

FILED
07-16-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Case No. 2024AP330-OA

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; ISMAEL R. OZANNE, in his official capacity as District Attorney for Dane County, Wisconsin; JOHN T. CHISHOLM, in his official capacity as District Attorney for Milwaukee County, Wisconsin,

Respondents.

EXPLANATION IN SUPPORT OF STIPULATION TO PROCEED
USING PSEUDONYMS AND
FOR THE ENTRY OF A PROTECTIVE ORDER

The parties to this action, by and through their respective counsel, jointly submit this Explanation in Support of Stipulation to Proceed Using Pseudonyms and for the Entry of a Protective Order related to the identities of the Petitioners who have been designated with the pseudonyms Maria L., Jennifer S., Leslie K., and Anais L. in this action (“Women Petitioners”).

Stipulated Explanation

The parties acknowledge that there is a “strong presumption in favor of openness for judicial proceedings and records,” but this presumption “can be overcome by specific statutory or constitutional rights, and in some circumstances, by the inherent power the constitution vests in the judicial branch.” *Doe 1 v. Madison Metropolitan Sch. Dist.*, 2022 WI 65, ¶19, 403 Wis. 2d 369, 976 N.W.2d 584. Here, the parties agree that it would be appropriate for this Court to exercise its inherent power to allow for the redacting and sealing of the identities of the Women Petitioners on the terms set forth in the Order to Proceed Using Pseudonyms and for the Entry of a Protective Order (“Proposed Order”) and that the terms agreed to by the parties represent the least restrictive means possible of effectuating the proposed restriction on public access.

Other petitioners are proceeding in their real names. The records containing the relevant facts about the Women Petitioners with regard to this matter will remain open to the public; only their identities will remain private. The public will suffer no harm and its interest in nondisclosure of the Women Petitioners’ identities shall remain intact. In *Doe 1*, 2022 WI 65, all of the plaintiffs sought to keep their identities secret from both the public and the other parties’ attorneys in the case. The Court noted that the plaintiffs’ identities could very well have implications for the substantive issues in the case, and that all attorneys in the matter had independent ethical obligations to evaluate any potential conflicts of interest. *See id.* ¶¶ 24-26. Ultimately, the Court saw no error in the circuit court’s determination that the parties’ identities should be withheld from the public, but not from the attorneys. *See id.* ¶ 28. Consistent with the ruling in *Doe 1*, 2022 WI 65, the stipulated terms here provide that all parties’

attorneys shall be informed of the identities, addresses, and workplaces of the Women Petitioners to evaluate potential conflicts of interest and for other necessary purposes, and no party will be burdened or disadvantaged in any way. The parties submit that the Stipulated Terms are otherwise consistent with Wisconsin law.

First, the parties agree that “Wisconsin courts have looked to federal cases for guidance on sealing documents.” *Doe 1*, 2022 WI 65, ¶ 21 n.7. The parties further agree that “there is a long tradition in the federal courts of plaintiffs bringing suit under an alias” in cases where people have sought access to abortions. *See, e.g., Speech First, Inc. v. Shrum*, 92 F.4th 947, 950 (10th Cir. 2024) (citing *Roe v. Wade*); *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981) (“The Supreme Court has given implicit recognition to the use of pseudonyms in the abortion cases.”); *see also June Medical Services L.L.C. v. Russo*, 591 U.S. 299, 405 (Alito, J., dissenting) (“[A] woman who challenges an abortion restriction can sue under pseudonym, and many have done so.”).

Second, there is a public policy interest in protecting the privacy of an individual’s health information. This policy is reflected in various state and federal statutes that reflect a public interest in the confidentiality of an individual’s health care records. *See* Wis. Stat. §§ 146.81(4), 146.82, and 256.15(12)(a) (protecting patient health care records); Wis. Stat. § 51.30(1)(am), (1)(b), (4) (protecting mental health registration and treatment records); Wis. Stat. § 905.04(1)(c), 2, 3 (creating the patient/provider privilege); 42 U.S.C. § 1320d-2, 45 C.F.R. pts. 160 and 164 (protecting patient health care records, pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA)); Wis. Admin. Code § Med 10.03 (“unprofessional conduct” includes divulging patient

confidences). In addition, for purposes of our public records law, “[t]he exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy.” Wis. Stat. § 19.35(1). One such exemption to the open meetings act is a meeting for the purpose of “[c]onsidering financial, medical, social or personal histories or disciplinary data of specific persons,” which further establishes that Wisconsin recognizes a privacy interest in a person’s medical history.

The parties agree that, according to their affidavits, each of the Women Petitioners obtained an abortion. At the time, the fact that each of these women obtained an abortion would likely have been treated as confidential health information.

The parties also agree that several Wisconsin statutes have allowed for courts to protect the identities of women who have abortions. Wisconsin Statutes section 253.107, for example, bans abortions after twenty weeks (subject to certain exceptions), creates criminal and civil penalties, and provides:

(6)(a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was performed or induced or attempted to be performed or induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

(b) Any person, except for a public official, who brings an action under this section shall do so under a pseudonym unless the person obtains the written consent of the woman upon whom an abortion was performed or induced, or attempted to be performed or induced, in violation of this section.

(c) This section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

See also Wis. Stat. § 253.10(7m); Wis. Stat. § 253.105(5). Additionally, Wisconsin Statutes section 48.375(7)(e) requires that the identity of a minor who seeks to waive parental consent before obtaining an abortion be kept confidential with limited exceptions.

Finally, in this action the Women Petitioners assert that they have a state constitutional right to determine whether to carry a pregnancy to term or obtain an abortion. Respondent Urmanski does not agree with Petitioners' position. Nevertheless, because the individual petitioners are alleging the existence of a state constitutional right that petitioners argue is grounded in a protection of privacy of their own personal decisions regarding their healthcare and family planning, the parties agree the individual women petitioners should not be required to disclose their full identity to determine whether such a state constitutional right exists and that requiring them to disclose their full identity could dissuade them or others from seeking judicial determinations of their alleged rights based on similar allegations. The parties agree that nothing in this paragraph shall be construed as implying the existence of the state constitutional right claimed by petitioners.

The parties agree that entering into this stipulation shall not prejudice in any way the position of any party on the merits of this case or

the merits of *Kaul v. Urmanski* (Case No. 23AP2362) or operate as an admission of any point argued by any party on the merits of either case.

Dated this 16th day of July, 2024.

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