IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., *et al.* *Plaintiffs*, v. PAM BONDI, *et al.*, *Defendants*.	)	Civil Action No. 4:18-cv-137-MW-CAS

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE TO PROCEED UNDER PSEUDONYMS

The Second Amendment "guarantee[s] the individual right to possess and carry" firearms, and "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 592, 635 (2008). The State of Florida, however, has recently prohibited an entire class of law-abiding, responsible citizens from fully exercising the right to keep and bear arms—namely, adults who have reached the age of 18 but are not yet 21. Plaintiffs Jane Doe and the National Rifle Association of America, Inc. ("NRA") have brought this lawsuit to challenge that ban.

Jane Doe is a 19-year-old adult female. Jane Doe desires to purchase a firearm for self-defense, and, but for Florida's ban, she would do so. Plaintiff NRA has brought suit on behalf of its members injured by the ban, including John Doe, a

19-year-old adult male, who also desires to purchase firearms and would do so but for Florida's ban. Because Plaintiff Jane Doe reasonably fears she would suffer harassment, intimidation, and potentially physical violence if her name were revealed and her participation in this lawsuit became public, she seeks the Court's leave to participate in this lawsuit under a pseudonym. For the same reason, Plaintiff NRA seeks leave on behalf of its member, John Doe, to refer to him pseudonymously.

ARGUMENT

FED. R. CIV. P. 10(a) provides that "[t]he title of [a] complaint must name all the parties." The federal courts, however, have "carved out a limited number of exceptions to the general requirement of disclosure, which permit plaintiffs to proceed anonymously." *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 685 (11th Cir. 2001). The Eleventh Circuit has held that "[a] party may proceed anonymously in a civil suit in federal court by showing that he has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Plaintiff B v. Francis*, 631 F.3d 1310, 1315–16 (11th Cir. 2011) (quotation marks omitted). "In evaluating whether a plaintiff has shown that he has such a right, the court should carefully review *all* the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff's identity should yield to the

plaintiff's privacy concerns." *Id.* at 1316 (quotation marks omitted).

In *Plaintiff B*, the Eleventh Circuit held that the "first step in analyzing a plaintiff's claim of a substantial privacy right is to look at . . . three factors." "First, are the plaintiffs seeking anonymity challenging governmental activity? Second, will they be required to disclose information of the utmost intimacy? Third, will the plaintiffs be compelled to admit their intention to engage in illegal conduct and thus risk criminal prosecution?" *Id.* at 1316. After weighing these factors, *Plaintiff B* instructs that a court should proceed to "analyz[e] all the circumstances," including such factors as "whether [the plaintiffs are] threatened with violence or physical harm by proceeding in their own names, and whether their anonymity pose[s] a unique threat of fundamental unfairness to the defendant." *Id.* (citation omitted). Here, Plaintiff Jane Doe—and Plaintiff NRA's member, John Doe—have a powerful interest in proceeding anonymously. And Defendants' interest in learning their identities is weak.

1. The first *Plaintiff B* factor—whether the case challenges "governmental activity" rather than activity by private individuals—relates to the nature and weight of the Defendants' interest in learning the identity of the plaintiff. Here, that interest is quite weak. The defendants in this case are government officials, not private individuals or entities. And as the Eleventh Circuit has recognized, the interests that a private party ordinarily has in knowing

the identity of his accuser are thus not present here. While "the mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm," litigation against the government "involve[s] no injury to the Government's 'reputation.' " *See Doe v. Frank*, 951 F.2d 320, 323–24 (11th Cir. 1992).

Moreover, it is difficult to see how Defendants could even conceivably be prejudiced by allowing Jane Doe (or John Doe) to remain anonymous. As shown by previous litigation similar to this action, *see National Rifle Ass'n v. BATF*, 700 F.3d 185 (5th Cir. 2012), the dispositive issues in this case are likely to be purely legal ones—relating to the scope of the Second Amendment's protection of the right to acquire firearms and the strength of the government's interest in maintaining the challenged age ban. And to the extent there are any factual disputes in this case, they are likely to concern issues of "legislative fact," not issues of "adjudicative fact"—"[f]acts pertaining to the parties and their businesses and activities," *Usery v. Tamiami Trail Tours, Inc.*, 531 F.2d 224, 244 n.52 (5th Cir. 1976)—that might pertain to Plaintiff's identity. Finally, to the extent the identity of either Jane Doe or John Doe for some reason becomes critical to the conduct of this litigation, Plaintiffs would be willing to share their identifying information with Defendants' counsel on an attorneys'-eyes-only basis.

2. The second *Plaintiff B* factor, related to the plaintiff's interest in

anonymity, strongly counsels in favor of allowing the use of pseudonyms in this case. Plaintiff Doe's name, address, and status as a plaintiff in this case are highly sensitive and personal. Few issues of public policy are as controversial and politically polarizing as the possession and use of firearms. Ms. Doe seeks only to purchase firearms for lawful use in the privacy of her own home as the Second Amendment guarantees; but publication of her identity would expose her to unwanted public attention and censure for exercising her right to challenge a statute denying her a fundamental constitutional right. Indeed, as discussed in more detail below, those who are publicly connected with the litigation have already received numerous threatening calls and emails. For the same reasons, John Doe's participation in this suit is a highly private, sensitive matter.

Jane and John Doe's identity and participation in this high-profile, controversial litigation may not be "intimate" information of the kind at issue in *Plaintiff B*—a lawsuit involving sexual assault and the distribution of pornographic material—but it is nonetheless "sensitive and highly personal [in] nature." *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712 (5th Cir. 1979). Indeed, in recognition of the highly sensitive nature of this information, Florida law expressly exempts "[p]ersonal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm" from the state Sunshine Law. FLA. STAT. §

790.0601. Florida also prohibits the creation of any "list, record, or registry of legally owned firearms or law-abiding firearm owners" because of concerns that such records "can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm." *Id.* § 790.335(1)(a)(2), (2). The second *Plaintiff B* factor thus weighs heavily in favor of allowing Jane Doe and John Doe to remain anonymous.

3. Finally, other contextual circumstances in this case strongly support Plaintiffs' request. The Eleventh Circuit has looked, for example, at whether a plaintiff would be "threatened with violence or physical harm by proceeding in [her] own name[ ]." *Plaintiff B*, 631 F.3d at 1316; *see also Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1247 & n.8 (11th Cir. 2012) (proceeding anonymously appropriate in cases involving illegal immigration because identification "could lead to . . . harassment[ ] and intimidation"). Here, as detailed in the accompanying declarations, Ms. Doe and Mr. Doe reasonably fear that public exposure and association with this lawsuit could subject them to harassment, intimidation, and potentially even physical violence.

As described in the accompanying declaration by Marion Hammer, a representative of the NRA who has been referenced in national news stories as associated with the lawsuit, she has received numerous threatening and harassing emails and phone calls in the wake of the Parkland shooting. Several representative

examples are attached as Exhibit 1 to Ms. Hammer's declaration. The emails[1] in Exhibit 1 are just a handful of the scores of threatening emails NRA representatives received after this lawsuit was filed. Ms. Hammer has also received scores of disturbing phone calls from individuals who have used offensive, derogatory language similar to the language employed in the emails in Exhibit 1 and have threatened her life and physical well-being. Mr. Doe and Ms. Doe—19-year-old, private citizens—have a strong, overriding interest in not being exposed to similar threats and harassment as a result of their desire to vindicate their constitutional rights in court.

CONCLUSION

For the foregoing reasons, Plaintiffs' respectfully urge the Court to grant their Motion for Leave To Proceed Under Pseudonyms.

[1] Plaintiff has redacted the senders' names and email addresses.

Dated: April 26, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2018 a true and correct copy of the foregoing was filed using the Northern District Clerk's EM/ECF filing system which will generate an automated email notice and service copy to record counsel below:

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