

FILED
02-22-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
NO. 2024-AP-3300A

PLANNED PARENTHOOD OF WISCONSIN,
on behalf of itself, its employees, and its patients,

KATHY KING, M.D.,

and

ALLISON LINTON, M.D., M.P.H.
on behalf of themselves and their patients,

and

MARIA L.,

JENNIFER S.,

LESLIE K.,

and

ANAIS L.,

Petitioners,

v.

JOEL URMANSKI, in his official capacity as District Attorney
for Sheboygan County, Wisconsin,
615 North 6th Street, First Floor
Sheboygan, Wisconsin 53081

ISMAEL R. OZANNE, in his official capacity as District Attorney
for Dane County, Wisconsin,
215 South Hamilton Street, #3000
Madison, Wisconsin 53703

and,

JOHN T. CHISHOLM, in his official capacity as District Attorney
for Milwaukee County, Wisconsin,
821 West State Street, Room 405
Milwaukee, Wisconsin 53233

Respondents, as Class Representatives for
all Wisconsin District Attorneys.

**PETITIONERS' BRIEF IN SUPPORT OF MOTION TO PROCEED USING
PSEUDONYMS AND ASSOCIATED RELIEF**

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Parenthood of Wisconsin, Dr. Kathy King,
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February 22, 2024

I. Introduction

This is an action seeking the Court's determination of whether Wisconsin Statute § 940.04, as interpreted by Sheboygan County District Attorney Joel Urmanski (and other prosecutors) to ban almost all consensual abortions, violates the fundamental rights declared in Article I, Section 1 of the Wisconsin Constitution of Wisconsinites who may become pregnant and of the physicians who provide care to them. Three petitioners – Planned Parenthood of Wisconsin, Dr. Kathy King, and Dr. Allison Linton – have been identified publicly. Petitioners Maria L., Jennifer S., Leslie K., and Anais L. (collectively, the “Women Petitioners”) are women who have each had an abortion and would consider doing so again should they become pregnant. (Maria L. Aff., ¶¶ 5, 13; Jennifer S. Aff., ¶¶ 5, 14; Leslie K. Aff., ¶¶ 5, 11; Anais L. Aff., ¶¶ 5, 14.)

Petitioners move the Court pursuant to Wis. Stat. §§ 801.21 and 809.14 for an order permitting the Women Petitioners to proceed anonymously by using pseudonyms as the Court considers whether to grant the Petition for Original Action filed herewith (“Petition”).¹ Should the Court grant the Petition, Petitioners ask that the Court grant an order permitting the Women Petitioners to continue appearing by pseudonym, requiring any unredacted copies of their

¹ If the Court does not grant the Petition, there will have been no need for the Court to obtain unredacted copies of the affidavits. Hence, Petitioners request that the Court not require the filing of any unredacted materials until the Court has granted both this motion and the Petition.

affidavits be filed under seal, and requiring the other parties to join a protective order that requires the Women Petitioners' identities to be kept confidential on an attorneys' eyes only basis. The administration of justice and the public's overriding interest in nondisclosure requires that the Women Petitioners' identities be kept confidential.

II. Argument

In light of courts' broad inherent authority to seal information, and the highly-sensitive information sought to be sealed in this case, the Court should grant the Women Petitioners' motion to proceed using pseudonyms.

A. Courts may seal parties' identities under their inherent powers.

Courts may allow a party to proceed in litigation anonymously. *See, e.g., Doe v. Ellis*, 103 Wis. 2d 581, 309 N.W.2d 375 (Ct. App. 1981); *Doe by Doe v. Roe*, 151 Wis. 2d 366, 444 N.W.2d 437 (Ct. App. 1989); *Doe v. Am. Nat. Red Cross*, 176 Wis. 2d 610, 500 N.W.2d 264 (1993); *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 565 N.W.2d 94 (1997); *Doe 56 v. Mayo Clinic Health Sys.*, 2016 WI 48, 369 Wis. 2d 351, 880 N.W.2d 681. Court records may be sealed or redacted to prevent public disclosure when (1) a statute authorizes confidentiality, (2) disclosure would infringe upon a constitutional right, or (3) the court exercises its "inherent power to preserve and protect the exercise of its judicial function...when the

administration of justice requires it." *State ex rel. Bilder v. Delavan Twp.*, 112 Wis.

2d 539, 556, 334 N.W.2d 252, 261 (1983). In a recent case, this Court noted:

[T]he inherent authority of courts includes those powers "necessary for the courts to function as courts." *State v. Schwind*, 2019 WI 48, ¶12, 386 Wis. 2d 526, 926 N.W.2d 742. We see no reason why the inherent authority of courts would not also reach other interests implicated by the openness of judicial proceedings, including the potential for threats and harassment alleged in this case. These interests go to the core of the judiciary's duty to preside over and conduct judicial proceedings...

Doe 1 v. Madison Metro. Sch. Dist., 2022 WI 65, ¶ 15, 403 Wis. 2d 369, 976 N.W.2d 584.

Courts have also limited access to otherwise public records when "permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection." *Doe 1 v. Madison Metro. Sch. Dist.*, 2021 WI App 60, ¶ 26, 399 Wis. 2d 102, 963 N.W.2d 823, *aff'd*, 2022 WI 65, ¶ 26, 403 Wis. 2d 369, 976 N.W.2d 584 (citing *Matter of Ests. of Zimmer*, 151 Wis. 2d 122, 132, 442 N.W.2d 578, 582 (Ct. App. 1989)). Crucially:

The "public interest in protecting the reputation and privacy of citizens ... is *not* equivalent to an individual's personal interest in protecting his or her own character and reputation," and "the public interest in protecting individuals' privacy and reputation arises from the public effects of the failure to honor the individual's privacy interests, and not the individual's concern about embarrassment."

Id. (internal citations omitted).

This Court applies a balancing test on a case-by-case basis to determine whether permitting inspection of records would result in harm to a public

interest which outweighs the public interest in opening the records to inspection. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 25, 254 Wis. 2d 306, 646 N.W.2d 811. For example, courts have favored nondisclosure of public records that include witness identities in workplace sexual harassment investigations to avoid potential embarrassment to those witnesses, which might make them less likely to come forward. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 73, 284 Wis. 2d 162, 699 N.W.2d 551. Court have also cited the public's interest in avoiding a perception that public employees' personnel files are regularly open for review, which may make it more difficult to attract quality candidates for public employment, *id.* ¶ 75, as well as the public's interest in not injuring the reputations of public employees, *see Local 2489 v. Rock County*, 2004 WI App 210, ¶ 26, 277 Wis. 2d 208, 689 N.W.2d 644.

B. *The Court should permit the Women Petitioners to seal their identities and proceed using pseudonyms.*

Here, the administration of justice and the public's interest in nondisclosure requires that the Women Petitioners' identities be kept confidential.

"This court has held that it can and will take judicial notice of matters of common knowledge." *State ex rel. Schilling v. Baird*, 65 Wis. 2d 394, 399, 222 N.W.2d 666, 669 (1974) (citing *Frederick v. Hotel Invs., Inc.*, 48 Wis. 2d 429, 180

N.W.2d 562 (1970)). The following matters of common knowledge are relevant here:

- The legal status of abortion care remains a highly-charged social and political issue;
- The legal status of abortion care in Wisconsin has received national² and even international³ media coverage;
- Whether or not to have an abortion is a matter of utmost intimacy.

The Legislature has recognized the sensitivity of the issue for those who seek an abortion and has provided for confidential proceedings and records in proceedings for women who have received an abortion, as well as for minors who seek a judicial waiver to parental consent for abortions. Wis. Stat.

§§ 253.105(6) (directing court to determine whether the identity of a woman who had an abortion should be kept confidential; requiring use of pseudonym unless the woman who had an abortion provides written consent to use her name);

² See, e.g., Mitchell McCluskey, Planned Parenthood will resume abortions in Wisconsin next week after judge rules 1849 state law doesn't apply, CNN (Sept. 14, 2023, 4:41 PM), <https://www.cnn.com/2023/09/14/us/wisconsin-abortion-resume-planned-parenthood-1849-law/index.html> (last visited Feb. 21, 2024); Associated Press, Planned Parenthood resumes offering abortions in Wisconsin after more than a year, PBS (Sept. 18, 2023, 10:55 AM), <https://www.pbs.org/newshour/health/planned-parenthood-resumes-offering-abortion-in-wisconsin-after-more-than-a-year> (last visited Feb. 21, 2024); Sarah Varney, What it's like for doctors in Wisconsin to follow an 1849 abortion law in 2023, NBC News (July 22, 2023, 5:00 AM), <https://www.nbcnews.com/health/womens-health/s-doctors-wisconsin-follow-1849-abortion-law-2023-rcna95433> (last visited Feb. 21, 2024).

³ See, e.g., Carter Sherman, Planned Parenthood in Wisconsin to resume abortion care after judge's ruling, The Guardian (Sept. 14, 2023, 12:36 PM), <https://www.theguardian.com/world/2023/sep/14/wisconsin-abortion-planned-parenthood> (last visited Feb. 21, 2024).

48.375(7)(e) (requiring confidentiality of proceedings and records for minors seeking an abortion). Here, the Women Petitioners have a legitimate interest in maintaining confidentiality around their decisions to obtain an abortion.

Requiring the Women Petitioners to publicly divulge their identities in the course of seeking relief from the Court may interfere with the administration of justice. There is a very real possibility that the Women Petitioners could become the subject of threats and harassment due to their participation in this matter. The Court's inherent authority allows it to protect the integrity of these judicial proceedings and keep the focus on the legal issues involved by maintaining the confidentiality of the Women Petitioners' identities. *See Doe 1*, 403 Wis. 2d 369, ¶ 15.

There is also a strong public interest in allowing the Women Petitioners to proceed anonymously. Each of the Women Petitioners wishes to use a pseudonym in this matter to protect their privacy. (Maria L. Aff., ¶ 2; Jennifer S. Aff., ¶ 2; Leslie K. Aff., ¶ 2; Anais L. Aff., ¶ 2). Each has also made a very personal decision to have an abortion and would consider doing so again should they become pregnant. (Maria L. Aff., ¶¶ 5, 13; Jennifer S. Aff., ¶¶ 5, 14; Leslie K. Aff., ¶¶ 5, 11; Anais L. Aff., ¶¶ 5, 14). Because the decision to have an abortion is a matter of utmost intimacy, and because this matter is likely to receive significant media interest in the context of a highly-charged social and political

environment, requiring the Women Petitioners to disclose their identities would discourage them from participating despite their collective belief that they should have the legal authority to make decisions about whether or not to have a child (*see* Maria L. Aff., ¶¶ 2-3; Jennifer S. Aff., ¶¶ 2-3; Leslie K. Aff., ¶¶ 2-3; Anais L. Aff., ¶¶ 2-3).

Just as the public has an interest in avoiding even a perception that public personnel files are regularly open for review because that perception may make it more difficult to attract quality candidates for public employment, *Hempel*, 284 Wis. 2d 162, ¶¶ 75, 77, the public has an overriding interest in avoiding a perception that individuals must sacrifice the privacy of their most intimate and personal decisions in order to seek this Court's review of their legal rights. Should this Court require Women Petitioners to publicly identify themselves over their objections, it would discourage others from involvement in litigation that is similarly highly-charged and high profile – especially when the litigation involves extremely personal decisions and matters concerning their healthcare.

Allowing Women Petitioners to continue appearing by pseudonym, requiring any unredacted copies of their affidavits be filed under seal, and requiring the other parties to join a protective order that requires the Women Petitioners' identities to be kept confidential on an attorneys' eyes-only basis constitute the least restrictive means of protecting the public's interests in the

Women Petitioners' privacy. *See* Wis. Stat. § 801.21(4). The records containing the relevant facts about the Women Petitioners' personal experiences and standing with regard to this matter will remain open to the public; only their identities will remain private. *See Hempel*, 284 Wis. 2d 162, ¶ 70 (affirming redaction of identities "without hiding the alleged conduct"). The public will suffer no harm and its interest in nondisclosure of the Women Petitioners' identities shall remain intact. Neither the Court nor the parties will be burdened or disadvantaged in any way.

III. Conclusion

For the reasons stated above, Petitioners request that the Court grant this motion and enter an order allowing the Women Petitioners to proceed in this case anonymously using pseudonyms as it considers whether to grant the Petition. Should the Court grant the Petition, Petitioners ask that the Court grant an order permitting the Women Petitioners to continue appearing in this matter by pseudonym, requiring any unredacted copies of their affidavits to be filed under seal, and requiring the other parties to enter a protective order that requires the Women Petitioners' identities to be kept confidential on an attorneys' eyes-only basis.

Respectfully submitted this 22nd day of February, 2024.

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