* named each trustee individually in the case caption of Plt. Supp. Memo, more than a month later. Apparently, it did not occur to plaintiffs (or perhaps their counsel) that being publicly identified as promoting anti-Semitism raises some of the same concerns that led plaintiffs to request anonymity.¹ Similarly, in requesting anonymity, plaintiffs apparently fail to see the irony in their argument that "under the veil of anonymity that posting on the internet provides, internet users are willing to say things that they otherwise would not." Plt. Memo at 2. One of the Court's concerns in allowing the parties to proceed anonymously in this type of case is the greater ease with which an anonymous party can make irresponsible or unsubstantiated allegations.

It is no coincidence that most cases in which pseudonyms have been allowed involve abortions, mental health, children and other areas in which privacy interests are well recognized in the law, see *Bell Atl. Business*, 162 F.R.D. at 420, because the legal standard places upon plaintiff the burden to show a "substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Singer*, 453 Mass. at 1013. Because plaintiffs in this case fail to meet this burden, their motion to proceed under pseudonyms must be denied.

¹ The repeated naming of each individual trustee of the University in the case caption appears to reflect lack of attention to the potential consequences to these trustees of being publicly named, not an intent to harass or embarrass university officials, which has motivated at least some plaintiffs in cases against universities. See Emergency Motion to Intervene and Memorandum of Law (Docket # 7) at 5, quoting Marcus, "Standing Up for Jewish Students," *Jerusalem Post* (Sept. 9, 2013) ("Seeing these [title VI] cases rejected has been frustrating and disappointing, but we are, in fact, comforted by knowing that we are having the effect we had set out to achieve... These case – even when rejected – expose administrators to bad publicity...")

CONCLUSION AND ORDER

For the above reasons, Plaintiffs' Motion to Proceed Under a Pseudonym (Docket # 4) is **DENIED**. If plaintiffs wish to proceed in this case, on or before July 25, 2019 they must serve and file an Amended Complaint that is in substance identical to the Verified Complaint, with the exception of including their names in the case caption. Failure to file this Amended Complaint shall result in dismissal of the case with prejudice. If such Amended Complaint is filed and the proposed intervenors wish to intervene, their counsel shall contact the session clerk to schedule a hearing on their motion to intervene, which motion has already been briefed. All current tracking order deadlines remain in effect.



Robert L. Ullmann
Justice of the Superior Court

Date: June 25, 2019

SUFFOLK, SS

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO.

19-1308-14

John Doe 1 an John Doe 2
PLAINTIFF (Print Name Clearly)

VS

Robert Manning et al
DEFENDANT (Print Name Clearly)

PLAINTIFFS'
MOTION TO PROCEED
UNDER A PSEUDONYM

SHALL JOSEPH J. ...
CLERK / MAGISTRATE
2019 APR 25 1 P 23
SUFFOLK SUPERIOR COURT

MOTION

Now comes the plaintiff ~~defendant~~

and moves this Honorable Court to enter an order allowing them to proceed anonymously in this matter. Plaintiffs rely on the facts in the verified complaint. As alleged there, they are Jewish students on the campus of the University of MA Amherst who, because of the rising anti-semitism they are experiencing from peers and from faculty, fear for their safety and fear retaliation in the form of bad grades, refusals to give them recommendations and myriad other subtle actions. The anti-semitism on campus has been documented online. for instance: <https://www.masslive.com/news/2017/01/umass-ranked-26th-worst-campus.html>

Dated this _____ day of _____ 200

worst-campus.html

Respectfully submitted
Karen Hurvitz
Signature

April 25, 2019